

**A Philosophical Investigation of Virginity Testing In Kwazulu-Natal: A Contribution to  
the Multiculturalism and Feminism Debate.**

by Lennox Khulekani Dlamini

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Supervisor: Prof. Louise Du Toit

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## **Declaration**

By submitting this thesis electronically, I declare that the entirety of the work contained therein is my own original work, that I am the authorship owner thereof (unless to the extent explicitly otherwise stated) and that I have not previously in its entirety or in part submitted it for obtaining any qualification.

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## Abstract

A debate has broken out between promoters of multiculturalism and those of feminism. Even though both can be said to be interested in some form of equality, some feminists argue that multiculturalists' demand for cultural group rights can only be realised at the expense of women. Will Kymlicka (1995) is convinced that individualistic human rights as promulgated in the Universal Declaration of Human Rights are insufficient for the protection of two kinds of groups, that is, national and polyethnic minorities. According to Kymlicka group-specific rights are morally justified as means to ensure minorities' meaningful participation in liberal society and government.

Susan Moller Okin (1999) in her book, *Is Multiculturalism Bad for Women?* questions and rejects Kymlicka's multiculturalist theory based on her conviction that it represents a threat to the progress made by feminists to challenge patriarchal worldviews. She argues that there is an inherent conflict between feminism and multiculturalism, and if special group rights were to be granted to national minorities, women from the minorities would be in a disadvantaged position (ibid.:10). However, Okin's strong tone in her suggestion that cultures that oppress women should be allowed to go extinct is an issue of concern and has polarised the debate in the form of an intractable multiculturalism vs feminism conflict.

Anne Phillips (2007; 2010) offers an alternative/middle way to the stonecast polarisation caused by what she deemed as an exaggerated value given to role of culture as a determining cause of human behaviour (2007:8). According to Phillips, a fundamental change in our understanding of the role culture plays in people's lives will defuse the construed dilemma between multiculturalism and feminism. This change entails rejecting the essentialist and deterministic notions that are too often attached to culture.

Like Phillips, I argue that both multiculturalism and feminism have something to offer on the condition that both accept that cultures are always changing as the result of both internal and external influences. At the same time, I argue that culture needs not be the enemy of feminism; on the contrary, culture and particular practices can be manipulated in such a way that they advance feminist goals. Thus, in Chapter Five, I link the multiculturalism and feminism debate to the lived experience of the people of South Africa. I focus on virginity testing (henceforth VT), as practised in KwaZulu-Natal. In the early 1990s, VT was re-established in KwaZulu-

Natal as a cultural alternative to government initiatives to fight the spread of HIV/AIDS. In recent years, however, VT has been condemned by South African human rights organisations and women's rights organisations such as the African National Congress Women's League (ANCWL). In response, in 2006, the government signed into law the Children's Act No. 38 of 2005, which bans VT of girls younger than 16 years of age and regulates VT of the girls above 16. I argue that a total ban on VT might deprive feminists of the opportunity to empower young girls through promoting those VT elements that have the potential to strengthen the feminist agenda.

### **Abstrak**

Daar is 'n voortgaande, hewige debat tussen voorstanders van multikulturalisme en feminisme onderskeidelik. Alhoewel albei agendas geïnteresseerd is in gelykheid, argumenteer sommige feministe dat multikulturaliste se eis vir kulturele groepsregte slegs gerealiseer kan word ten koste van vroue. Will Kymlicka (1995) argumenteer dat individuele menseregte soos geproklameer in die Universele Verklaring van Menseregte onvoldoende is vir die beskerming van twee soorte groepe, te wete, nasionale en poli-etniese minderhede. Volgens Kymlicka is groep-spesifieke regte moreel geregverdig as 'n manier om minderhede se betekenisvolle deelname aan 'n liberale samelewing en regering te waarborg.

Susan Moller Okin (1999) in haar boek, *Is Multiculturalism Bad for Women?* bevraagteken en verwerp Kymlicka se multikulturalisme, weens haar oortuiging dat dit 'n bedreiging inhou vir die vordering wat feministe gemaak het in hulle teenkanting teen patriargale wêreldbeskouings. Sy voer aan daar is 'n inherente konflik tussen hierdie twee teorieë, en as spesiale groepsregte vir minderhede toegestaan sou word, sou die vroue binne daardie minderhede in 'n benadeelde posisie opeindig. Okin se skerp toon in haar suggestie dat kulture wat vroue onderdruk toegelaat moet word om uit te sterf is sorgwekkend en het die debat gepolariseer tot 'n skynbaar onoplosbare konflik tussen multikulturalisme en feminisme.

Anne Phillips (2007; 2010) wys egter 'n alternatief of 'n middeweg uit hierdie impasse aan, wanneer sy dui op die oordrewe waarde wat gegee word aan kultuur as 'n bepalende oorsaak van menslike gedrag (2007:8). Volgens Phillips sal 'n fundamentele verandering in ons verstaan van die rol van kultuur in mense se lewens die bogenoemde konflik ontloot. Hierdie

verandering verwerp die essensialistiese en deterministiese idees wat té dikwels aan kultuur gekoppel word.

Soos Phillips, argumenteer ek dat beide multikulturalisme en feminisme iets het om te bied, op voorwaarde dat albei aanvaar dat kulture altyd besig is om te verander as gevolg van sowel interne as eksterne invloede. Terselfdertyd argumenteer ek dat kultuur nie die vyand van feminisme hoef te wees nie; intendeel, kultuur en spesifieke praktyke kan sodanig gemanipuleer word dat hulle feministiese doelwitte dien. In Hoofstuk Vyf koppel ek daarom hierdie debat aan die geleefde ervaring van mense in Suid-Afrika. Ek fokus op maagdelikheidstoetsing (of “virginity testing”, voortaan MT), soos beoefen in KwaZulu-Natal. In die vroeë 1990s is MT heringestel in verskeie streke van KwaZulu-Natal as ‘n kulturele alternatief vir regeringsinisiatiewe om die verspreiding van HIV/VIGS te bekamp. In die meer onlangse verlede is MT egter veroordeel deur Suid-Afrikaanse menseregte-organisasies, sowel as deur vroueregte-organisasies, soos die ANCWL (ANC-vroueliga). In reaksie het die Regering in 2006 die Kinderwet (Children’s Act No. 38) aanvaar, wat MT verbied vir meisies jonger as 16 jaar oud, en die MT van ouer meisies reguleer. Ek argumenteer dat ‘n totale verbod op MT feministe van ‘n geleentheid kan ontnem om jong meisies te bemagtig deur die bevordering van daardie elemente van MT wat die potensiaal het om ‘n feministiese agenda te versterk.

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## CHAPTER ONE

### INTRODUCTION

#### 1.1. The Rationale and Background of the Study

One of the persisting realities of our times is that the world as we know it is becoming more and more pluralistic. There are multitudes of cultures, doctrines, ideologies and philosophies that jostle for attention and come into contact with one another. Cultures and practices that were previously viewed as unacceptable and unpopular are gaining recognition like never before. In the midst of all these, human beings need to coexist regardless of their creeds and worldviews. Sometimes coexistence is maintained without many problems, but sometimes it's maintained with considerable difficulties. In cases where people religiously hold onto certain sets of beliefs as unalterable, the results might include intolerance, or even total segregation and subordination of those who hold different views and doctrines. In situations like these, it is almost impossible to forge unity. The Holocaust of the Jews during the Second World War, the Rwandan genocide of 1994, and the xenophobic attacks in South Africa are but a few examples of what happens when powerful groups are allowed to do whatever they like, or prefer to be correct on their own terms. In the past, especially during colonial times, one of the political answers in the prevention of intergroup conflict was either total cultural assimilation or total separation. Nowadays, however, many countries are governed by laws that give each cultural community a certain amount of freedom. Nevertheless, even here, often minority cultures continue to struggle to participate meaningfully in their national politics as a result of seemingly unjust majoritarian political frameworks.

In an effort to address the domination of minorities by powerful majorities, in liberal states in particular, two political theories, namely multiculturalism and feminism, seem to collide. Proponents of multiculturalism suggest that liberal states ought to create policies that will guarantee group-specific rights that are necessary for the protection of minority cultures within a liberal state (Kymlicka, 1995;1999). Multiculturalists like Kymlicka argue that even though some practices in some minority cultures might contradict the principles of liberalism, there is a warranted claim for these cultures to self-govern and to be self-determined. Kymlicka and other multiculturalists acknowledge that a lot has been achieved through universal human rights policies, but argue that on their own these policies are not yet sufficient to cater to the special needs of national minorities. Thus, Kymlicka proposes that multiculturalism should be enacted as a policy in such a way as to safeguard some special rights for minorities.

The second position is propagated by some of the promoters of liberal feminism. Some among the feminists, Susan Moller Okin<sup>1</sup> (1999) in particular, believe that many of the cultural minority groups are oppressive towards women. In her widely read essay, *Is Multiculturalism Bad for Women?*(1999), Okin argues that multiculturalist policies such as those proposed by Kymlicka, directly or indirectly enforce and perpetuate the subordination of women within illiberal minority cultures. Therefore, if liberal governments were to create and endorse group-specific rights for minorities, such a move would leave women and other disadvantaged groups within the minorities vulnerable to unfair and oppressive customs (ibid.). Okin suggests that multiculturalist protection of minority cultures collides with the liberal aim of protecting all women's personal autonomy, freedom and privacy. She does not only reject Kymlicka's proposed multiculturalism, but believes that cultures that oppress women cannot legitimately claim special protection from the state.

While Kymlicka (1999:31–34) claimed that feminism and multiculturalism had a lot in common, others have responded that they appear to be in perfect opposition (Volpp, 2001), are irreconcilable (Okin 1999), or that the dilemma is exaggerated (Philips, 2007). In this thesis, I join the debate in the hope of establishing whether there is a bridge that connects these two positions. My focus will not be based on empirical fact-finding, but rather on the theoretical conceptual analysis of the multiculturalists' question of minority group rights, specifically as it is given voice by both multiculturalist and feminist literature. I will do this by looking, first, at the liberal multiculturalism that is championed by the Canadian political philosopher, Will Kymlicka. Secondly, I will focus on Susan Moller Okin's criticism of multiculturalism and her warning about the hidden and unforeseen consequences of the uncritical embracing of multiculturalism.

Kymlicka's insistence on group rights and Okin's pushback have nourished what has become a robust and mostly polarising debate on the two positions, with some, like Anne Phillips (2007; 2010) advocating for a middle way between multiculturalism and feminism. My own inclination, and what I set out to demonstrate in this project, is that there is no need to choose between these two theories. I argue that even though some national minority groups have practices that seem to oppress women or others within the group, that fact, on its own, does

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<sup>1</sup> In this thesis I analyse Okin – in Chapter Two - as the main opponent of Kymlicka, with a special focus on the kind of consequences suffered by women when what she calls illiberal societies are allowed to prosper on their own terms through the protection of special group rights.

not force liberal governments to abandon the legitimate project of pursuing equality for minorities. It is my view that intergroup equality should be sought after, while at the same time addressing issues of intragroup oppression and unjustified restrictions.

I thus align myself with the third option that proposes that multiculturalism and feminism can and should be political allies. Both are geared towards the alleviation of oppression and suffering, specifically caused by the unfair discrimination against powerless members of the society (Phillips, 2007; 2010; Vollp, 2001). Phillips helps us to revise our attitude toward the debate, and to change our understanding of the terms that are used in both the cultural rights camp and the women's rights camp. I follow Phillips who rejects the polarisation between culture and rights. She observes that the biggest challenges in the debate are, on the one hand, the conservative attitude of many advocates of cultural rights, and on the other, the condescending and paternalistic attitude of many advocates of women's rights. I am more inclined to Phillips's position, and believe that she correctly points out that there is no deep value conflict between proponents of minority group rights and women's rights (Phillips, 2007). Instead, as both Phillips and Du Toit (2013) argue, most of the confusion arises from how cultural practices are interpreted. The best way out of this problem is to engage with groups from within the minority cultures who are already challenging some of these practices, or their interpretations, without forgetting to dialogue with those who are most immediately affected. For such strategies to work, however, one might have to question the very paradigm within which the clash between feminism and multiculturalism arises, namely the liberal political framework.

### **1.2. The Research Question**

On the basis of the debate as set out above, my research question for this thesis is as follows. "Can the conflict between cultural (group-specific) rights and women's (individual) rights as perceived in certain cultural practices, such as virginity testing by the Amazulu, be resolved by moving beyond the liberal paradigm?"

### **1.3. The Structure of the Thesis**

This thesis comprises of five chapters, including the introduction. Chapter One consists of the introduction, and the discussion of the themes running through this thesis. In Chapter Two, I will discuss the form of liberal multiculturalism proposed by Kymlicka (1995), a philosopher

who challenges us to take into consideration the need to establish group-specific rights for national minorities. I discuss and explicate his arguments and in particular, show the strengths of multiculturalism, both as a way of coexistence and as a policy. Pervasive in this thesis is the assumption that multiculturalism still has a place in the political arena.

In Chapter Three, I discuss Okin's version of liberal feminism as a challenge to Kymlicka's multiculturalist proposals. Okin's *Is Multiculturalism Bad for Women?* (1999) is the primary literature that I will use in this chapter to outline her argument against a hasty acceptance of multiculturalism. In this article, Okin expresses her dissatisfaction with Kymlicka's multiculturalism, and warns of a foreseeable clash between multiculturalism and the aims of feminism. According to Okin, there is an inherent conflict between these two theories, and if multiculturalism were to be implemented, women would be at a disadvantaged position. In her view, both these political policies are incompatible, even though at face value they both seem to represent the interests of disadvantaged groups. Okin (ibid.:10) refutes any simplistic conclusion that leads to thinking that feminism and multiculturalism go hand-in-hand or are easily reconcilable.

In Chapter Four, I attempt to reconcile Kymlicka's ideas and Okin's objection with the help of Anne Phillips (2007 & 2010). Phillips, who is also a renowned feminist, is of the opinion that the apparent conflict between multiculturalism and feminism is either oversimplified or overstated. According to her, a fundamental change in our understanding of the role that culture plays in people's lives will defuse the aforementioned conflict. This change entails rejecting the essentialist and deterministic notions that are too often attached to culture. She seems to argue that both the multiculturalists and feminists who are entangled in this debate misrepresent the impact that culture has on its members. I will specifically look at two books from Phillips, *Multiculturalism Without Culture* (2007) and *Gender Without Culture* (2010). She contends that our close focus on the value of culture will reveal that some of the things that have been deemed as cornerstones of culture are mere human constructions that, over time, have gained importance and have shifted to the centre of the community's and individuals' lives. In support of the view that Okin's critique of Kymlicka is exaggerated, I will also explore the work of Leti Volpp (2001), who argues that the structure of the debate misleadingly lands on a "Feminism versus Multiculturalism" discourse. Also in her view, therefore, the two need not be polarised, but our conception of the terms used in the debate needs to be revised to make room for a meaningful and complementary exchange between feminism and multiculturalism.

In Chapter Five, I link this debate to the lived experience of the people of South Africa, with a special focus on virginity testing (henceforth VT), as practised in KwaZulu-Natal. In the early 1990s, VT was re-established in various corners of KwaZulu-Natal as a cultural alternative to government initiatives that were put in place to combat the spread of HIV/AIDS. In recent years, however, VT has been condemned by South African human rights organisations, as well as women's rights organisations, with the African National Congress Women's League (ANCWL) calling for its ban. In 2006, the government signed into law the Children's Act No. 38 of 2005, which banned the VT of girls younger than 16 years of age and regulating VT of girls above 16. The signing into law of the Children's Act was celebrated by the Commission for Gender Equality (CGE) and the South African Human Rights Commission (SAHRC), and many others, who were interested in the promotion of human rights. On the other hand, promoters of VT were dismayed by this move and vowed to continue with VT, since they felt it was their culture and the government had no business interfering in what they felt was part of their identity. As in the multiculturalism and feminism debate, VT as practised by a minority in South Africa in the name of culture, evokes mixed feelings, setting people into two camps: those who want it to continue in spite of its prohibition in 2006, and those who are not satisfied with the partial banning of VT but want its complete prohibition.

For my purposes here, I adopt Phillips's stance that, while VT may present many challenges for its promoters and appear in the face of things as a violation of young women's and girls' human rights, as argued by the CGE and SAHRC, there is an opportunity to be seized in empowering young girls through this cultural practice. I believe that such an empowerment will not necessarily be centred on any girl's actual "virginity" status, but rather on a myriad of events associated with, and interpretations placed on the cultural meaning of VT, by its practitioners that include both maidens and their testers (*abahloli*). In this regard, I appeal to Vincent (2006), Du Toit (2013; 2016) and Tamale (2007; 2008), all of whom, like Phillips, advocate for the repositioning and redefinition of the terms used in the discussion of practices such as VT. These terms include but are not limited to "culture", "rights", "women", "choice" and "agency", and even "feminism" itself.

In the conclusion, I make recommendations based on the theoretical debate I discuss. I argue that both multiculturalism and feminism have something to offer, and have a potential to complement each other. Liberal multiculturalists should accept that the effect of their claims necessitates the elimination of any possible forms of intentional intragroup discrimination

against women and other minorities within minorities, as also in majority cultures. I also argue that the possibility and reality of intragroup oppression alone is not enough reason for abandoning the quest of multiculturalism altogether. As I will show, at times, it can be permissible to discriminate against certain groups in order to ensure that the previously oppressed may be raised to an equal political and economic standard, as has been done to those who were previously privileged in the case of affirmative action. Thus, such cases ought to be treated on their own merit.

In the following section I will briefly introduce the key concepts in this thesis, providing only working definitions for the sake of the argument here. These terms are: “liberalism”, “multiculturalism”, “feminism”, “culture”, “minority and majority cultures” and “virginity testing”. These are terms that persist in both the literature of multiculturalism and feminism, and in order to better understand the debate, it is of paramount importance to understand the way in which these terms have been used by both the multiculturalists and feminists in their attempt to establish clarity in their respective positions.

## **1.4. DEFINITIONS OF KEY CONCEPTS**

### **1.4.1. Liberalism**

Minogue et al. (2020: n.p.) define liberalism as a “political doctrine that takes protecting and enhancing the freedom of the individual to be the central problem of politics. Liberals typically believe that government is necessary to protect individuals from being harmed by others, but they also recognise that government itself can pose a threat to liberty”. Central to most liberal theories is that they view the individual as a free being that makes choices that will ultimately maximise their happiness. Accordingly, the state has a duty to ensure that an individual person’s freedom is not unjustifiably hindered by others, including the state itself.

### **1.4.2. Multiculturalism**

Multiculturalism refers to two things. First, it refers to the phenomenon of people with different cultural backgrounds living together in one society (descriptive) and, secondly, to a policy that exists in order to guard against the abuse of minority cultures by the majority cultures in a state (normative). In the first instance, multiculturalism refers “to the coexistence in a society of culturally diverse people with a mixture of individuals from different races, linguistic



backgrounds, [and] religious affiliations” (Rodrigues 2016: n.p.) existing in the same geographical space. In this sense, I do not know of any country that is purely homogenous both in culture and affiliation. Even one given cultural group is more likely to have different religious affiliations, political stances and ideological associations. There is nothing much that anyone can do to change this.

On the other hand, according to Kymlicka (1995), multiculturalism as a policy helps to ensure that the diversity that exists in any given state is protected, encouraged and even defended against encroachment by any powerful arm of a government or state and by the powerful individuals within the culture. This is the normative side of multiculturalism that attempts to stipulate how the de facto multiculturalism of societies ought to be handled in order to ensure fairness to all. It focuses on two aspects of meaningful existence within the state, that is: a) it ensures that every culture is allowed to establish itself and that its members are not discriminated against based on their cultural belonging, and b) that minority groups are not absorbed into the majority or dominant culture or religion within a state, where they live through assimilation or other coercive means. Thus, multiculturalism rejects the “ideal of the ‘melting point’ in which members of minority groups are expected to assimilate into the dominant culture in favour of an ideal in which they maintain their distinctive collective identities and practices” (Song 2020: n.p.). Multiculturalists reject the idea that, because many people belong to a particular cultural or religious group so that they form a majority, their ways are more superior or more desirable than those of non-members.

### **1.4.3. Feminism**

McAfee (2018: n.p.) defines feminism as “a political movement that seeks justice for women and the end of sexism in all forms. Motivated by the quest for social justice, feminist inquiry provides a wide range of perspectives on social, cultural, economic, and political phenomena.” Feminism is rejection of the arbitrary domination of women by men and the patriarchal society. It is a quest for women to be accepted as equals to men, to be treated with dignity and to ensure that they have equal opportunities as men. Feminism is not just one thing, but a range of ideas concerning women’s access to social justice.

#### **1.4.4. Culture**

Many definitions of culture are overly tied to the notions of rigidity, an unwarranted monolithic approach, immutability and an internal homogeneity. Other definitions approach culture more open-mindedly, acknowledging the fluidity and flexibility of cultures both to change internally over time, and to interact, learn and adopt some aspects of other cultures. For the purpose of this thesis, I will start with Kymlicka's definition of culture.

Kymlicka sees culture as a life-giving and life-defining project, tied with the historical-familial inheritance that is necessary for the well-being of both an individual and a group to make sense of themselves. According to him, "culture is synonymous with 'a nation' or 'a people' – that is as an intergenerational community, more or less institutionally complete, occupying a given territory or homeland, sharing a distinct language and history" (1995:18). Culture, in this way, refers to a group of people brought together by common descent, sharing some customs and traditions that may or may not differentiate one culture from another, and speaking a language that is distinguishable from other languages. Such an approach to culture purports cultures to be clearly demarcated from one another.

The second approach to culture that is important for this thesis is an anti-essentialist approach which holds that culture is not something static, immutable and homogenous (Rodrigues, 2016.n.p.). Proponents of anti-essentialism charge all the other approaches with overstating the role that culture plays in the lives of individuals and of the group as a whole. Anti-essentialists propose that where culture is concerned, we should adopt two positions. Firstly, we should conceive of cultures to be "always in flux"; secondly, "broader categories should be substituted by thinner categories. This means that rather than using terms like 'African Culture', one should use terms like 'Tutsi culture in Rwanda'" (ibid.). They argue that the idea of cultural immutability is both incorrect and contradictory. Cultures come into contact with others and learn from them. Cultures adopt and adapt. Thus, to depict them as monolithic is deemed unrealistic and untruthful.

#### **1.4.5. National and Polyethnic Minorities**

Kymlicka asserts that there are two types of national minorities that are eligible for special group rights to protect them against majority domination. The first group of minorities that he

speaks about are those who became a minority as result of the “incorporation of previously self-governing, territorially concentrated cultures into a larger state” (1995:10). A good example is the Himba<sup>2</sup> people in Namibia who, to this day, live a mostly closed communitarian life. They marry and procreate among themselves. These people have for many years survived encroachment by outsiders, however, today it is becoming more and more difficult for them to live by themselves without interference. They still form part of the national minorities of Namibia, but are not as active within politics as the Owambo and Herero people, which are two of the larger ethnic groups in the same country. Kymlicka wants to protect such groups by ensuring that they have access to the economy without being belittled or excluded for their traditional and cultural beliefs.

The second group of minorities Kymlicka proposes “arises from individual and familial immigration ... and [their members] typically wish to integrate into the larger society and be accepted as full members of it” (1995:10–11), albeit with their cultural background respected and even encouraged by the state. Members of this category of minorities do not aspire to political power, but want to be accepted as part of the larger community as citizens. However, they desire to be recognised as people who belong to a particular ethnic group, and that their cultural differences be accommodated in their (new) home country.

Besides the two groups of minorities defined by Kymlicka in the paragraphs above, there are many other groups that are not properly represented in/by the majority in the society. Sometimes, underrepresentation stems from segregation based on religious affiliation, sexual orientation and gender. Kymlicka gives attention only to a culture inasmuch as it represents a people or a nation, but Okin (1999) argues that multicultural policies tend to have consequences for other groups that do not necessarily fit his paradigm of culture. Such groups includes but not limited to LGBTQ+ communities, women and children. Such groups are considered the less powerful members of the societies and can be found both in the majorities and the national minorities. Eisenberg and Spinner-Haley (2005) refer to this phenomenon as “minorities within the minorities”. While these groups of minorities encourage an interesting research direction in relation to both multiculturalism and feminism, its scope is beyond this thesis.

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<sup>2</sup> The Himba people are among the secluded communities in Namibia from which the Herero people (Namibia’s second largest ethnic group) descended. For years they have lived in a closed system with their own leadership models. However, this is becoming more and more of a challenge due to drastic changes in technology, the economy, politics and education; see Fihlani (2017).

#### 1.4.6. Virginitv Testing

The World Health Organisation (WHO) refers to virginitv testing (VT) practices as “a gynaecological inspection of female genitalia carried out in the false belief that it can reliably determine whether a woman or girl has had vaginal intercourse” (WHO, 2018: n.p.). Those who believe that virginitv can be ascertained through VT rely on the physical appearance of a girl’s/woman’s hymen. A ruptured hymen is construed to mean the loss of virginitv. Such a loss is believed to be caused by penile penetration during heterosexual intercourse.

Now that I have defined the key concepts that will be used in this thesis, I will move to Chapter Two, where I will discuss the policy of multiculturalism as proposed by Kymlicka in *Multicultural Citizenship* (1995). His proposal for multiculturalism is primarily informed by his Canadian experience, whereby minority groups were threatened by policies that favoured majorities. Kymlicka observes that, though many governments subscribe to the Universal Declaration of Human Rights (UDHR), and even though such rights are guaranteed by states to their citizens, quite often minority groups are not adequately protected by universal human rights alone. Thus, he proposes a set of additional group-based (rather than individual) rights that ought to be available for minorities alone.

## CHAPTER TWO

### KYMLICKA'S QUEST FOR LIBERAL MULTICULTURALISM

#### 2.1. Introduction

"When I'm in traditional clothes outside the village, I get strange looks. I have a few businesses and people treat me with more respect when I look like them, they take me more seriously." (Pumza Fihlani 2017)

It is an undeniable truth that most of the modern world's societies are made up of people of diverse origins, belongings, associations and affiliations. This diversity, in most cases, arises as a result of different cultures, religious affiliations and cultural membership coexisting in a given territory. Diverse people and cultures embrace diverse practices and doctrines that may be foreign and alienating to those who are not members. Sometimes these diversities have been the source of big misunderstandings, domination, racism, xenophobia and other forms of unjust discrimination between cultures, nations and religious communities.

In a democracy, those who form the majority enjoy political power and have the ability to decide the order of their country. Democracy, by its nature, strengthens the position of the majority by one person on a vote manifesto. Therefore, if people from the majorities want or do not want something, they can achieve it through their vote, and this is a luxury which minorities do not have because of small membership numbers (Kymlicka 1995:109). Since this inequality between minorities and majorities is created by the very principles of democracy, Kymlicka appeals to structures that support such governments to make liberal commitments that will ensure individual freedom for people in minorities, thereby protecting them from domination by the majority. Therefore, Kymlicka's quest for multiculturalism is to have a liberal policy that will truly ensure that people from minority groups are not systematically excluded from issues of importance, especially those that concern their well-being, both as individuals and as a group.

Domination of minorities can be manifested in different ways, for examples, through economic exclusion, inferior education, and political domination. Fihlani (2017), a BBC reporter, gives us a glimpse of economic domination experienced by some minorities in Namibia. She reports of a certain Mr Owen Kataparo who was torn into two as a result of his loyalty to his Himba

Culture and his desire to participate in a modernised manner of doing business. The Himba people in Namibia are known for wearing revealing attires made primarily of animal skins. In an interview with him, Fihlani asked Kataparo why he wore western clothing, which was very different from the traditional Himba attire. Kataparo answered: “When I’m in traditional clothes outside the village, I get strange looks. I have a few businesses and people treat me with more respect when I look like them, they take me more seriously” (Fihlani 2017: n.p). His cultural appearance hindered him in doing business as a Himba, and he had to be “civilized” in order to be able to attend to his business without being ridiculed or exoticized. It’s as if he needed to shed his culture so as to be a “proper” businessman. The experience of Mr Kataparo is shared by many of the minorities in the world. He does not only represent his individual experience, but a tragedy shared by cultural or religious groups that are not necessarily part of the policymaking majorities. Perhaps, advancing the theories of multiculturalism especially through special representation rights could help to ensure that people such as Kataparo’s right to trade are not overshadowed by foreign norms and practices.

Kymlicka is opposed to forcing people into discarding their cultures so as to have their business respected. As a liberal, he believes in both freedom for individuals and equality among peoples both within and outside individuals’ cultures. Therefore he argues that, “respecting the minority rights can enlarge the freedom of individuals, because freedom is intimately linked with and dependent on culture” (ibid.:1995:75). Furthermore, freedom and equality are better experienced in a community. The society in which the individual belongs makes the individual’s choices, rights and responsibilities meaningful. Hence, Kymlicka argues that suppression of minority groups leads to suppression of the right to freedom and to equality for the members of those minority groups. Central to the multiculturalist argument is the thesis that people’s culture gives meaning to their existence and, since their right to freedom is tied to their right to culture, their cultures must be preserved and protected by policies that prevent larger societies from coercing minorities to conform to the majority lifestyle. Kymlicka in particular argues that cultures are to be preserved not for their own sake but because they “provide us with an intelligible context of choice and a secure sense of identity and belonging” (1995:105). Thus being able to make choices and being part of a respected cultural community puts an individual on a platform where his/her rights can be upheld and protect.

Kymlicka (1995; 1999) believes that there are reasonable liberal grounds for believing that it is good and even necessary to preserve different cultural groups, whether liberal or illiberal, in

any particular state. According to him liberal majorities ought to remember that they were not always liberal and that this confession will help liberals to be patient and tolerant towards cultures that are not yet liberal in their approach. Thus, Kymlicka reminds us that:

“All liberal nations had illiberal pasts and their liberalisation required a prolonged process of reform ... the task of liberal reform remains incomplete in every society, it would be ludicrous to say that only purely liberal nations should be respected while others should be assimilated” (ibid.:94).

It is understandable why it is not desirable to force minority groups to assimilate to majority cultures. In the past, oppressing and forcing others to assimilate to majority cultures have led to bitter resentments and even to civil wars, where the oppressed cultural groups went to war in order to be freed from what could be considered unjust discrimination. Islamic terrorism, for example, is usually justified on the grounds of intolerance of Islam by Christian westerners. The 1976 Soweto youth uprising and their massacre by the Apartheid government in South Africa is a clear example of what happens when the oppressed have had enough. Such examples demonstrate the need for the establishment of policies that will prevent unjustified domination of one group by another.

Even though many countries have gained political independence from their colonial masters, according to Kymlicka (1995:11) there are still traces of political imbalances between the majorities and minorities in many countries. While many countries have been emancipated from external domination, and governments are run through democratic principles, those who are not part of the majorities continue to be dominated by bigger groups who can influence government decisions through majoritarian votes. Beginning from the minority situation of the Quebecois, Kymlicka exhorts his readers to take seriously the need to establish supplementary rights that will be specific to particular national minority groups. Relying on liberalism, Kymlicka proposes the policy of multiculturalism as an alternative to assimilationist policies. His political space is Canada, and his interest to the question of multiculturalism is immediately informed by the minority situation in his country, with him taking exception to the manner in which his home government has dealt with the people of Quebec, other indigenous groups and immigrants that have settled in Canada. This is not to say that his argument is only limited to Canada, for he speaks a lot about other minorities, especially in the United States, Australia and other places, but important to him is the immediate experience of his home minorities.

Throughout his argument, Kymlicka (1995) wants us to understand that the people of the national minority groups are people, with a past, living in the present and, like any other nation, they hope for a bright future without unwarranted political limitations. He wants politicians and lawmakers to adopt, endorse and promote rights that will focus specifically on the survival of minority groups. He wants to establish “morally justifiable and politically viable answers” (ibid.:1) that will address the claims associated with self-realisation for the minorities. He exhorts democratic governments to design a bill that will establish and promote group-specific rights that will be protected by liberal constitutions even if the groups themselves are not very liberal (ibid.:94). Kymlicka does not think every small group of individuals congregating together deserves these rights: in his mind only those groups that were previously “self-governing, territorially concentrated cultures” and those groups arising “from individual and familial immigration...[the] ethnic groups” (ibid.:10) should be afforded some group-specific rights.

The only two type of minorities that Kymlicka is willing to accommodate in his policy of multiculturalism therefore are previously self-governed cultures and immigrants. He asserts that even though immigrants may not need self-governing rights, they still have legitimate reasons for demanding certain “exemption from laws and regulations that disadvantage them, given their religious practices” (ibid.: 31). In relation to these minorities, I will also briefly discuss other minorities which, according to Kymlicka, need a different set of protective policies, as opposed to groups-specific rights. Women, the LGBTQ community and other non-conformists from these minority groups and indeed from majority groups— while Kymlicka acknowledges them as disadvantaged – do not qualify for group-specific rights or polyethnic rights. This is so because they do not fit his criterion of being a nation as they lay no claim to a homeland or territory with special needs for cultural self-determination. In turn, I will discuss each of these group-specific rights as presented by Kymlicka (1995). Since the multiculturalism that concerns me in this thesis is largely represented by Will Kymlicka, I will briefly introduce him and explain why he is important for this study.

Kymlicka is a well-published author in the area of politics with special emphasis on diversity and multiculturalism. Among the 34 books and over 200 scholarly articles that he has published is the book *Multicultural Citizenship* (1995) which is one of the three main academic resources for this thesis. It was this book that generated explosive debates among academics concerning the rights of minorities.



Kymlicka (1995:20-22) considers himself a pioneer of multiculturalism, with emphasis on the distinction between national minorities and polyethnic minorities. I now turn the discussion to each of these minorities in turn, explaining Kymlicka's views on who these groups are, and what needs to be done in order to ensure that these minorities are part of the larger community without losing their cultural identity.

## **2.2. The National Minorities**

Kymlicka (1995:11) argues that any state is most likely to be multinational. This means that many states are composed of various minority groups that originally inhabited a territory before it (the territory) was invaded and incorporated into a sovereign state. He asserts that these minorities were previously autonomous, intact, with their own political systems, and occupied a place which they inhabited as a homeland. Each member was seen as an important contributor to the formation of the group as a nation. Every individual was expected to live and abide by the communal statutes that were seen as both guidance and rules of engagement, both culturally and morally.

Kymlicka's national minority groups represent a "nation", a "people" and a "culture", and he uses the three terms interchangeably. According to him, a minority group is a nation only if it is a "historical community, more or less institutionally complete, occupying a given territory or homeland, sharing a distinct language and culture" (ibid.). These are the people who used to live independently and had their own political system, their own religious value system, as well as their own legal structure, which were disrupted either through conquest or colonisation. In South Africa, there are many such groups. The Khoisan and Amakhosa, for example, conceive of themselves as distinct cultures, with a distinct history, and previously occupied a particular territory which they treasured as a homeland,<sup>3</sup> which was lost during colonisation. Later on, after independence, they were simply incorporated into democratic societies and were expected to live as if they were never independent cultures before. The Amakhosa are by no means a small tribe in South Africa, and have a sizeable influence in politics,<sup>4</sup> while the Khoisan, on the other hand, "are an ethno-linguistic group that has traditionally been marginalised

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<sup>3</sup> For information on the history of these people see "Appendix A: Indigenous Systems Awards" available from <https://www.gov.za/about-government/appendix-indigenous-systems-awards>.

<sup>4</sup> The first two Black presidents of democratic South Africa were Amakhosa, with the ANC membership having large numbers of Amakhosa, while the Inkatha Freedom Party was dominated by Amazulu. This has changed and KwaZulu-Natal, which is predominantly Zulu, is one of the strongholds of the ANC.

throughout South African history” (South African History, 2020.n.p.). To date, no proper large-scale recognition and representation has been made in order to restore the tribal political power for the Khoisan people. In recent years, attempts to get the Khoisan people, their political autonomy recognised have been made<sup>5</sup>.

Many attempts have been made to ensure that previously autonomous groups that were later absorbed into one state could coexist as members of one country. An example of such an attempt is a federal country such as Germany. Nwabueze defines federalism as:

federalism is an arrangement whereby powers of government within a country are shared between a national (nation-wide) government and a number of regionalized (i.e., territorially localized) governments in such a way that each exists as a government separately and independently from the others, operating directly on persons and property within its territorial area, with a will of its own, and its own apparatus for the conduct of its affairs and with an authority in some matters exclusive of all others” (1983:1)

Federalism makes it possible for minorities to exist in a particular area with limited political autonomy, but with a certain degree of jurisdictional autonomy. While the federal member state or province enjoys a certain amount of autonomy, it is always limited by the constitution of the federal state, which regulates how all other states within the federation relate to the main body, the central government and one another.

Kymlicka asserts that the most important aspect of federalism is that it affords minorities concentrated in particular regions to have their own limited source of political autonomy. This is necessary because it allows minorities to “ensure the full and free development of their culture and the best interest of their people” (1995:27). He also argues that federalism is only possible when there is a concentration of people with the same cultural interest inhabiting a given territory, and not just scattered and mixed with others all over the country. Federalism works if minority groups voluntarily opt to be part of it with the hope that, while being part of a bigger political community, groups also continue to live according to their celebrated customs, rituals and cultures. Thus in cases where federalism is not practised other models of political existence need to be explored, especially in democratic republics where majoritarian

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<sup>5</sup> For more information on these efforts see Kanya Mlaba (Global Citizen 2020)

government policies directly threaten the very existence of minority rights, to both autonomy and self-realisation as a cultural minority group.

A national minority is made up of people who share a distinct history that has been passed from generation to generation. It has its belief systems, cultural practices, language and certain ideas about what good or bad governance is like. A group usually has every intention to preserve itself by ensuring its continuity by passing down its traditions, rituals and customs to their children and future generations. Any threat to that is often met with resentment and can lead to bloodshed or secession. Unlike any other types of minority, Kymlicka believes that a national minorities have the intrinsic urge to preserve and determine itself as a unitary community. While they are part of a majoritarian country, national minorities want their culture to be preserved and protected from erosion arising from practices that they deem foreign and alien to them. Their “self-government claims, then, typically takes a form of devolving political power to a political unit substantially controlled by members of the national minority, and substantially corresponding to their homeland or territory...these rights are ‘inherent’, and so permanent” (Kymlicka 1995:30). Kymlicka argues that minority people’s interest ought to be protected through policies that are specific to their needs.

### **2.3. The Polyethnic Minorities**

Since travelling between countries has been relaxed by open border agreements between countries, movement among nations has become even greater. This has given rise to the second type of minorities, which Kymlicka refers to as polyethnic minorities. Unlike the national minorities, polyethnic minorities are “not ‘nations’ and do not occupy homelands. Their distinctiveness is manifested primarily in their family lives<sup>[6]</sup> and in voluntary association and is not inconsistent with their institutional integration” (Kymlicka 1995:14). Immigrants are individuals or families that have relocated from their countries of origin to settle in their countries of choice, for various reasons, such as wars, employment, retirement etc.

The fact that some foreigners leave their home countries to settle in a foreign land does not make that land immediately polyethnic. According to Kymlicka, the polyethnicity of a country

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<sup>6</sup> This is an area of concern for Okin (1999). Since family life is a private domain mostly protected by family law, Okin argues if cultures that have oppressive family laws become protected by group-specific laws, women will suffer more. I discuss this in Chapter Three of this thesis.

is only real when the receiving state is willing to “accept large numbers of individuals and families from other cultures as immigrants and allow them to maintain some of their ethnic particularity” (ibid.:14). The ethnic particularity that Kymlicka envisages entails allowing immigrants to speak their language, to worship according to their home country's religion, to honour their cultural commitment, and to freely associate with people of their culture without fear of being excluded or victimised by alien, unfriendly policies (ibid.:31). Therefore, by accepting immigrants and refraining from coercing them to adopt the local lifestyle and other assimilationist techniques, governments actively support these minorities to live in both worlds, their original world and the new world. This renders society multinational.

Kymlicka argues that immigrants usually want to be part of the new society that they have decided to settle in. In other words, “while immigrant groups have increasingly asserted their right to express their ethnic particularity, they typically wish to do so in the public institutions” (ibid.:15). They are not interested in forming parallel governments, but instead desire that the larger community recognises some aspect of their cultures as valid and acceptable. These aspects include but are not limited to forms of worship, rituals, dress code, language and customary laws needed to raise their children.

#### **2.4. Other Minorities**

Other than national and polyethnic minorities there are further groups that can legitimately claim certain oppression from the society in which they live, both as groups and individuals. The marginalisation of women, LGBTQ community and of people living with disabilities is not a case of a majority vs minorities, as it is with national and polyethnic minorities. In fact, the oppression of these groups is “found in majority cultures and homogeneous nation-states as well as national minorities and ethnic groups” (ibid.:19). The LGBTQ members, for example, are usually rejected by their societies and their sexual authenticity is questioned even in so-called progressive societies. Kymlicka does not suggest that the plight of these groups should be ignored, but that it does not necessarily have to be done through a policy of multiculturalism, as he perceives it.

Kymlicka is aware of the need to ensure the equality between sexes, however he does not think such a need can be addressed with group-specific rights. He does not think women's rights issues are limited to minority groups and, since women's rights need to be addressed by both

majorities and minorities, other adequate options such as gender-related policies should be explored. He believes there are other mechanisms that can be explored in relation to women's rights, but multiculturalism has national and polyethnic minorities as the primary concern. Hence, he argues that:

The marginalization of women, gays and lesbians and the disabled cut across ethnic and national lines – it is found in majority cultures and homogenous nation-states as well as in national minorities and ethnic groups – and it must be fought in all these places. An adequate theory of rights of cultural minorities must therefore be compatible with the just demand of the disadvantaged social groups. (Kymlicka 1995:19)

Women, the LGBTQ members and many others are usually disadvantaged by male orientated norms and this needs to be corrected. However, neither women nor gay rights activists want to exit the society and find their own political power centres. They want corrections to this marginalisation to be done from within the society. Over and above that, they do not constitute a nation in Kymlicka's sense, nor are they immigrants who could make demands for ethnic rights. Even though they are free to exercise their right to movement, they are primarily disadvantaged within their homelands. They form part of what Eisenberg and Spinner-Halev (2005) call the "minorities within minorities". Women for examples, are members of their society, whether majorities or minorities, as women, they have to leave within patriarchal systems where their existence is meaningful only in relation to their male counterparts. Okin (1999) is not satisfied with a multiculturalism that does not take into consideration the needs of women, and she is opposed to any culture that has a potential for harming the feminist agenda to liberate women from patriarchy. She takes Kymlicka to task, and wants him to address the question of women in his quest for multiculturalism. I return to Okin's objection in the following chapter.

## **2.5. Kymlicka's Three Multicultural Group-Differentiated Rights**

In addition to universal human rights, which protect and promote every individual's right, Kymlicka advocates for the supplement of three group-specific rights, namely: self-government, polyethnic and special representation rights. He argues that, while universal human rights are extremely important for the liberation of all people from any form of unfair discrimination, these rights are simply inadequate to address the issues raised by minorities

(1995:4-5). According to him, minorities demand group-specific rights for two reasons: a) to prevent or restrict its members from disobeying and causing havoc by challenging some of the practices and values that are understood to be the foundation of that culture (ibid.: 35), and, b) to block or to limit any possibility of outside interference from any larger political bodies or any other non-member organisation or individual (ibid.:35). In his commitment to liberty, and to individual and cultural freedom, Kymlicka rejects the first reasoning, which entails suppression of internal reformation, and he endorses the second reasoning, which entails prohibiting external forces from wielding unwarranted influence upon groups (1999:31). Toward the end of this chapter I explain what exactly Kymlicka means by these two types of restriction. Before that, however, I want to focus on the self-government, polyethnic and special group representation rights.

### **2.5.1. The Self-government Rights**

Any cultural group that conceives of itself as a nation, in Kymlicka's sense, with a past, a present and a future, will also have desires for self-realisation and self-determination through structures that will support its autonomy. This autonomy entails having reasonable access to political power. Thus, in order to be able to minimise the threat of interference from majority groups and other unfriendly external forces, Kymlicka suggests, with conviction, that national minorities must be afforded a right to govern themselves by having their own political structures (1995:30).

Kymlicka argues that these rights are necessary because they ensure that "a national minority cannot be outvoted or outbid by the majority on decisions that are of particular importance to their culture such as issues of education, immigration, resource development, language and family law" (1995:37-38). In other words, the minorities are afforded the opportunity to preserve, promote and defend those cultural values that they hold as necessary for the unity and prosperity of the group. These rights allow minorities to coexist with the majorities as equals who deserve equal political and economic freedom status. Self-government rights assist minorities in defining their circumstances and in predicting the future, without fear of external forces encroaching and destabilising the particularity of a cultural group. Rights to self-government also allows a minority group to determine its future and to design the plans that are necessary to ensure that their continued existence is guaranteed, even if the culture itself continues to evolve through contact with other cultures.

When a group asks for self-government rights, it is demanding a right to have political autonomy, the right to own a particular piece of land that they treasure as a homeland, shared by all members now and into the future. These rights also allow the minorities to formulate and enforce laws that will be used as rules of engagement among its members, while at the same time affording the group with negotiation rights among other groups that exist within the same territory or state and beyond. The self-government right allows groups to negotiate as equals. It gives the group a legal standing as a legitimate cultural body that can have its own recognised legal systems, and members who violate some of the group's norms can be held to account through these systems.

This right can be affirmed by means of federalism, where a minority group concentrated in a particular region within a state may be given political autonomy. Such an arrangement decentralises political power by sharing it with smaller communities, forming majorities in smaller, demarcated areas. Kymlicka asserts that “federalism can provide extensive self-government for a national minority, guaranteeing its ability to make decisions in certain areas without being outvoted by the larger society” (ibid.: 28). The group as a whole will have a final say on issues of importance relating to its survival. However, federalism has its challenges. One challenge is to maintain a balance between the central power of the main government and that of sub-states joined to the federal state. Whatever the case, self-government rights demand that power is shared between national minorities and the larger state government in order to allow and facilitate a smooth preservation of minority cultures.

### **2.5.2. The Polyethnic Rights**

Ethnic groups are not national minorities in Kymlicka's sense. Ethnic groups, as they are immigrants, cannot make territorial claims since they are not in their homeland. Instead, they are immigrants in a foreign country which has its own set of laws, which might be the same or different from the laws in their countries of origin. Their quest is not to self-govern but to be allowed to celebrate their difference, their previous home culture, and their religion in their new country without fear of being unfairly discriminated against (Kymlicka 1995:30-31). The establishment of polyethnic rights, therefore, is “usually intended to promote integration into larger society not self-government” (ibid.: 31).

In some cases, previously, when an individual or family left their country of origin to start a new life in a foreign country, they were expected to blend into the new society, adopt the culture of the new community, and to let go of their ethnic and cultural heritage. However, with the independence of many states, and with growing pressure from immigrants against racism and other forms of discrimination, most governments have abandoned the assimilationist view and replaced it with laws that allow ethno-cultural groups to hold onto some of their cultural practices (ibid.:30-31). Since immigrants' quest is not to be separated from the larger society but to be part of it, their quest is that their ethnic particularity is promoted through polyethnic rights. Thus, Polyethnic rights are "intended to help ethnic groups and religious minorities express their cultural particularity, without it hampering their success in the economic and political institutions of the dominant society" (ibid.: 31). Thus, the creation of polyethnic rights makes it possible for ethnic minorities to live in the country without fearing unwarranted prejudices that may lead to exclusion and discrimination from the local citizens.

The policies in line with promotion of polyethnic minority rights also seek to address the attitudes of othering – a phenomenon where citizens discriminate against the immigrants. Polyethnic minorities demand that, since it is legitimate for the state to fund many of the majority's institutions, there should be no reason why the state cannot do the same for immigrants who seek to promote their particularity through their religious schools, for example (Kymlicka, 1995:31). One may consider for, example that many Christian countries celebrate certain Christian days as public holidays. However, these countries do not usually celebrate non-Christian religious days as holidays. Thus, if polyethnic rights are taken seriously, this would also mean that governments fund or set aside days such as Ramadan, Diwali and others as holidays, to be celebrated and given respect equal to that of Christian holidays.

Polyethnic rights include granting special exemption from some of the laws of the country which might disadvantage these minorities based on their religious doctrines and practices (ibid.:31). As an example, such rights will make it possible for medics to excuse themselves or refuse to perform medical practices such as abortion, and they can do so by appealing to the doctrines of their religious formation. Kymlicka reckons that in some cases it is correct to exempt the minorities from certain national policies, because those policies could have negative impact on minorities, especially if they contradict deep rooted religious or cultural principles (ibid.:31). Thus the aim of polyethnic rights is not to promote divisive cultural practices, but to encourage different levels of belonging that each of the immigrants can embrace. They feel



the sense of belonging into the state in which they have immigrated but at the same time to a particular culture with which they were raised.

### **2.5.3. The Special Representation Right**

The third type of right that Kymlicka proposes are what he calls “special representation rights” (1995:31-33). According to him these rights take two forms. The first form that they take arises from an ongoing demand by underrepresented and previously segregated groups to have their interests represented by people who will advance these interests. He reckons that there is an ever-increasing sentiment that most political and economic structures should be reorganised to include representatives from previously disadvantaged and excluded groups, such as women, people with physical disabilities and people of colour. It is generally accepted that more men than women have leadership positions in the working environment. Most underrepresented group in many places have begun to challenge the monopoly by the selected few and are demanding a right to be represented in decision making bodies. Consequently, most governments have heeded the call to abolish non-representational structures and opted for policies that are demographic representational. In this manner special representation rights are a “response to some systematic disadvantage or barrier in a political process which makes it impossible for the groups’ views and interest to be effectively represented” (ibid.:32)

According to Kymlicka special representation rights are contextual and as such are meant to address two issues; that is systematic discrimination and secondly the need for special representation stems from self-government rights. (1995:141). Special representation in the first context, is a commitment to ensure that those who were systematically excluded from politics and economy are given an opportunity to participate in economy. Take for example the Black Economic Empowerment policy (BEE) in South Africa, which was established to remedy and fast-track the participation of Black people and other previously disadvantaged groups – who were systematically excluded by the apartheid regime – in the country’s economy. The idea behind this policy is that at a certain moment in the near future, Black South Africans will have a reasonable enough financial independence to be able to compete in the economy without the burden of apartheid-created poverty. Any discussion around this policy thus necessitates representation from small Black businesses. In this way representation rights are applicable to every group that had been previously systematically excluded from protection

by law. This would include non-ethnic groups such as women, children and the LGBTQ communities.

The second context in which special representation rights matter is a necessary consequence of the self-government rights. National minorities want to be taken seriously and want to be consulted and heard by the general government of the country, before decisions that impact on their wellbeing can be passed. Since their existence as a national minority is meant to continue indefinitely, “it would seem corollary of self-government that national minorities be guaranteed representation on anybody which can interpret its power of self-government” (Kymlicka 1995:33). Multiculturalists defend these rights as necessary to confront the scourge of inequality in politics caused by the deliberate silencing of minorities through unrepresentative governmental instruments.

Special representation for national and ethnic minorities “within the political institutions of the larger society make it less likely that a national or ethnic minority will be ignored on decisions that are made on a countrywide basis” (ibid.:37). The assumption is that if the government knows that the needs of the minorities are represented (through legitimate sources), they will take these needs seriously and implement the policies in a manner that is going to further the interests of these minorities. Thus, these special representation rights put the minorities on par with the majorities. Since they are represented, they can speak for themselves through their representatives, and have an opportunity to object and seek clarity before the consultative process is completed.

This group of rights presupposes that it is unjust for the society to make decisions on issues that impact on the people without first getting their opinion on the matter. Therefore, “fairness in decision making procedure implies, amongst other things, that the interest and perspective of the minority be listened to and taken into account” (ibid.:131). This gives cultural and religious authorities, or their representatives, an opportunity to participate in the general politics of the country, and to represent the interest of their people. By doing so, they ensure that the government takes into account the needs of the minorities, especially when decisions related to their homeland are to be made.

National and ethnic minorities need permanent special representation rights because their existence is not seen as something short-lived but long lasting. These rights are therefore

necessary in order to sustain the other two rights I have discussed in the preceding subsections: self-government rights and polyethnic rights. A right to self-government would mean very little, if anything, if the majority leadership were at liberty to decide the future and fate of the national minorities without prior consultation for their opinion and consent. Special representation rights guarantees that minorities are treated with respect and are consulted whenever important decisions that will affect them are made. Mutual consultations and legitimate representation lead to dialogue and an establishment of terms and conditions for mutual benefit between the minorities and the majorities.

To summarise, Kymlicka argues that there are three group-specific rights that are necessary to ensure that minority groups are not dominated by majorities. These rights are self-government rights, polyethnic rights and finally the special representation rights. These rights are needed to deter larger ethnicities in the same state from making decisions and carrying out projects that will otherwise have a negative impact on minorities. Special representation rights have both a limited and a long-term character. It has a limited lifespan if the injustice needed to be addressed can be achieved within a short timescale, whereas in the case of national minorities with an inherent right to self-determination, special representation seems to be a necessary permanent consequence. Self-government rights prevent states from forcing national minorities to assimilate into the majority culture, while polyethnic rights prevent any form of coerced conformity to the larger society. In order to avoid biases and prejudices against these ethno-cultural groups, it is important that representatives of these groups are given an opportunity to form part of the government wherever they find themselves. This will bring more clarity to issues of support, such as the necessity of funding, that a state may have to consider whenever these groups are concerned.

Up to now, most of what I have been dealing with reflects the need for protection for minorities from external forces that might want to interfere with the minority groups' state of affairs. Kymlicka refers to this phenomenon as "external protections" (1995:36). In other words, multiculturalism should be seen as the means by which national minorities coexist fairly in the same state with both other minorities and majorities, without being threatened with cultural extinction or assimilation by any group. In most cases however, "granting special representation right, land claims or language right to a minority need not, and often does not, put it in a position to dominate other groups" (ibid.: 36). However, some critics have accused

him of promoting cultures that are internally illiberal and are oppressive to women (Okin 1999). Below, I discuss Kymlicka's view on subgroups that exist within the minorities.

## 2.6. Internal Restrictions

The second claim for group differentiated rights is internally orientated. This type of claim "is intended to protect a group from the destabilising impact of *internal dissent*" (Kymlicka 1995:35). In order to ensure cultural stability, these minority groups "may seek the use of state power to restrict the liberty of its members in the name of group solidarity" (ibid.:36). Arguably, there are times when it is viable to expect members of the group to conform to some cultural practices, such as honouring the summons of the cultural judicial system to answer for one's actions or as a witness (of course with an option to appeal to a higher judicial system). In fact, according to Kymlicka, "all governments expect and sometimes require a minimum level of civic responsibility and participation from their citizens" (ibid.). Such commitment and restrictions assist with the smooth running of the minority group. However, such internally restrictive measures may be abused to compel people to do acts that violate their very basic human rights, such as right to privacy, safety and bodily integrity. It is however important to note as Kymlicka does that internal restrictions are not limited to minority groups but are also applicable to larger societies.

The effort to prohibit members of minority groups from within to participate in the religion of their choice, or to marry whomever they so desire, and the effort to use coercive measures to silence those who challenge the traditional leaders are both oppressive and undesirable (ibid.:19). Commitment to liberal principles entail ensuring that individual rights are upheld and respected at all times. Therefore, if we truly accept that the freedom of the individual is non-negotiable, and that groups should be given equal rights, consistency requires that we should reject internal restrictions in the same way that we reject inter-group domination. In Kymlicka's words, "liberals can and should endorse certain external protections, where they promote fairness between groups, but should reject internal restriction which seeks to limit the right of members to question and revise traditional authorities and practices" (ibid.:37). What Kymlicka rejects is the deliberate actions by the authorities to silence their cultural group members when they seek some reform. This presupposes that multiculturalism should be open to intra-group social justice.

## 2.7. Conclusion

In this chapter I have presented Kymlicka's view on liberal multiculturalism. I have shown that he believes that culture and the freedom of individuals are intertwined and necessary. In other words, "freedom involves making choices amongst various options and our societal culture not only provides these options but makes them meaningful to us" (ibid. 1995:83). Thus, culture promotes the abilities in which an individual can access his or her right to freedom of choice. Since Kymlicka attaches so much value to the individual and to the culture that provided the individual with the mechanism for making an informed choice, he proposes that minority cultures should be protected from domination by larger cultures.

Since he is committed to liberal principles, Kymlicka wants to preserve the right to freedom for individuals in minority groups, but in order to do that he believes it is also necessary to establish group specific rights. In this chapter I have discussed the national minorities and polyethnic minorities as two types of minorities that Kymlicka defends through multiculturalism. He believes that if we give minority groups group-specific rights, it will lead to better coexistence among national minorities, polyethnic minorities and the larger culture. This in turn will enhance quality of life, marked by equality among the groups, freedom for the groups to participate meaningfully in the local politics, and maximum autonomy for the minority groups. Hopefully these principles will naturally flow to all members of the groups. Liberal multiculturalism respects the Universal Declaration of Human Rights as a defender for human rights, however, according to Kymlicka (1995:4), minority rights are not properly catered for in this document. There needs to be a supplementary set of rights that is particular to the needs of the minorities.

The non-ethnic groups, however, fall outside the scope of Kymlicka's criterion of a nation. Thus, the group-specific rights that he advocates for cannot be applicable to these groups. Other models, such as affirmative action and gender policies, should be used in addressing the political needs of these groups. As an objection to his proposed set of group-specific rights, multiculturalism is charged with ignoring the plight of these minority groups. Advocates for women's rights see multiculturalism as a threat to feminists' struggle for women's equality rights. Some among the liberal feminists argue that "there is a considerable likelihood of tension between [...] feminism and a multiculturalist commitment to group rights for minority

cultures” (Okin 1999:10). In the following chapter, I explore Okin’s criticism of Kymlicka’s multiculturalism.

## CHAPTER THREE

### OKIN'S FEMINIST CRITIQUE OF MULTICULTURALISM

#### 3.1. Introduction

While multiculturalism promises to address inter-group inequalities, some critics think it does so at the expense of women, children, LGBTQ and those who question certain practices or the legitimacy of cultural authorities. Among many opponents of multiculturalism, some representatives of liberal feminism suggest that awarding ethno-cultural minorities with group-specific rights collides with the fundamental liberal commitment to ensure the right to freedom, equality and autonomy for individuals, especially women and girls. In this chapter I investigate how Susan Moller Okin<sup>7</sup> (1999) engages with Kymlicka's liberal multiculturalism, as well as some of the responses to her position.

In her widely read article, "Is Multiculturalism Bad for Women?"<sup>8</sup> (1999), Okin asks us to re-examine our commitment to group-specific rights with special attention paid to the position of women in society. This article is a direct response to Kymlicka's version of multiculturalism. In it, she argues that we (and he) have been too quick to conclude that multiculturalism and feminism are two compatible allies (ibid.:10). She claims that the tension and conflict between the two become clear when one pays closer attention to the actual cultural practices of national and polyethnic minorities. Many illiberal cultural practices, such as the murder of adulterous wives, polygamy and forced marriages, disadvantage women and promote patriarchy. According to Okin, the multicultural commitment to protect national and polyethnic minorities with group-specific rights is "inconsistent with the basic liberal values of individual freedom, which entails that group rights should not trump the individual rights of its members" (ibid.:11). By giving special protection to oppressive cultural practices, multiculturalism fails women and contradicts its own liberal principles. Feminist support of these group-specific rights will equally be a violation of the very foundations of feminism.

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<sup>7</sup> Susan Moller Okin was a political philosopher and "perhaps the best feminist political philosopher in the world ... she made the case that consideration of the status and the position of women must be part of political philosophy's concern" (Trei, 2004. n.p.). I was drawn to her strong tone in her criticism of multiculturalism that attracted me to the multiculturalism-feminism debate.

<sup>8</sup> This is the title of Okin's essay that appears in the book *Is Multiculturalism Bad for Women?* (Cohen et al. 1999). The book opens with Okin's essay of the same title.

### 3.2. Okin's Central Claim

“I think we – especially those of us who consider ourselves politically progressive and opposed to all forms of oppression – have been too quick to assume that feminism and multiculturalism are both good things which are easily reconciled. I shall argue instead that there is a considerable likelihood of tension between them – more precisely, between feminism and multiculturalist commitment to group rights for minority cultures.” (Okin 1999:10)

Okin begins her article by criticising the failure of the French government that “uncritically” allowed polygamy for immigrants, especially the French Arabs and some Africans that had immigrated to France by the early 1980s (ibid.:9-10). According to her, the government should have done thorough research on the institution and implications of polygamy with a special focus placed on the perspective of the (marginalised) wives. Okin believes they were the victims of this cultural practice, which was not a norm in France, but was nevertheless safeguarded by the French state. She argues that, if the government took time to investigate it would have discovered sooner that these women found polygamy oppressive and “regarded it as an inescapable and barely tolerable institution in their African countries of origin and an unbearable imposition in the French context” (ibid.:10). Thus, Okin strongly condemned the French government of the time as unwitting accomplice that failed these woman, by listening only to one side: the polygamous men; part of what she also calls the “cultural elites”. This argument is in line with her earlier book, *Justice, Gender and the Family* (1989), in which she asks political theorists to scrutinize the so-called private sphere of the family more carefully, since that is where the lofty justice ideals of the West fail most dismally.

In her attempt to show that multiculturalism was dangerous for women and girls, Okin further proposed as evidence that some “cultural practices” violate basic human rights, such as “marriage by capture” (which Okin equates to rape), “wife-murder”, “children murdered by their mothers” and “clitoridectomy” (ibid.:18). She points out that where such cases reach the courts, they are often excused on the basis of their being “cultural practices”. Men who had murdered their wives, because of cheating and other passion-related murders, justified their actions on the basis that they were the result of what their home cultures sanctioned as the corrective measures to retain some honour for themselves and their families. Therefore, the biggest crime that Okin levels against promoters of group-specific rights is that multiculturalism overlooks problems of gender that are prevalent among national and polyethnic minority groups. One might even say, their difference from the liberal majority often



manifests in clearly illiberal practices, and the latter are not worthy of special protection by a liberal state. According to her, endorsing multicultural policies obstructs on a continuous base the liberation of women from the worst forms of patriarchy that she observes in these illiberal minority cultures.

Okin anchors her argument in the view that gender and culture are deeply intertwined. She believes that it is in the private sphere, the homes, where culture is transmitted, and where many of the gender stereotypes and oppressions are also simultaneously, and in the name of culture, perpetrated and perpetuated (ibid. 1999:13). What worries her more is that because the damage takes place at home, and often in private, allowing cultures to prosper on their own terms is tantamount to the double harassment of those who are already disadvantaged by their culture (ibid.:10). In situations where women find some of their cultural practices oppressive, their hope is to get protection and support from a liberal government; however, where liberal governments uphold group-specific rights, the already disadvantaged become even more so.

In Okin's view, women are the most underprivileged members of society. Therefore, anyone who promotes cultural autonomy promotes an establishment that "endorses and facilitates the control over women" (ibid.:12) by those who perpetuate patriarchy. In other words, the promotion of group-specific rights directly undermines and harms women's aspirations for equality. Therefore, multiculturalism is illiberal and antifeminist (ibid.:23). Thus if multiculturalism is to be taken seriously, its proponents must explain "what should be done when the claims of minority cultures or religions clash with the norm of gender equality that is at least formally endorsed by liberal states" (ibid.:9). Okin seems to suggest that the two cannot coexist: one cannot support group-specific rights for illiberal cultures and at the same time be a liberal feminist – the two positions will inevitably collide. Thus those who consider themselves progressive have a choice to make: Is it going to be multiculturalism – and the perpetuation of women's subordination – or is it going to be feminism – denying national and polyethnic minorities some group-specific rights for the sake of protecting of women's human rights?

According to Okin, the first major shortcoming of multiculturalism is that it "tends to treat cultural groups as monoliths [...] [and pays] attention to differences between and among groups [rather] than differences within them" (ibid.:12). She argues against treating groups as monoliths since such an exercise relies on the misleading assumptions that essentialise cultures.

This leads to the false assumption that all members of a group conform to all norms and values that are promoted within the culture. This presupposes that members are in agreement with the authority of the traditions and the leadership of the cultural representatives. It supports the idea that members of the group are always and everywhere content with the political, moral and economic views that their respective groups promote. This makes it impossible for anyone to negotiate with the cultures in question, and renders groups incommensurable with one another. However, such a stance on culture deliberately ignores the power dynamics that are at play within minority groups.

Secondly, Okin argues that multiculturalists ignore the fact that many among minority cultures are illiberal and these cultures place women in a position of subordination to men. In Okin's view, multiculturalists "accord little or no recognition to the fact that minority cultural groups [...] are themselves gendered with substantial differences in power and advantage between men and women" (1999:12). As already stated above, Okin believes that most women from illiberal cultures have no access to basic human rights such as the right to equality, bodily integrity, privacy, and others. Culture, she says, imposes inferior roles on women and girls while leaving prestigious public positions to men and giving boys privileges which will enable them to hold such positions in the future. This begins at home, the cradle of cultural transmission, from parents to children and from one generation to the next. Thus, by endorsing multiculturalism, liberals run the risk of condemning women to double oppression, both by their culture and through the legislative policies of the larger liberal state. The double oppression lies in the inescapability of family laws and their validation by liberal laws which the oppressed would have hoped the liberal states would overturn.

Okin states that cultures establish customary laws that regulate "the sphere of the personal, sexual, and reproductive life functions [...] Religious or cultural groups often are particularly concerned with 'personal law' – law of marriage, divorce, child custody, division and control of family property and inheritance" (ibid.:12-13). In this case, many cultural personal laws seem to favour men and reduce women to the mere property of men within the household. Thus, allowing such cultures to prosper is a direct challenge and threat to feminists, who have been fighting for women's equality rights. It is a challenge because it blocks both external and internal efforts to criticise the leadership and to revise certain practices that are promoted in the group. Multiculturalism prohibits both insiders and outsiders from challenging the groups' status quo.

Okin argues that “most cultures have as one of their principal aims the control of women by men” (1999:13), and this they have learned from the Abrahamic religions, that is Judaism, Christianity and Islam. In all these religions, she argues, maleness is associated with the strength and power to resist temptation, and the possession of a political will to dominate creation. Femaleness, on the other hand, is associated with weakness, susceptibility to sexual looseness, untrustworthiness, and deception, modelled on Eve’s failure to resist temptation in the Book of Genesis. She suggests that all these founding myths have placed women at a disadvantage and in a precarious position (ibid.:13-14). With culture, it is as if men have taken it upon themselves to rewrite history and make corrections where Adam failed; to keep his wife in check. Adam had failed to resist Eve’s temptation to indulge in the forbidden fruit, and this resulted in disaster for all humankind. In short, Okin asserts that cultures have absorbed these religious narratives as evidenced by their misogynistic rules.

Other than religious stories of the Fall, Okin (ibid.:17-20) also presents us with a host of contemporary examples of court cases where convicted men and women blame their cultures for abusive actions against women and children. All of them seem to portray men’s actions in such a way that culture is described in both monolithic and deterministic terms. In these court cases, men are portrayed as if they were slaves of cultures that determine certain cultural norms and moral reactions. Okin purposely chooses to focus on (for her) foreign societies with cultures different from her own. Two of these examples have to do with rape and sexual assault. In the first case, Okin explains that in some illiberal minority cultures – common in Latin America, West Africa and Southeast Asia – a man that rapes a woman is exonerated if he offers to marry his victim. The second example concerns gang rape, whereby all other perpetrators are exonerated as long as one among the gang offers to marry the victim. Cultural-legal arrangements such as these demonstrate that rape in these societies is not even viewed as “a violent assault on the girl or woman herself but a serious injury to her family and its honour” (ibid.:15). In short, to guarantee these societies group-specific rights will disadvantage women far more than it would disadvantage men. Those condemned to such matrimonial arrangements have to endure physical, emotional and psychological traumas without any external assistance.

In order to show the complexity of endorsing polyethnic rights, Okin also focuses on the liberal court room (ibid.:17). She looks at cases that involve immigrants who have committed crimes that would otherwise be defined as a clear human rights violation, but get complicated by the defendants’ efforts to explain his or her actions with reference to their culture. In their defence,

these accused immigrants portray their cultures as responsible for their individual actions. All these examples prove one thing for Okin: endorsing group-specific rights, meant to ensure the survival of national and polyethnic cultural minorities, ends up endorsing human rights violations suffered by women at the hands of men in the name of culture (1999:19).

Okin also discusses cases of failed suicide attempts by Japanese or Chinese wives who had first murdered their children as a means of escaping shame caused by infidelity of their husbands (ibid.:18). She gives many more examples. In all these cases, the prevailing principle is that:

“Women are ancillary to men and should bear the blame and the shame for any departure from monogamy. Whoever is guilty of infidelity, the wife suffers [...] again the idea that girls and women are first and foremost sexual servants to men emerge in many of the statements made in defence of cultural practices” (ibid.:19).

Her natural conclusion is that Kymlicka and his fellow multiculturalists need to address this discrepancy if they are to be taken seriously by promoters of women’s rights (ibid.:23). Otherwise, no seriously progressive member of a liberal society can in good faith embrace such policies. Even though Kymlicka rejects the idea of internal restriction within minorities, as we have seen, Okin is not convinced by this (ibid.:22). Okin believes that cultures are hostile to women, so according to her, Kymlicka is naïve to believe that minority cultures will accept women’s equality should the minorities get specific-group rights. If Kymlicka wants to win Okin over, he would have to do more than simply asserting that minority groups should not oppress women, because these would be empty words based on a reality that is far different than Kymlicka is ready to accept.

Okin acknowledges that proponents of multiculturalism may be ready to condemn obvious universal human rights violations that may otherwise be culturally defensible, child-marriage for example. However, the extent of the problem becomes clear if one focuses on the private sphere, at home, where “strict control of women is enforced [...] by the authority of either actual or symbolic fathers, often acting through or with the complicity of older women of the culture” (ibid.:21-22). She maintains that such control is very subtle and, worse still, it might have been already internalised and normalised by some women, especially the elderly who see these practices as necessary for the well-being and continuity of a group. It is not surprising then that Okin concludes that “unless women – and, more specifically, young women (since older women are often co-opted into reinforcing gender inequality) – are fully represented in

negotiations about group rights, their interest may be harmed rather than promoted by the granting of such rights” (ibid.:24). She wants younger women to ensure women’s voices are heard, incorporated and respected, by being part of decision-making processes that will have an impact on their lives – and hopefully help liberate the complacent elderly women by speaking against those practices that have negative effects on women in the group. Okin insists that when group rights are considered, young women should be involved in the negotiations between their cultural group and the liberal state. (With his notions about special representation rights, Kymlicka would seem to be in accordance with Okin on this point, even if he does not fully spell it out in his book.)

Okin wants multiculturalists to acknowledge and decisively condemn the subordination of women, which is “often very informal and private” and she further states that “virtually no culture in the world today, minority or majority, could pass...[a] no sex discrimination’ test if it were applied in private sphere” (ibid.:22). Until such a time that multiculturalism directly responds to the oppression of women and other forms of internal restriction within cultural groups, it cannot be an ally of feminism. Okin believes that Kymlicka’s multiculturalism exacerbates the problem when it endorses freedom and autonomy for ethno-cultural groups that might be (and in fact often are) hostile to women and girls, without addressing this problem explicitly.

Okin issues a strong warning for cultures that refuse to reform and give women the recognition they deserve. She threatens them with cultural extinction. She thinks women from more patriarchal cultures would be “much better off if the cultures into which they were born were either to become extinct (so that its members would become integrated into the less sexist surrounding cultures) or, preferably, to be encouraged to alter itself so as to reinforce the equality of women” (ibid.:22-23). She seems to be saying that cultures must reform and be as liberal as the majority cultures of liberal states are, or face cultural extinction by assimilation. The ultimatum, therefore, is that such cultures should either change their way of thinking and incorporate women into leadership roles, or face the music of being pushed to the margins – even to total annihilation (An-Na‘im 1999:61).

Okin’s article generated a heated debate among feminists, promoters of group-specific rights, multiculturalists and other authors trying to harmonise the two positions. Those who agree with her acclaim her bravery and brutal honesty in confronting and exposing what they deem to be

the hidden agenda of national and polyethnic minorities: the underlying disposition to oppress and discriminate against those who are less powerful in the group – these for Okin, being women and girls (Tamir 1999:47). Those who disagree accuse her of extreme imperialistic views, bias to western ways of doing things, and of missing the point of multiculturalism. They further find her guilty of committing the very crime that she finds with multiculturalism: that of making and viewing foreign cultures as monoliths. Anthias (2002:276) for instance asserts that the mistake in the multiculturalism and feminism debate is:

... homogenising and totalising cultures, ignoring the differences, but most importantly, the hierarchies within so called “cultural groups” (itself an ideological construction), for example the existence of class oppression, and the diversity of position or location within as well as between cultural groups.

Thus, Anthias cautions us against homogenising cultures, whether from a feminist or multicultural perspective. We will return to this point most explicitly in Chapter Four. Now I first review the main responses to Okin’s position.

### **3.3. The Responses in Support of Okin’s Criticism of Multiculturalism**

#### **3.3.1. The Affirmation of the conflict observed by Okin.**

Okin believes that there is a natural conflict between liberal multiculturalism and liberal feminism. She claims that this conflict arises as a result of the commitment to liberal principles – such as individual freedom, autonomy and equality on the one hand – and the policies that promote equality among cultural groups, right to self-determination and maximum cultural autonomy on the other. The two are seen as naturally incompatible, as Okin believes that most of the cultures have practices that are oppressive to women. It is therefore the duty of the promoters of universal human rights to change this and, according to her, much has already been achieved in this area. However, the demand for group-specific rights threatens to undo all the progress that feminists have achieved in their quest for women’s rights.

In support of Okin’s claim about the fundamental conflict between feminism and multiculturalism, Pollitt (1999) in the same volume argues that culture in all its guises threatens and oppresses women’s individual rights. Therefore, “in its demand for equality of women, feminism sets itself in opposition to virtually every culture on earth...[and] fundamentally the ethical claims of feminism run counter to the cultural relativism of ‘group right’

multiculturalism” (ibid.:27). There is enough historical evidence to demonstrate that in many cultures of the world women have been historically and traditionally marginalised, while men have occupied places of power and honour in the societies. After all, feminism was in some way born as a reaction to a male-dominated world.

It seems indisputably true that feminists will always be wary of the demands made in the name of culture as long as the equality between sexes is not upheld and fostered with appropriate policies. Feminism and cultural rights are thus viewed as naturally conflicting and usually leading to an uncomfortable position of either/or. Pollitt finds it “hard to understand how anyone could find these arguments controversial” (ibid.:27)). According to her, it is a straightforward, self-evident truth that multiculturalism and feminism are two conflicting political theories.

### **3.3.2. The Problem of Cultural Essentialism**

Besides the affirmation of the conflict between the two theories, other supporters of Okin charge multiculturalism with severe bias towards the already powerful members of society. They argue that endorsing multiculturalism reinforces misogynistic hierarchies of power and tends to entrench a conservative social status quo. It gives those who occupy the places of privilege and prominence more security by re-affirming their place of dominance over virtually all other members of their group. Tamir (1999:47), for example, argues that the problem highlighted by Okin is only suggestive of the bigger problem inherent to multiculturalism. The problems that come with multiculturalism are not only limited to women, but also encompass other less privileged and marginalised community members such as children, LGBTQ and dissenters or nonconformists.

Tamir asserts that multiculturalists are mistaken in at least two areas. Firstly, multiculturalists are wrong when they define and defend group rights based on unrealistic expectations about the nature of cultures themselves. This is so because she believes that multiculturalists treat minority cultures as if they were living entities that were immutable (ibid.:48) What Tamir points out is that the nostalgia surrounding the multiculturalist discourse essentialises the role of culture and wrongly suggests that, if changes were to take place, it would damage or destroy the character of the group completely.

Tamir argues that if it were true that cultures were closed entities, as cultural relativism would suggest, there would be no meeting points between groups. Yet, groups do not exist in isolation, and are always in contact with other groups. They are open to endless possibilities of adapting and adopting new ways that, in some ways, guarantee their continued existence amidst the impact of other cultures. Thus, to hold onto authenticity and uniqueness, would entail that these cultural groups are sealed and complete in themselves, so much so that every change or correction initiated by either outsiders or insiders would amount to a violation of culture. However, it is not true that each and every member in the cultural group blindly accepts culture as having the final word in their lives. Many from within the groups want to see certain things changed. Hence, Okin (1999: 24) proposes the inclusion and full participation of younger women when matters of importance, especially those that relate to them, are discussed. Feminists do not only want women to be accommodated or tolerated, but they also want women to form part of cultural narratives as active players, and as equal contributors of societal policy development, in the same way that men are afforded an opportunity. This will ensure that women also have a right to propose, define and interpret what cultural values ought to be, and what they mean for individuals and for the entire group.

Policies related to multiculturalism are derived from the assumption that they will ensure the survival and protection of ethno-cultural groups from majority cultures' assimilationist and conformist policies, which some governments put in place in the name of national unity. However, some feminists take issue with the very concept of cultural "survival". Tamir, for example, argues that the term "survival" erroneously "intensifies the cost of change, and [fosters] a belief that any violation of social and religious norms, any reform of traditional institutions and the group's customary law endangers its existence and must therefore be rejected" (1999:49). In other words, terms such as "survival" exaggerate the need for such protective policies, and it portrays the minorities as if they were innocent and helpless in the hands of the majority. It seems to suggest that minorities are forever bullied into accepting majority decision as non-negotiable.

Tamir insists that "it should be clear that the term survival refers not to the actual community or its members but to the survival of the traditional way of life" (ibid.:49). In other words, the term "survival" is misleading and disguises the real agenda of ethno-cultural groups' leaders. According to her, the survival that is actually at stake has nothing to do with the prosperity of individuals – i.e., in terms of freedom, equality and autonomy – but the term suggests the



protection of the way of life that is potentially oppressive to other members within the group. This, usually puts men at the place of cultural prominence, while pushing women to the margins of society. In other words, promoters of group rights, in spite of their best intentions, may be hindering reformation and reinforcing various vested interests associated with internal power and control.

This phenomenon, whereby leaders seek to suppress internal debate through the (ab)use of group rights, Kymlicka refers to as “internal restriction” (1995:36). Such a strategy he finds problematic in that it is used as a shield to validate unjustifiable and outdated methods used by elites to prevent other group members from challenging or adapting the group’s way of life. Therefore, while dissenters, non-conformists and human rights promoters (particularly defenders of women’s rights) are often perceived as a threat to the group, they are perceived as even more of a threat to continued male domination. In such cases what passes for the “survival” of a culture should therefore instead be seen as the survival of the authority of the elderly males and other members of the group who prosper by reigning over submissive members within the group (Tamir 1999:47). On this view, those who support multiculturalism empower dominant members of the group with legal tools to completely silence those who seek to challenge the status quo.

It cannot be that every change that a group undergoes will lead to cultural disintegration or cultural dissolution. For example, a few centuries ago, Christianity was not part of many cultures of the world, yet today many of these cultures have embraced at least some Christian teachings without necessarily giving up some of their own cultural aspects, which sometimes contradict Christianity. Christianity influences many of the cultures it comes across, no less than the way these cultures influence Christianity as it is lived in those cultures. Thus, to see any change as fatal to any group hinders it from any possibility of becoming or remaining a meaningful symbolic order for its ever-changing subjects in an ever-changing world. Cultural change in fact seems indispensable for cultural survival.

Liberal feminists, therefore, claim that liberal multiculturalism solidifies the patriarchal order of things, by relying on rigid interpretations of culture (ibid.:52). The idea of this claim is that multiculturalism retains male dominance and directly or indirectly ignores the oppression of those who have less power. It ignores that many in the groups may want to give up or alter certain practices and norms, but are unable to address their concerns because of policies that

might suppress open dialogue through exclusionary measures. In other words, women are casualties of the liberal choice of endorsing multiculturalism within liberal states. Women, girls, LGBTQ, dissenters and nonconformists are the ultimate losers of such a system.

While people like Tamir see a patriarchal agenda veiled in the adoption of liberal multiculturalism, others see the slippery slope that such a discourse may lead to. The slippery slope, in this case, is the belief that by allowing multiculturalism, it will automatically lead to worse forms of oppression for both women and non-conformists within the groups. This is so because the implications of multicultural policies are more far-reaching in their application than Kymlicka allows (Honig 1999: 35). If we allow cultures to govern themselves on their own terms, even when they privately discriminate against women and other marginalised groups, then in effect (in spite of our best intentions) we protect the power of the cultural elites and intensify the powerlessness of the culturally marginalised. We should then not be surprised if other national, polyethnic or larger groups adopt policies that are unfair to the groups we want to protect through multicultural policies.

### **3.4. The Challenge to Okin's Claim**

While Okin finds support among some liberal feminists and liberals in general, there is also some considerable opposition to her claims. I will discuss five points of criticism levelled against her. These are: (1) Cultural imperialism, (2) cultural stereotyping and racism, (3) lack of insight, (4) the treating of culture as if they were monoliths, and (5) paternalism. I now briefly discuss each of these points.

#### **3.4.1. Criticism Against Okin's Western Imperialism**

As we have seen, Okin asserts that granting minority groups special rights will have a negative impact on women within these groups. Judging from her Western liberal perspective, she suggests that these minorities should change and become more like her western society, where she believes much progress has been made in relation to women's rights (1999:16-17). If, however, the national and polyethnic groups refuse to change their illiberal ways to embrace liberal principles, it is better (for their own members) if their culture becomes extinct (ibid.:22). Many of her critics did not find such an approach helpful. It is an approach that portrays Western liberalism as having authority over those that are not part of its value system and

worldview. As An-Na'im (1999) suggests, this approach offers a do or die ultimatum as the only way to deal with illiberal cultures. She is alarmed by Okin's tone which simply compels minorities "either to change to achieve gender equality in the private lives of your families and communal affairs, or perish" (An-Na'im 1999:61). Giving such an ultimatum to minorities assumes the superiority of Okin's culture and simultaneously hinders a meaningful dialogue between minority and majority cultures.

Al-Hibri (1999) concurs with those who accuse Okin of setting herself and her liberal feminism on the pedestal of what he refers to as "the dominant 'I'" (ibid.:41-43). The relationship between the Western dominant "I" (the majority culture) and the non-Western subservient "them" (the indigenous minority groups or polyethnic groups) describes Okin's intolerant attitude toward non-western cultures.

### **3.4.2. Criticism against Okin's Cultural Stereotyping**

Okin is further accused of cultural stereotyping. She simply assumes non-Western cultures to be both illiberal and patriarchal. Her generalisations about cultural misogyny are based on negative examples charged with emotion, displaying human rights violations, such as the murder of wives due to infidelity. The deliberate and systematic choice of these examples seems to establish the narrative of "the inferior other" represented by these cultures in comparison to Okin's own culture in which comparable things seemingly never happen. Anthias (2002:276) makes this criticism explicit when she criticises Okin for measuring and condemning cultural minorities in terms of "the 'other,' as 'different', as not like ours, those of the foreigners, the 'traditional'". Okin's approach to the "other" is that the other needs to change and follow liberal practices, and only then can they be treated with respect as equals by liberal states.

Okin further describes the national and polyethnic minorities as people bound by culture, while the people from her community seemingly are not similarly bound by their culture, and have a choice (1999:16-17). She treats minorities as never having heard of equality, autonomy and freedom, and assumes that the Western world has outgrown culture and has the monopoly in the promotion of these liberal values. However, reality does not support such an assumption. Phillips (2007) refutes such views and argue that human rights have no boundaries and to think otherwise is stereotypical and incorrect. According to Phillips the attitude which holds that

freedom, choice, agency etc., are Western values “draws on and reinforces stereotypical distinction[s] between liberal and illiberal, modern and traditional, Western and non-Western, cultures. It proclaims the world of ‘us’ and ‘them’ and it makes it pretty clear our ideas are superior” (2007:23). Okin maps out the conversation in such a way that it gives the impression that she wants everyone to subscribe to her way of life. To her, in non-Western cultures, women remain victims of oppressive practices, whereas in the progressive and liberal West, women are free to make their choice according to their right to equal dignity.

Another form of stereotype for which Okin is criticised is her claim that older women from national and polyethnic groups are “brainwashed” agents of patriarchy. According to her, the liberation of women from these cultures will come from the younger women who, hopefully, have not yet been brainwashed into accepting that the right way of life is patriarchy. According to her, the older women from these groups are a danger to both their children and themselves because “older women are co-opted into re-enforcing gender inequality” (1999:24). However, Okin does not make any reference to older women in liberal society, because “women in more liberal cultures are [...] legally guaranteed many of the same freedoms and opportunities as men. In addition most families in such cultures [...] do not communicate to their daughters that they are of less value than boys” (ibid.:17). Thus, Okin is criticised for perpetuating the idea that in national and polyethnic minorities, girls are not only threatened by men but older women are a threat to young girls, due to their co-optation into patriarchy.

### **3.4.3. Criticism Against Okin’s Lack of Insight**

Another criticism levelled against Okin is that she lacks insight into some of the issues that she raises as “clear” examples of liberally unjustifiable practices. She mistakenly claims that the creation narratives in Genesis and the Qur’an similarly promote the idea that women are secondary beings after men (Al-Hibri 1999:42), and so erroneously compares the Genesis story of creation to the Islamic Qur’an. Where “the Qur’an clearly states that males and females were created by God from the same *nafs* (soul or spirit) and that the most honoured among them in the sight of God is the most pious” (ibid.), the Bible states that Adam was created first, and only later was Eve created from one of his ribs. In the same passage, Al-Hibri argues that this error of interpretation displays Okin’s self-assumed supremacy that is characterised by her underlying assumption that her liberal culture treats women better than the cultures she criticises (ibid.:42).

In her criticism of Okin, Honig (1999) argues in a similar vein that the sexual control by Abrahamic religions that Okin sees as limiting to women is actually a misrepresentation of the texts. She argues that all three Abrahamic religions, through their texts, put the same restriction on all their members, both male and female. In order to demonstrate that Okin was missing the point where religion was concerned, Honig argues that there are cases in which religious women demonstrated they can exist without men's domination. He states that, "while little room is provided for women to live 'independently' of men (nuns are a stunning exception to this claim), equally little room is provided for men to live independently from women" (1999:37). Religious sexual restrictions apply to all, and this means that women are expected to live a chaste life just as men are. Any other readings of these scriptures are manipulations for selfish agendas. However, this reference to the autonomy of nuns did not sit well with Okin. In her reply she argued that since women and nuns could not be ordained priests, their life in a convent was not necessarily a sign that women can live without men (1999:123). Therefore, in Okin's view, the fact that women could congregate in a convent and live by themselves was not an incentive enough to, for example, to compel the governments to subsidise church schools if the church was not ready to ordain women.

#### **3.4.4. Criticism Against Okin's Cultural Essentialism**

Okin is also criticised for sealing non-Western cultures into neat monoliths. In order for her to be able to critique culture the way she does, she has to accept what she criticises in multiculturalism. She has to assume that these minority cultures are remarkably backward, sealed and trapped in a primitive and superstitious world of rituals. According to Anne Phillips, "Okin combines [...] scepticism about cultural claims with what many have seen as a static conception of culture, and an overly strong demarcation between cultures that are more egalitarian and those that are more patriarchal" (2007:26). She delineates too neatly between "liberal" Western culture and all other "illiberal" cultures on the basis of their attitudes towards women. She erroneously views Western liberal culture as "politically progressive and opposed to all forms of oppression" (1999:10). According to her, most liberal and democratic societies are emancipating to women, while "ethno-cultural groups" (as if the West has no culture or ethnicity) oppress and abuse women, in a timeless manner.

In her monolithic interpretation of minority cultures, Okin sees culture as necessarily opposing women's freedom. She strongly asserts that many among minority cultures are oppressive to

women and must be eradicated or educated with liberal principles (1999:22-23). Culture, according to Okin, marginalises women while promoting abusive behaviour in men. Many courtroom examples that she used seem to suggest that men from non-Western cultures kill their wives because of their cultural traditions. This treats minorities as slaves of their culture, having no individual agency.

#### **3.4.5. Criticism Against Okin's Paternalism**

Okin is also criticised for paternalism. In her article (1999), she portrays young women from so-called "illiberal cultures" as if they were in a state of complete helplessness, engulfed by oppression emanating from both the older women and the men. According to her, "older women are co-opted into reinforcing gender inequality" (ibid.:24) in that they have been enculturated since their childhood to the point that they have unconsciously, or consciously, internalised patriarchy as the normal way of things. Thus, she "cast[s] the conflict as one in which feminists and advocates of human rights are attempting to save women of minority cultures from internal oppression" (Al-Hibri 1999:44). The problem with such an approach is that it views women of minority cultures as lacking in all agency, voice, view and perspective. It creates a view that the older women within minorities have suffered brainwashing, and that the younger women need to be empowered with liberal tools to challenge patriarchy and make things better for themselves and their parents.

#### **3.5. Kymlicka: Multiculturalism and Feminism Have a Lot in Common**

Kymlicka (1999) also had an opportunity to respond to Okin's direct criticism of his version of multiculturalism. He conceded the unacceptability of internal restrictions that might flow from group rights, and gave Okin her due in this regard (ibid.:31). However, he argued that multiculturalism and feminism had a lot more in common than she supposes. Based on three common points (discussed below) that he believes these schools of thought share, Kymlicka argues that "liberals can accept external protections which promote justice between groups, but must reject internal restrictions which reduce freedom within groups" (ibid.:32). Therefore, the strength of Kymlicka's multiculturalism lies not in limiting members of the group from protesting and challenging certain aspects of their cultures from within, but on asserting that inequality between groups (on the outside) is both unacceptable and undesirable. His policies are thus not aimed at reducing internal dissent, but at curbing external domination. As a liberal,

Kymlicka seems to value liberal principles such as autonomy, freedom and equality, and he cannot in good faith endorse the deliberate oppression of cultural group members by their own leaders. Since both Kymlicka and Okin believe in the sovereignty of the individual, in processes that will make the individual's choices meaningful, and in individual autonomy, Kymlicka accepts that a liberal policy must reject internal restrictions insofar as they hinder these aspects of the individual (ibid:31). However, where Kymlicka most strongly deviates from Okin is that he believes that cultures are necessary for individuals to make meaningful choices, and he asserts that the individual and the community are not mutually exclusive (1995:84). What this means, is that communities as centres of both individual and communal prosperity, they create conducive environment where members are trained to differentiate between what is acceptable and that which is not, what is helpful from what destructive. A meaningful choice therefore, will be informed both by the needs of the individual and those of the community and the two will be interpretative of one another. Since individuals do not exist in isolation, their choices are informed by both individual and communal needs. Part of protecting individual freedom is therefore to protect the culture into which that individual was born and where s/he was enculturated. Thus, liberal theorists need to find ways in which the individual and the group-specific rights can be complementary.

Kymlicka believes that multiculturalism and feminism are allies for at least three reasons. Firstly, according to him, both these theories reject the position that universal human rights are adequate for the protection of systematically disadvantaged groups (1999:32). The disadvantaged groups in the case of feminism are women and girls, while the national and polyethnic minorities are the underprivileged groups in the case of multiculturalism. Both argue that universal human rights neglect the institutionalised forms of discrimination that are suffered by women and by both national and polyethnic minorities. According to Kymlicka (1999:32-33), Okin argues that in order to confront sex discrimination, society ought to “pay attention to the structure of societal institutions [...] and to [the] sorts of images and expectation[s] people are exposed to in schools and media since these are [...] using male as the ‘norm.’” Kymlicka claims to be making a similar assertion when he proposes that we should start by “examining [the] structure of societal institutions since these make use of the majority culture as the ‘norm’” (ibid.:33). In other words, whereas feminism criticizes the use of maleness as the norm, multiculturalism denounces the appeal to majority as the way of life. Both believe that these norms have, for a

long time, been used as a yardstick to dominate the disadvantaged and the underprivileged and must therefore be rejected in order to open space for the acknowledgement of difference.

Secondly, Kymlicka put forward another point of similarity that is related to the first, something which he calls “the problem of invisibility” (ibid.:33). When national and polyethnic minorities make laws that disregard women as if they did not exist, and function as if the men were the sole beneficiary, and when majority groups treat the national and polyethnic groups as if they were irrelevant in the process of decision-making, this amounts to the problem of invisibility. Kymlicka (1999:33) observes that feminists lament the side-lining of women in important political debates that have a direct impact on their lives, freedom, autonomy and right to equality. This is because men everywhere, especially in the “illiberal cultures”, usually have the unwarranted right to determine and steer the daily running of the society, including the position and status of women. Most of sex discrimination occurs first and foremost in the private home and as such it is not easily detected by the public. Similarly, Kymlicka (ibid.:33) claims, multiculturalists lament that majority cultures often make laws that do not take into consideration the needs, values and viewpoints of the national and polyethnic minorities, having a direct impact on their autonomy and freedom. Thus, he concludes that “in both cases, the result is that liberalism has been blind to grave injustices which limit the freedom and harm the self-respect of women and ethnocultural minorities” (ibid.:33).

Thirdly, and finally, he argues that feminists have pushed for solutions that are similar to those which are proposed by multiculturalists. In order to ensure that justice is done to women in their respective societies, some feminists have engaged democratic societies to compel them to open new avenues for women through programs such as “affirmative action” (ibid.:33), and to establish independent human rights bodies, such as the South African Commission for Gender Equality. Multiculturalists do the same in the case of national minorities. They demand that states afford national and polyethnic minorities with specific group rights. As already discussed in Chapter Two, these rights include self-determination rights, polyethnic rights and special representation rights. For Kymlicka, such rights will ensure that the needs of minorities are not trumped by majoritarian policies.

Feminists and multiculturalists want these specific rights to be protected by liberal constitutions. Therefore, inasmuch as they both appeal to special treatment for their respective groups, Kymlicka affirms that he and Okin are doing the same thing, that is: fighting the battle



for the emancipation and freedom of those who are unfairly discriminated against by political bodies and other institutions, whether of a patriarchal or majoritarian nature. Both are “challenging the traditional liberal assumption that equality requires identical treatment” (ibid.:34).

In her response to Kymlicka’s analysis, Okin conceded to all three these main observations, agreeing that multiculturalism and feminism may indeed have something in common. However, she maintains that there is still an antithesis between feminism and multiculturalism. Okin draws our attention to what she believes is the real difference between the two: the women’s struggle does not endorse any oppression among women, not even as a side effect. According to her, “the few special rights that women claim *qua* women do not give more powerful women the right to control less powerful women. In contrast, cultural group rights do often [...] reinforce existing hierarchies” (Okin 1999:131). This highlights the gap between the ideal and the norm, between values and reality. While multiculturalism prioritises equality among cultural groups, Okin prioritises women. She wants Kymlicka to refine his multiculturalism and to enable it to put concrete and explicit measures in place that will deal with sex discrimination among people in the minority groups (ibid.:131).

### **3.6. Conclusion**

Okin sees an unavoidable conflict between multiculturalism and feminism. She believes that without an honest address of the gendered inequalities that exist between the members of national and polyethnic minorities, true liberation for women cannot be achieved, and in fact, group rights will be counter-productive. Some feminists have supported her in this claim, and others have claimed there was still more that needed to be done in order to liberate women from patriarchy. However, some have accused her of deliberately misleading her readers by selecting extreme examples of minority culture. While she maintained that multiculturalism had more work to do in order to be acceptable to feminists’ ideals, she did concede that there were areas in which both feminism and multiculturalism converge.

In this chapter I have also shown how Kymlicka believes that these two political positions have a lot in common and that feminists, like other liberals, may accept the proposal to promote group-specific rights, while at the same time rejecting internal restrictions that may exist within these groups. In the following chapter I will investigate how Anne Phillips tries to get away

from this apparent dilemma by revisiting the manner in which promoters and opponents of multiculturalism define the terms “culture” and “cultural practices”.

## CHAPTER FOUR

### ANNE PHILLIPS: BEYOND CULTURAL DETERMINISM

#### 4.1 Introduction

As I have demonstrated so far with the discussion of Kymlicka (Chapter Two) and Okin (Chapter Three), the debates about the tension between gender equality and cultural diversity have been marred by misleading stereotypes of culture and an exaggerated language of cultural difference has lent itself to ethnic reductionism, cultural stereotyping and the hierarchy of the ‘traditional’ and ‘modern’ (Phillips 2010:4). This criticism is particularly well developed by Anne Phillips, Professor of Political and Gender Theory at LSE, England. She states:

The guiding principle is that we should respect the diverse choices people make about their lives, not assume that these are forced on them by oppressive patriarchal cultures, and not leap prematurely into protective mode [...] We should recognise that what looks to an outsider like submission is sometimes better understood as empowerment, and acknowledge that everyone has agency even though clearly some have more options than others. We should in other words recognize the agency of women even under conditions of severe oppression and exploitation, and not ignore the choices they make as if these were no more than the reflections of their limited room to manoeuvre. (Anne Philipps 2010:11)

From this quote it is clear that she wants to give greater acknowledgement to the agency of people with respect to their cultures. The highly contested aspect of multiculturalism is culture. Supporters of cultural equality, such as Kymlicka (1995:105), as we have seen, describe culture as a necessary condition for individuals to make a meaningful choice and for the continued existence of a cultural group. Some promoters of women’s rights, as discussed with reference to Okin, on the other hand, reject an attempt such as Kymlicka’s liberal multiculturalism, aimed at protecting minority cultures, because of the understanding that many among illiberal cultures promote practices that disadvantage women. As already discussed in Chapter Two and Three, the debate between multiculturalists and feminists attempts to answer a specific question posed by Okin: “What should be done when the claims of minority cultures or religions clash with the norm of gender equality that is at least formally endorsed by the liberal state?” (1999:9).

Feminists (like Okin 1999, Politt 1999 and Tamir 1999) unsurprisingly argue that women's rights should take precedence, while multiculturalists typically respond that feminists can and should accept multiculturalism that prohibits external interference and rightly rejects internal restrictions (Kymlicka 1999). However, it is not clear, from the liberal feminist perspective, whether this distinction between external protection and internal restriction is viable in practice. In other words, it is possible that formal protections from external interference inadvertently tend to strengthen the mechanisms for internal restrictions, reinforce existing power relations, and so on.

In this chapter, I investigate Anne Phillips's proposal of another way out of the "multiculturalism dilemma" without being forced into the ultimatum of an "either/or" option. Like Okin, Phillips focuses on the term "culture", and attempts to deconstruct the myths and the stereotypes that are associated with various interpretations of the term. In her opinion concerning the debate between Okin and Kymlicka, Phillips (2010) suggests an alternative understanding of culture, devoid of the essentialism and determinism which seem to limit both Kymlicka and Okin to an either/or choice. Thus, in her opinion, underlying and constraining the stark stand-off between Kymlicka and Okin is a simplistic and problematic understanding of culture, and how it functions in people's lives. According to Phillips (*ibid.*), a shift away from this limiting view of culture will enable both groups to have an honest discussion about the issues that arise from endorsing group-specific rights. A shift away from a determinist approach to culture to a non-determinist approach will help everyone to avoid either exaggerating or understating the complexity of the issues that surround the demand for multiculturalism, while at the same time avoiding perpetuating cultural stereotypes.

In her contribution to the debate, Phillips (*ibid.*) addresses four themes: (1) A shift from cultural determinism to cultural indeterminism, (2) the diversity of voices and contestations within groups, (3) the mistaken assumption of deep value conflict between defenders of cultural rights and women's rights, respectively, and (4) cultural stereotypes. The layout of the chapter is therefore as follows: In section 4.2, I explain Phillips's critique of the problematic view of culture underlying the apparent clash between multiculturalism and of feminism. I will also show how she breaks away from this reductionist, essentialist, and determinist view of culture, and presents us with an alternative understanding. Importantly, this alternative view of culture also allows us to break out of the unsupported assumption that only non-Westerners "have cultures" in the problematic ways assumed in the mainstream debate. In section 4.3, I focus on

Phillips's attention to the diversity of voices and ongoing contestations within all cultural groups about what culture is and what authority it holds. Staying with Phillips, Section 4.4 provides an overview of her criticism of the assumption within the multiculturalism-feminism debate that there is a deep value disagreement between the parties. She shows that, since they are grounded in a liberal framework, both sides to the debate highlight the values of individual freedom, equality and dignity. Where they differ is not so much on their core values, but on their understanding of the actual operations of cultural authority in practice (Ibid. 2007:8) The surface clash can therefore be somewhat ameliorated when focusing on their shared core values, and realising that the clash could be more empirical in nature. However, these moves then lead Phillips, as will be discussed in Section 4.5, to show that both sides also share the unfortunate tendency to assume a sharp and simplistic hierarchy between Western culture(s) understood as liberal, and non-Western cultures understood as illiberal, leading to pervasive cultural stereotyping. After discussing the diverse angles of criticism that Phillips launches against the essentialism of the Kymlicka-Okin debate, I turn in Section 4.6 to her own view of culture and of how the individual is positioned within culture – with cultural embeddedness rightly restored to a universal phenomenon in which all humans share equally. Given the alternative understanding of culture that Phillips develops through her critical engagement with this debate, she also leaves us with a different perspective on what happens in cases where cultural and women's rights seem to clash.

I chose Phillips for this part of my thesis because she responds directly to the seemingly intractable debate between Kymlicka, as representative of cultural rights, and Okin, as representative of women's rights. Moreover, I find her problematizing of their understanding of culture very useful and important for my own project, which is to consider critically the meaning, nature, and place of virginity testing amongst the amaZulu within the contemporary South African state. The ways in which she manages to move the debate beyond the surface open up fruitful pathways for my own thinking in this regard. Also, Phillips is an established feminist scholar, who takes women's and cultural rights seriously from within a liberal framework.

Phillips is an accomplished author with extensive publications in the area of politics, gender and multiculturalism. Among her publications are: *Multiculturalism Without Culture* (2007), *Gender and Culture* (2010) and *Our Bodies, Whose Property?* (2013). In this current chapter, it is especially her books *Multiculturalism Without Culture* and *Gender and Culture* that take

centre stage, because these are where she most clearly works out her alternative view of culture in relation to women's rights and interests. As already mentioned above, I use her insights as guidelines in problematizing the essentialist and determinist approaches to culture that Phillips describes as the main source of confusion within the debate between multiculturalism and feminism.

#### **4.2. From Cultural Determinism to Cultural Indeterminism**

Phillips begins by criticising the interpretation that multiculturalists and feminists provide for the role that culture plays in individual lives, and especially in the so-called "illiberal" communities. According to her, the problem is that they often view (non-Western) cultures in essentialist terms, but moreover as something that has extraordinary power over individuals. She observes that "even when theorists explicitly reject the idea of culture as separate, bounded or internally uniform, they still tend to present minorities in non-Western cultures as more determining of behaviour and of beliefs [than Western culture/s]" (Phillips 2010:7). It is one thing to say something has certain definitive characteristics (essentialism) and another to say that a thing determines and controls people's cultural behaviour (determinism). Phillips rejects the notion that culture is a driving force behind every individual's actions, i.e., the deterministic view. Phillips believes that the difficulties that arise from the multiculturalism-feminism debate are caused by people's tendency to see culture as something that stimulates and generates culturally conditioned behaviour.

In line with her anti-determinist stance, Phillips also criticises the rigid use of the terms "cultural practice" and "cultural traditions". Firstly, she claims that these terms suggest a determinist view of culture and, secondly, that they sustain stereotypes between what is construed as Western and whatever is construed as non-Western (ibid.:9). She argues that some participants in the debate have tended to use these terms with a special focus on some criminal (at least by the standards of liberal courts) behaviours as defining characteristics of illiberal non-Western cultures (recall the examples referred to by Okin in Chapter Three). In other words, Western liberal commentators take at face value the arguments made in defence of criminal actions, when they choose to believe the defence claim "my culture made me do this". They believe both that the "home culture" (which is non-Western) authorises the behaviour, and that it somehow makes opposition or deviation from that behaviour nearly impossible. This construal of so-called "cultural practices" as normative tends to see minority groups as

possessing a natural way of doing things – that is both authoritative and deterministic - in a manner that liberal majority cultures presumably do not. Implicitly in these debates, the liberal Western world is viewed as if it, in effect, has no cultural practices since such things as cultural practices “belong” to the terrain of the illiberal world.

Phillips advises against defining cultures as if they were entities that were alive, with their own mind and the ability to drive history, as well as the behaviour of individual people. Cultures are eternally changing and adapting according to context, contact and contestation. Therefore, she believes that to hold that cultures are immutable is misleading. It “reifies cultures as separate entities and overemphasises their internal homogeneity” (ibid.:21). People within cultures often have opportunities to express their views concerning practices and the impact these practices have on people’s lives. Therefore, to present cultures as if they were in control of people’s lives does not reflect reality. People manoeuvre between cultures and usually adapt according to the environment where they find themselves at a given time. In work environment for example, employment professionalism, etiquette is expected of every employee, and such standards can even go against some employees’ cultural formation. Thus while at work, individuals will behave as per protocol (e.g. wear uniform) and at home will behave in a manner consistent to his/her culture (recall the story of Owen Kataparo in chapter 2)

Phillips (2018:n.p.), in an interview with Virginia Haussegger, further rejects the very notion of “cultural practice” on the grounds that it misleadingly represents such practices as if they were uncontested, authoritative and deterministic cultural norms that were cherished and personally endorsed, equally by everyone belonging to that culture. As an example, Phillips discusses people’s attitudes towards so-called “forced marriages”. She says that no one introduces their cultural group to another or even amongst themselves as a society that forces people into marriage. Nobody uses the term “forced marriage” as part of their cultural self-description. since people recognise that the terms are negative, and cultures do not see themselves as inherently oppressive entities. Instead, it is factually correct that some cultural communities in the world embrace arranged marriages, as a norm, which do have the potential of deteriorating into forced marriage; as such it is never a cultural norm that is cherished by every member of the group (ibid.). Therefore, according to Phillips, cultural practices are not the same as norms, and are not always accepted as self-evident truths that should be embraced by everyone. Practices evolve and change over time, and their fluidity is only possible if we accept that cultures are not immutable but are constantly changing, due to both internal and

external forces impacting upon them. Thus some of what is used as cultural defence arguments are nothing but an attempt to divert the attention from real problems of criminality and oppression of one group by another in the name of culture. Thus, well informed multiculturalists and feminists will detect such misrepresentation and reject it on the ground that it distorts the peoples cultures.

The cultural defence (as used in criminal trials), for example, demonstrates that behaviours that are put forward as cultural practices only make sense in court if they resonate with what the judges have already accepted as being the case in their *own* cultures. According to Phillips, this means that “cultural evidence works best when it enables judges and juries to fit the defendant’s action into a pattern already familiar through mainstream culture” (ibid. 2007:96). By comparison, therefore, some mainstream liberal judges would pardon or grant a lesser sentence to an offender who appeals to a “cultural defence” because these judges identify and understand the underlying principle, which is largely congruent with the judge’s own cultural values. An example of such an underlying patriarchal principle is that men have a right to be angry at and even to harm their supposedly cheating partners. Thus, argues Phillips, when judges in liberal courts accept so-called cultural evidence, they merely interpret the defendant’s action according to their own understanding of men’s behaviour as they have witnessed and come to expect in mainstream cultures.

Phillips asserts that there are two ways in which multiculturalism can be understood. Firstly, it may be understood to refer to a multiculturalism that acknowledges the fact that countries are usually made up of people of diverse origins, with different cultures and languages (ibid, 2018:n.p.). The first multiculturalist stance acknowledges this fact and advocates that the aforementioned diversity ought to be encouraged and even protected by minor laws<sup>9</sup> that might not necessarily be applicable to the rest of the country’s population. This notion of multiculturalism encompasses various forms of diversities (such as religious, cultural, sexual and gender diversity, etc.) within the state, without giving one group power over others. This simply affirms that a given community consists of various groups that are not so different from each other, yet have certain special interests they want to protect and even promote without fear of being unfairly prohibited by powerful groups.

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<sup>9</sup> By minor laws, I mean those laws that are flexible and do not contradict the spirit of constitutions nor trump certain individual’s inalienable rights.



The second meaning of multiculturalism Phillips identifies, is the one that Kymlicka promotes in *Multicultural Citizenship* (1995). As already discussed in Chapter Two, multiculturalism in Kymlicka's sense of the term refers to the policies that help protect the interests of national and polyethnic minorities. These include the national minority groups' desire for self-preservation, self-realisation and self-determination without unwarranted interference from larger cultures. Phillips looks at these two interpretations and endorses the first one. She says that if "multiculturalism [is] understood as we are [a] multicultural society [...and that] we have to recognise that diversity and not simply impose one culture on other cultures, [then] that multiculturalism ought to be compatible with feminism" (ibid, 2018: n.p.). Group rights, in this sense, apply to all forms of minorities that may need certain empowerment through the use of policies that will assist in ensuring that all individuals, within the state and their cultures, continue to participate meaningfully in the running of the government. Put differently, such multicultural rights and policies are necessary to ensure that individuals from minority groups are not unfairly discriminated against, or excluded from full political, economic, civic or any other form of social participation. In this way, multiculturalism will not support theories of culture that seem to seal cultures as if they were natural entities that are incommensurable. Such a view, for Phillips, is feminist-friendly. Multiculturalism therefore only becomes antifeminist if it treats cultures as entities that seek to sustain themselves by disregarding women's human rights (ibid).

Once again, the problem of presuming that groups are monolithic and homogenous manifests in practices that favour the elite few and disadvantage many other group members. Phillips agrees with Okin in that if one were to look at most of the cultures of the world, one will find that most cultures have many practices that have in one way or another disadvantaged women (ibid.). Thus, if group rights protect cultures that embrace practices that oppress women, then one has to think twice if it is actually justifiable that such groups can be protected by liberal institutions. As a result, Phillips is opposed to the type of group rights that Kymlicka defends since they tend to be of the kind that assumes culture to be determinist, essentialist and homogenous. Furthermore, multiculturalists such as Kymlicka seem to assume that certain cultural "practices" or values form the core of those cultures, and if they were to change or disappear, it would spell the dissolution of the culture itself. Phillips says this is an inaccurate understanding of culture. Moreover, it is an understanding that is likely to reinforce women's subjugation in the name of "culture". Phillips Therefore wants a multiculturalism that will

address and condemn any possible oppression of women and any other group in the name of culture.

As stated in this section, Phillips challenges the second interpretation of multiculturalism as based on a problematic and unrealistic understanding of culture itself. This kind of multiculturalism does not only rely on an essentialist view of culture, but goes further and defines culture as a static and given entity that exerts a (deterministic) pull on all members of the culture. Phillips (2007; 2010) argues that such a view of culture should be discarded, especially because it deprives individuals of their human agency, first by assuming, and then by ensuring, they follow the supposed dictates of their cultures uncritically. Clearly, if the aim of multicultural policies rooted in a liberal framework is to ensure individuals' equality, freedom and dignity, then, if they lead to the opposite outcome, they must be rejected in the name of liberalism itself. If we reject that cultures are homogenous and static in favour of the view that individuals are agents within their cultures, we will be in better position to accept that traditions evolve, sometimes as a result of internal dissent and contestation. In the following sections I discuss Phillips' argument concerning the diversity of voices within cultures as evidence disproving cultural homogeneity.

#### **4.3. Diversity of Voices and Contestations Within Groups**

The problem of viewing cultures as entities that control the behaviour of cultural members is that it renders individuals as victims rather than agents of their cultures. Phillips notes that those who reject multiculturalism do so on the ground that it does not appear "as a cultural liberator but as a cultural straightjacket, forcing those described as members of a minority cultural group into a regime of authenticity, denying them the chance to cross cultural borders, borrow cultural influences, define and redefine themselves" (Phillips 2007:14). In other words, defenders of multiculturalism, in the second meaning of the term distinguished above, are charged with presenting cultures as if they were vulnerable to unjust interference, by believing that all members – including women and other marginalised groups within each minority culture – endorsed all "cultural" practices, or otherwise should endorse them. They universalise the experience of the group members and present practices as if they were norms that were cherished and embraced by all, women and men, young and old, heterosexuals and homosexuals alike. Clearly, this is an impoverished view of the agency of individuals and groups within the minority culture, and if this assumption feeds into policy, it will likely work

to effectively limit such agency. It is moreover an unrealistic understanding of culture, says Phillips.

Phillips (2007:101) also argues that many liberal prohibitions made against (minority) “cultural” or “religious practices” have been based on the assumption that people have very little say in their cultural groups. Only a few (typically male) members of the group create, pronounce, interpret and protect those practices that have been adopted as cornerstones or key defining features of the cultural group. Thus, when a young Muslim woman who lives in a liberal democracy says she prefers to wear her hijab, even in public places such as schools, critics tend to interpret her preference not as a free choice but as a false desire arising from internalised coercive rules that serve to benefit only those who have power. Phillips suggests that those who object to girls wearing hijab, for example, believe that “none of the young women in question would have freely chosen to behave in this way, that they are all being coerced by their community or prevented by their culture from operating as autonomous beings” (Phillips 2007:101). In other words, those who advocate for the ban of the headscarf, in France for example, do so based on the assumption that no girl who is in her right mind would freely want to wear a headscarf. Even if the girl insisted that she was not forced by anyone or by any circumstances, those who are against the headscarf would still believe it is in the best interest of the girl not to wear the scarf, because, they mistakenly think, the only choice which would truly reflect her autonomy is the choice against cultural conformity.

It is possible that some of the Muslim girls do not like the idea of wearing headscarves in public but nevertheless do it as result of peer pressure or out of respect for their parents. Phillips asserts that, in some cases, lawmakers have used “blanket prohibitions” (ibid.:100) as a measure to deter parents from forcing their children from participating in practices that liberal institutions believe would harm these children. These prohibitions were put in place as a practical measure deemed necessary for deterring future violation of the same kind. However, the problem with this kind of prohibition is that sometimes it works to infantilise and even remove all agency from those for whom the policies are intended as a protection. The problem with individual agency is that it cannot, by definition, be predicted or controlled. For liberal authorities to believe it is impossible for Muslim girls to choose the headscarf, is effectively to remove that as an option from Muslim girls’ repertoire for action. This clearly cannot be right.

They must be free to decide to wear it, even if they thereby might show more respect to their parents than it being an expression of individual preference or personality. Their choice for respecting their parents must be counted as authentic and agentic. Sometimes, while policies are established as a means to protect *all* girls from “undue pressures of their religion and culture, they also treat culture as something that incapacitates people” (ibid.). If cultures undermine members’ ability to make meaningful choices, it seems reasonable that the liberal government should intervene and ensure that people’s right to freedom is upheld. However, to outright ban a practice that has some defenders among those who are ostensibly being protected from it relies heavily on a deterministic view of culture, and a reductionist view of individual agency within that culture. And somehow, paradoxically for a liberal institution, this ignores other voices that may genuinely and authentically, after due and free deliberation, want to take part in that practice, even when their reasons for doing so are not immediately shared or understood by liberal commentators (ibid.:113-114).

Phillips proposes that we need to revisit the issue of protection of minority cultures by liberal majority cultures and institutions, and look for voices of liberation from within these cultures themselves. We need to ask people who have first-hand experience of those practices that are deemed to be, at the same time, illiberal and core aspects of cultural identity, what interpretation they attach to these practices. She argues that there are instances where women rather than men have been in the forefront in making demands for both cultural change and cultural recognition (2002:10-11). She also argues that, while it is important to ensure that people and groups are not systematically oppressed, doing so solely from the outsider’s perspective is likely to create problems arising from the misreading and misrepresentation of facts. Thus, when outsiders lack sufficient knowledge about (different forms of agency within) other cultures, they are likely to propose policies that would further limit the existing forms of agency within said cultures, either through attempting to “protect” the cultures, as proposed by Kymlicka, or through attempting to “protect” the women against their own culture, as proposed by Okin.

As a way of avoiding such limitations, Phillips proposes that commentators on culture ought to take into consideration that: “The social meaning and significance of cultural practices is best understood by those who engage in them, and it is all too easy for ‘outsiders’ to misread them” (ibid.:12). People from majority cultures are prone to misinterpret unfamiliar information about unfamiliar practices, and to jump to conclusions that they can fit into their existing frameworks. This can easily lead to different forms of injustice against minority groups

as a whole, and against individuals within these groups. It is therefore necessary that we engage in dialogue with those who are affected most by certain practices before we pass judgment on these practices as being illiberal and oppressive. The implication here is that if we – in the sense of liberal outsiders with some say about group rights – allow ourselves to be enlightened by the personal cultural experience of those who are immediately affected by the relevant practices, we can ascertain with greater confidence what a liberal stance – aiming to optimise individual agency, equality and dignity – requires of us. Such a concrete encounter, Phillips seems to say, will help ensure that outsider liberal contributions to questions about cultural rights will be valuable and appreciated rather than domineering and oppressive (i.e., illiberal) in themselves. In this way, feminist approaches will be correctly tempered or informed by the best impulses behind multiculturalism.

Phillips (2018: n.p.) stresses that women's choices are still real, even when they live under deplorable gender-discriminatory norms. It would be a mistake to conclude that all those who live under illiberal cultures were only victims of their cultures and that they never had any real choice or agency. Phillips asserts that practices evolve and, because of internal contestations, get new meanings when those mostly affected by them deliberately come together and redefine or modify them. For example, some practices may have started out as a discriminating and oppressive practice against women; however, there are some cases in which women have found ways of attaching a greater and more empowering meaning and symbolism to the practice in question. The opposite may also happen: practices that had a liberatory and empowering function regarding women's sexuality in the past may morph into instruments of patriarchal control. These possibilities reflect the way in which practices, acts and rituals can seldom be tied down to having only a single and unchanging meaning and symbolic function. A good example is how the practice of veiling by Muslim women has had both negative and positive interpretations among Muslim women and outsiders, ranging from a symbol of women's internal submission to men to a symbol of women's resistance to colonial oppression. Phillips notes that in Egypt some "women do not see their head coverings as protecting them from the gaze of male strangers but rather as a sign of modesty and submission to God, and therefore do not remove them at all-women gatherings" (2007:117). This example demonstrates that in some cases it is best to listen to the people whose lives are most directly and pervasively affected by practices that we (i.e. outsiders) may not completely understand. Our openness to be influenced by people's primary experience will help us to refrain from making stereotypical conclusions and adding to the oppression of people from minority cultures.

Phillips is, however, not blind to the possibility that some of the disadvantaged and marginalised members of the group internalise certain practices that are oppressive and discriminatory, and are instead seen as normal, natural, or divinely ordained. Some “people living in unjust or impoverished conditions adjust their expectations downwards in order to survive and remain sane; we know that women can live their lives by images of femininity that do immense damage to their self-esteem; we know that ...[they] often find it hard to imagine themselves living under anything else” (ibid. 2010:11). This phenomenon makes it difficult to get a true reflection of what is going on within the groups, because one may only get a rosy picture covering up deep-seated elements of women’s subordination. According to Phillips, this specific kind of situation – to be determined empirically, and not decided prejudicially – may warrant an intervention from the outside world (ibid.:12). Such interventions should be possible if cultures are understood in terms of having open and porous boundaries, and even overlaps with one another. Cultures are thus not to be understood as fully bounded wholes, but as porous and changing over time, thus as existing in constant implicit dialogue with one another. But this understanding of culture – non-homogenising, non-essentialist and non-determinist – not only warrants, but even demands, that outside “interventions” by liberal parties not be oppressive and limiting in themselves, but instead be characterised by a dialogical approach in which the liberal listener can and must learn from the (say) non-Western member of the culture.

According to multiculturalists, culture is not only one of the mechanisms by which people live, but it is an essential component for human prosperity and for the community and its individuals to flourish. Thus, group rights proponents put forward a totalising picture of culture, assuming cultures to be entities that have total control over their members. The many court cases whereby defendants appeal to culture seem to rest on an understanding that culture has power to make people do things they would not do if they were part of a different culture. “I couldn’t help myself – my culture made me do it” becomes the slogan of those that seek sympathy for reduced sentence, or absolution from crimes of passion committed and defended in the name of culture (Depalma 2009:1-18). Those who believe or accept such statements – most often “liberal” judges – directly endorse that culture determines and conditions people’s behaviour. This state of affairs presents individuals as mere products of their culture; their behaviour and their actions ultimately described as the direct consequence of their cultural dictates. Thus, they are stripped of human agency and personal accountability. Such a view, therefore, purports that “individuals do what they do because of their cultures” (Phillips, 2010:31). On the face of

it, such liberal tolerance of supposed cultural difference is beneficial to the cultures involved because individual defendants are treated more leniently, but for Phillips, the identity group and its members are in actual fact damaged in the process because of the equation of defendants' pleas with the cultural identity of that group.

While it may seem that battle lines have been drawn between multiculturalists and feminists, we have now seen that there is a third view or middle ground in the debate. In fact, anti-determinist feminists such as Phillips argue that ignoring the possibility of the middle ground has the potential to either exaggerate the role culture plays in the lives of those deemed illiberal and traditionalist, or to understate the challenges experienced by those who are underprivileged within the ethnic groups; especially the women (Phillips, 2007; 2010). It also has the potential of exoticising and stereotyping those who are not deemed liberal, with special emphasis on European and North American societies. This line of thinking is central to the theses of Phillips and fellow anti-determinist theorists of culture, which seek to dismantle the binary between so-called liberal and illiberal cultures (such as Volpp, 2001).

#### **4.4. Criticism of Deep Value Disagreement**

We have seen that Phillips rejects the positioning of multiculturalism and feminism as two naturally opposed doctrines, arguing that “those writing on multiculturalism (supporters as well as critics) have exaggerated not only the unity and solidity of cultures but the intractability of value conflict as well, and often misrecognised highly contextual political dilemmas as if they reflected deep value conflict” (2007:8). Both Kymlicka and Okin subscribe to liberalism and are therefore necessarily in agreement on the supremacy of the individual's dignity and freedom. However, according to multiculturalism, since cultures are necessary to ensure the self-realisation of the individual and the fulfilment of the aforementioned liberal principles, liberal governments have a duty to ensure that cultures are protected by group-specific rights (Kymlicka 1995). This implies that by granting minorities group-specific rights, the government will be creating a good environment for the individual rights of all members within those groups to be realised.

Feminists, on the other hand, argue that most of the minority cultures are not good places to anchor the liberal project, because most of these societies promote illiberal practices that favour men more than women. According to promoters of women's rights, individuals should be the

authors of their own lives, not culture. Surely, both multiculturalists and feminists are committed to the right of equality as a value; they want equality between women and men, and between groups. However, the manner in which this shared value of equality can be practically achieved is contested by both promoters and opponents of multiculturalism. In line with this, Phillips claims that “there may be no great division between people on fundamental principles, but there is still [an] almost endless scope of disagreements when it comes to interpretation” (2007: 36). In other words, multiculturalists and feminists equally accept, without hesitation, that formal equality among people is a non-negotiable value of liberalism, however they differ in what needs to be prioritised in order to achieve this within a liberal, multicultural state, granting whether between groups or individuals (*ibid.*). According to multiculturalism, granting groups specific rights will result in granting subgroups within the minority groups the same equality. In contrast, feminists predict that the granting of group-specific rights will increase the existing subjugation specifically of women within such groups, or at the very least do nothing to decrease it. The disagreement, therefore, is not on whether people and groups should be given equality, but on what happens with the existing hierarchies within a group when, for example, minority ethnic groups obtain special rights.

As we have seen, Phillips affirms Okin’s observation that most of the world’s cultures have practices that are oppressive to women (2018:n.p), but *contra* Okin, she extends the criticism to all cultures in the world, inclusive of so-called Western cultures. Phillips (2018.n.p) argues that if we would look into every culture we would find many practices that disadvantage women – they just manifest in different ways in different cultures. Therefore, an honest discussion about the oppression of women should focus on all cultures, because each culture has something that must change in order for true equality between women and men to be achieved.

Phillips observes that there is a desire from both multiculturalists and feminists to eradicate unfair discrimination between cultural groups, while at the same time ensuring that marginalisation within groups, especially of women, is also uprooted. We have discussed in Chapter Three how Kymlicka, just like Okin, in principle rejects internal restrictions. In his response to Okin, Kymlicka (1999:32-33) listed three points that bring multiculturalism and feminism together. Recall that first, both recognise that universal human rights are not enough to respond to particular needs associated with their respective groups. Secondly, both



multiculturalists and feminists believe that laws were made to satisfy the needs of those who had or have access to power.

Thirdly, Kymlicka argues that both multiculturalists and feminists look for similar remedies (1999:33) in the form of special rights protecting special interests. Phillips agrees with Kymlicka, arguing that the shared concerns and structure in which both multiculturalists and feminists present their arguments show that “there is no deep disagreement: no fundamentally opposed understanding of justice, that have to be either ordered or democratically resolved” (2007:41). The disagreement instead arises from interpretations of the values, and on which group should take precedence in case the policies to which multiculturalists and feminists are committed threaten to collide. She adds to Kymlicka’s position the insight that those inside the cultural group have a better understanding of the relevant practice (Phillips 2018: n.p.). It is thought that outsiders might not fully appreciate what is going on in the culture. Moreover, the minority within a minority that is most affected by any particular practice should have more of a say than those who are less affected by it. Here, virginity testing is a clear example, because it is nowhere applied directly to boys or men. This is the topic of the next chapter.

According to Phillips (2007), the value-related problems in multiculturalism and feminism debates arise mostly from the rigid definitions of culture (essentialist, determinist, homogeneous and static) held by some lawmakers and politicians. Phillips argues that politicians cross the line when they make policies that are based on the assumption that cultures are fundamentally different from one another in such a way that it warrants every culture to be self-determinate, self-governing, without outside intervention. While it is noble to address and redress group inequalities, to do so based on the self-defeating premise of unitary, self-enclosed and static cultures is inadequate, and as we have seen, leads to contradictory outcomes. Viewing minority groups in this way “solidifies the group into something very substantial. The group is presumed, moreover to play a large role in the loyalties of its members” (Phillips 2010:59). This handling of minority cultures creates an impression that there are fundamental differences between them and people’s commitment to liberal values. Such a view undermines any possibility of members to be co-constructors of their own culture and leads to undesirable policy outcomes.

In the same way, Phillips observes that promoters of women’s rights condemn multiculturalists not because they have radically different views on values such as justice and equality, but for

advancing policies that feminists know are not supported by all members. These policies are said to be oppressive to women, side-lining women in issues of importance and leaving them mostly with domestic duties. Consequently, some feminists reject multiculturalism. Phillips believes that any discussion concerning practices that affect individuals must be inclusive of all those who are affected. She thinks that it is

“unlikely that a discussion conducted on genuinely inclusive lines would fail to throw up evidence of internal opposition to practices that constrained women’s freedom or subjected them to arbitrary male power” and she believes that “the very process of inclusion encourages people to stretch their sense of what is desirable and possible, enabling them to articulate previously repressed interests and concerns. (2001:16)

In other words, in order to overcome the type of internal restrictions Kymlicka is also concerned about, especially in order to prevent subordination of women within minority groups, both Phillips (*ibid.*) and Okin (1999:24) suggest that younger women should form part of the negotiations – whether “internal” to the group or “external” between groups – about which aspects of the culture in which they live should be protected, preserved or even discarded. However we have seen that Okin and some among the Western feminists tend to treat women from non-western cultures as lacking of agency. In the following section I discuss Phillips criticism of the western perspective as being stereotypical towards non-western minority women.

#### **4.5. Criticism of Cultural Stereotyping**

Phillips further argues that to pretend that all aspects of culture are cherished equally by everyone does not help the multiculturalist agenda, because such a mistake sustains stereotypes of national and polyethnic minorities as somewhat backward and pre-modern (2007:31). This view of minority cultures reinforces prevailing negative or condescending views of those in these cultures, which in turn leads to further discrimination from those within majority cultures. It strengthens the binary and hierarchical logic of the “civilised West” and the “uncivilised non-Western” world. One of the problems arising from this binary logic is that those from the West seem to believe that certain liberal values are only meaningful in Europe and North America. According to Phillips, “the idea that support for these values might end at the border of Europe [...] draws on and reinforces stereotypical distinctions between [...] Western and non-Western

cultures. It proclaims the words of ‘us’ and ‘them’ and makes it pretty clear that our values are superior” (2007:23).

While Phillips gives multiculturalists their due in tackling oppression and unfair discrimination amongst different groups, she charges them with possibly inadvertently reinforcing precisely those stereotypes that they are trying to dismantle. According to her, “multiculturalism tends to call up its own stereotypes, categorising people in ways that simplify difference, emphasise typical features, and suggest defining characteristics of each cultural group” (2007:31). She maintains that, in a bid for group-specific rights, multiculturalists argue that minorities are governed by principles that may not be understood by non-members. However, such stereotyping can degenerate to other forms of oppression, even with group-specific rights in place. For example, treating polyethnic groups as exotic people might quickly lead to xenophobia, racism and other forms of unfair discrimination. Therefore, an honest discussion about multiculturalism must first acknowledge that culture is not quite as central to individual existence as is often assumed. While culture remains one of the contexts that individuals may draw on in order to make real (authentic) choices, it is not so rigid so as to be completely sealed and isolated from other cultures that surround it. What is more, whenever “culture” is invoked in order to motivate a decision or action, interpretation is called for. Moreover, interpretations are the kind of thing for which interpreting agents must take responsibility. Intergroup equality is desirable, but there ought to be a clear difference between a group’s cultural liberation and a group’s cultural straightjacketing.

Critics in the debate between multiculturalism and feminism lament that the discussion between these views relies on the stereotypical dichotomy between what is accepted and not accepted in Western democracy. Whatever is deemed acceptable is described as progressive and fitting to liberal principles, and by definition Western. Whatever is not deemed acceptable is immediately placed in the sphere of illiberalism, oppressiveness and backwardness, and by definition non-Western, and ought to be challenged, altered or even destroyed if circumstances warrant. According to Phillips, “the tendency to present individuals from minority or non-Western groups as driven by culture and compelled by cultural dictates to behave in particular ways [...] denies human agency” (2007:9). Such a tendency renders those who are deemed to be limited by cultural determinism incapable of making informed and critical decisions. Elsewhere, Volpp (2001) argues that culture, in this sense, has erroneously become synonymous with Third World communities, while agency, choice and autonomy are

synonymous with the First World or the progressive West; that is Western Europe and North America. Seeing non-Western people as both illiberal and imprisoned by culture leads to a conclusion that these people remain victims to their culture.

One example of this type of reasoning is when “culture is invoked to explain forms of violence against Third World or immigrant women while culture is not similarly invoked to explain forms of violence that affect mainstream Western Women” (Volpp 2001:1187). Appealing to culture as the main motivator and determinant of a person’s behaviour renders that person incapable of making moral and legal decisions. This means that instead of blaming or prosecuting the individual for criminal acts he/she commits, lawmakers must understand that the individual in question had no choice but to do as his/her culture expects.

The claim that people from non-Western cultures actively oppress women, and the claim by Okin (1999:22) that older women are brainwashed by their cultures to accept patriarchy as the only way of life, sustain systematised narratives that sometimes encourage racism and imperialist intervention in non-Western countries and cultures. Okin’s suggestion for a multiplicity of voices in establishing the norms and principles that will serve as guidelines for the society is commendable. There seems to be good reason for inviting young women and men to participate in negotiations about practices that will have an impact on their lives in the long run. However, to call for their involvement by excluding their mothers simply because we believe the mothers are brainwashed or indoctrinated due to patriarchy is puzzling. Those who advocate for the exclusion of mothers in the dialogue, and those who prohibit certain practices “operate on the highly stereotypical assumption that all parents from these cultural groups are coercive and all young women submissive” (Phillips 2007:9). This also ignores innumerable efforts by some mothers who have called for the ban of some of those practices.

These problematic, generalised assumptions paradoxically strip women from the non-Western world of their autonomy, freedom, choice and activism often exercised in the face of varying degrees of opposition. It re-inscribes the very male power it professes to oppose and further marginalises women in a way that makes it even harder to ask for any intervention. What this whole discussion so far shows us is that when feminists completely ignore the unequal power relations between cultures, and when multiculturalists ignore the gendered nature of all cultural groups, both agendas become reductionist, distorting, and finally counter-productive, even with respect to their own expressed aims. Put more cursorily: feminist activism without

multiculturalism, and multiculturalism without feminism, both tend to, in different but complementary ways, reinforce existing relations of domination.

In their criticism of group-specific rights, feminists appeal to extreme cases that tend to exaggerate the conflict between feminism and multiculturalism. Cultures are not about the killing of wives, cultures are not only about forced-marriages, and men are not always and everywhere the enemies of women. Yet critics of multiculturalism paint a bleak picture of those cultures that are not part of the liberal tradition and populate them with stereotypes, instead of recognising them as consisting of agents who find themselves in complex decision-making situations. Okin (1999:18-20) speaks of wife murders as if they were only particular to illiberal cultures, and motivated by illiberal cultural norms such as honour. Norton criticises precisely this kind of sentiment when he observes the irrational notion that “when men in the United State beat their wives, it is an aberration, counter to the liberal principles that govern here. When Muslim men beat their wives, it is an act representative of the principles of Islam – whatever Koran or hadith may say” (2001:741).

Volpp concurs that some of the examples that Okin uses are biased in favour of the West, while being discriminatory against immigrant groups. She accuses Western commentators, of the multiculturalist/feminist kind, of describing the situation in terms of “they” and “us”. According to Volpp, the manner in which cultural defence is used in the multiculturalism and feminism debate depicts passion killings by non-western cultures as barbaric and suggests that women dying by guns through the hands of their men in the West are better off (2001:1187). Narayan also observes the commitment from the West to absolve non-Westerners from an understanding of civil laws, while at the same time displaying that they themselves transcend the influence of culture. Narayan (1997) suggests, by way of an example, that domestic violence is as prevalent in the USA as it is in India, yet in India domestic violence is explained by attributing it to culture, while in the USA it is explained in terms of legal deviance, or ordinary criminality. This narrative seems to justify the brutality that is associated with cultural determinism, while at the same time treating Western cultures as morally civilised and in the position to tell everyone else that they need to improve and embrace liberal values, which are supposedly purely Western. However, cultures are not always so different: the murder of women by their partners exists everywhere, and is typically condemned everywhere, in both liberal and “illiberal” cultures. Volpp argues that when Indian husbands murder their wives by burning them to ashes, the West exoticises the whole ordeal, yet the murder of women by

shooting is as exotic to an Indian community where the prevalence of guns is minimal (2001:1189).

#### **4.6. Phillips's Way Forward**

Now that I have discussed Phillips's criticism of the debate between multiculturalism and feminism, I briefly discuss her proposal of a way forward. As already shown above, Phillips's biggest challenge posed to the aforementioned debate is cultural determinism. In making plans for the future for multiculturalism, Phillips (2007) proposes three things.

1. Theorists in the multiculturalism debate need to change their approach in defining culture. If multiculturalism is to be acceptable to everyone, especially feminists, both multiculturalists and feminists need to let go of deterministic views of culture. In their quest for group-specific rights, multiculturalists should refrain from using culture as if it were some entity that has its own mind and could influence, in a real way, the behaviour of its members. In feminists' quest for women's rights, seeing culture as fluid will help feminists to avoid stereotyping the people from non-Western, so-called "illiberal" cultures.
2. The outsiders should encourage and allow groups due internal processes whereby members of the culture discuss and debate their own cultural experience. We should let people discuss and revise their cultural practices without us ("outsiders") wielding undue influence. This will ensure that cultures truly become part of the mechanism by which people can make a meaningful choice, but it will not mean that cultures coerce their members to blindly accept every practice as gospel truth. Where necessary, members will find appropriate means by which they can challenge their own cultures.
3. Phillips also reckons that it is not enough to watch from the outside and marvel at the manner in which people battle their issues. It might be necessary for the outsider to intervene and negotiate for a better coexistence strategy that will empower the marginalised. The reason for intervention might arise from the fact that, in some cases, the oppressed members of society have not been empowered by their own cultures to detect an oppressive practice. Outsiders, however, should be careful not to project their own cultures onto others and make demands that are not realistic in other people's

context. Any decision about undesirable practices or policies will therefore have to be the outcome of a dialogue between insiders and outsiders.

#### **4.7. Conclusion**

In this chapter I focused, with the help of Phillips, on drawing out the difficulties that arise by situating the debate of group-specific rights and the rights of women on a deterministic view of culture. I discussed how Phillips (2007; 2010; 2018), and other commentators such as Volpp (2001) and Narayan (1997), caution us against the stereotyping displayed by liberals when they overemphasise the role culture plays in the self-organisation of cultural minorities, while misleadingly displaying liberal societies as free from culture. The resulting binary hierarchy that is hereby established between the so-called “West” and “the Rest” is misleading, and at the basis of precisely the kind of cultural imperialism that multiculturalists set out to oppose and correct. According to Phillips (2007:23), both multiculturalists and feminists suffer from the stereotyping of non-Western cultures and from an exaggeration of the role of culture in non-Western people.

Phillips challenges both the multiculturalists and the feminists to rise above cultural determinism by refraining from passing value judgement on practices that they do not necessarily understand, without first making an effort to talk to the people who are affected by the practices that liberal feminists might mistakenly interpret as oppressive and disadvantageous to women. She proposes that we should be open to the fact that cultures and practices within these cultures are in a state of flux, and will remain so as long as they come into contact with other cultures.

I have discussed Phillips’s claim that cultures are not so different from each other, and that they are not incommensurable. I also discussed how the separation between the liberal and illiberal world leads to stereotypes about the minorities who are then described as backward, barbaric and incapacitated by their cultures (Phillips 2007:23). Phillips challenges liberals to revise their understanding of both minority cultures and their own. This will help everyone involved to realise that the debate of multiculturalism and feminism does not present any deep value conflict (see 4.4); it is rather the problem of the interpretation of these values (and their application in practice) that exaggerates the multiculturalism dilemma.

Phillips problematizes some of the key terms used in the debate between feminists and multiculturalists, such as “cultural practices” and “traditional practices” (Phillips 2007:20), since they tend to be associated with the norms of the culture, when they are in actuality nothing more than practices, with each having its own history, context and associated shifting meanings and functions. Now that we have discussed the theories about multiculturalism, we have seen the difficulties that arise from this debate. In the following chapter, I will discuss the virginity testing of *izintombi* by *amaZulu* in KwaZulu-Natal, South Africa, as a case study and a litmus test for the debate.



## CHAPTER FIVE

### LAMENTING MOTHERS AND GRANDMOTHERS: VIRGINITY TESTING – A MIRROR OF THE MULTICULTURALISM AND FEMINISM DEBATE

#### 5.1. Introduction

The dawn of democracy in South Africa in 1994 revived two desires for the people of South Africa that on the surface might seem to clash. The first entailed a hope for the revival of cultural autonomy, self-determination and (somewhat) self-governing powers for traditional societies that were eroded by colonialism and Christianity. The second desire was to affirm every citizen's universal human rights that were trumped by apartheid policies. The negotiation of these desires culminated in the world-class South African Constitution of 1996, which recognised the right for free cultural association and, at the same time, affirmed the inalienable human rights of every citizen. The new South Africa committed to respecting and protecting human rights, as promulgated in the Universal Declaration of Universal Human Rights of 1948. Thus, the new administration created human rights-orientated organisations, such as the Commission for Gender Equality (CGE) and the South African Human Rights Commission (SAHRC), to assist the state with monitoring whether citizens' human rights were violated. Thus one might say the crafters of the new South African Constitution implicitly followed Kymlicka and Phillips when they argue that special group rights and individual human rights need not clash outright. While the human rights-orientated bodies supported some cultural autonomy, they nevertheless had reservations concerning some of the practices some cultural groups promoted in the name of culture. In this chapter, I investigate an apparent clash between human rights and culture that arises from the virginity testing practiced by amaZulu, in an attempt to prevent the spread of HIV/AIDS, teenage pregnancy and the financial burden on grandmothers.

In the early 90s, South Africa was confronted with the rapid rise of the HIV/AIDS epidemic. In KwaZulu Natal, a province where most of the victims of HIV were women, an initiative was undertaken by the amaZulu in the hope of isolating and containing the virus. This initiative was the revival of a former (repressed) cultural practice, namely virginity testing (VT). Murphy (1999) described the curative resuscitation of VT as "a back-to-basics remedy for some of the country's worst ills, including the growing AIDS epidemic." However, VT was soon contested as a violation of the basic human rights of the girls and young women who were participating

in the practice. The Children's Act 38 of 2005 eventually prohibited VT on children under 16 years of age, while regulating girls above the age of 16. This was seen as a triumph for some of the human rights organisations, such as the CGE, and partly a victory for the SAHRC, who felt that VT was intrinsically inhumane and needed to be banned completely. On the other hand, the proponents of VT, led by King Goodwill Zwelithini, were infuriated by the ban on VT, which they did not think was in any way helping society. Another example of outrage was Mrs Luthuli, a parent of a VT maiden, who furiously commented on the Act, saying, "we parents have been marginalised: I am not renting children owned by the government. If my ancestors tell me to do this [virginity testing], I can't argue with them" (IRIN News, 2005:n.p.). Luthuli vowed to continue her support for VT, not only because she thought it was the right thing to do, but because of what she believed her ancestors demanded of her.

The structure of the chapter is as follows. In section 5.2. I discuss the nature and meanings of VT as experienced and practiced by the amaZulu community. I explore around twenty discernible meanings/interpretations that proponents put forward in support of VT. Most of these meanings can be understood as defences of the practice. This is important, as in the process I show how these defences link to Kymlicka's quest (1995) for multiculturalism through VT's decolonial project<sup>10</sup>, his quest for equality between cultures, and his desire for self-governance, especially in family and sexual matters. In section 5.3., I discuss South African criticisms of VT through legal and policy responses such as the Children's Act 2005 as well as the hard lines and compromises that are evident in the Act. I pay special attention to the CGE and SAHRC, which reject VT, on the basis of what they see as internal restrictions in Kymlicka's sense of the word, its gendered nature, and its infringement upon girls' human rights. This discussion links up also with Chapter Three, where Okin's (1999:9-24) rejection of internal restriction and her proposal for the democratisation of practices that involve girls had been discussed.

In section 5.4., I relate Phillips's (2007; 2010; 2018) main points to the practice of VT in KwaZulu Natal. I thus investigate what the VT discussion would look like if we can move it beyond the culture versus women's rights stalemate in which it currently finds itself, as explained in the previous two sections. Phillips's proposal is that cultural practices should be

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<sup>10</sup> By decolonial project, I mean the effort by amaZulu to return to local remedies such as VT that were condemned by Westerners in favour of Western scientific medical methodologies.

examined in dialogue with the women who live in the culture and who are most affected by the practice under discussion. These should include in particular daughters, mothers and grandmothers who should assist us in how we should look upon this practice within a South African context. This research is informed by a liberal framework, with all of the theorists employed here approaching the debate from this framework. The discussion on VT however provided me with an opportunity to push the boundaries and transcend the confines of the liberal framework. The aim is to demonstrate that the multiculturalism and feminism debate stalemate can be dismantled if the involved parties are open-minded and generous enough to listen to one another and engage in a proper dialogue.

## 5.2. Virginty Testing

I used to go for virginty testing until I was 18. I did it because it came from deep down within me. It wasn't about pleasing anyone but about the pride I had regarding my womanhood. With that said, I feel that virginty testing should be a choice for girls because it is about them after all. – Mandisa Pelsler<sup>11</sup>

South Africa has since the early 1990s, and in tandem with its transition to democracy, battled with the fast growing rate of HIV/AIDS. One of the often-cited factors for the acceleration of this pandemic is the continuous disintegration of cultural and sexual morality, as opposed to the rapid growth of individual human rights and westernisation, including the preference for scientific medical treatments against traditional medical treatments. While for some, HIV/AIDS presented a dilemma, for the amaZulu it provided an opportunity to resuscitate *ukuhlolwa kwezintombi* (VT) as a cultural response to the pandemic. This practice has both promoters and fierce critics. The debate around the practice is often polarised and politicised between the camps of the proponents of cultural rights and those of progressive human rights bodies. The debate around VT reflects the debate between multiculturalism and feminism as set out in this thesis. The resurgence of VT can be understood as in part the result of a demand for the right to self-governance and decolonisation on the side of a national minority, and in

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<sup>11</sup> Mandisa Pelsler was a waitress when she was interviewed by Zilungile Mnisi on whether or not it was a good idea that the ANC Women's League (ANCWL) rescinded from their position of condemning virginty testing and *ukuthwala kwezintombi* (loosely translated as "marriage by capture"). In 2014, the League had called for a total ban of VT, and a year later adopted a tolerant stance where they felt it was not their business to interfere in cultural matters. I will briefly discuss this when I discuss the CGE, SAHRC and ANCWL (African National Congress Women's League) criticisms of VT. For more information on this interview see Mnisi (2015)

part as a response to the HIV/AIDS health crisis that swept through the community and a call for group-specific rights.

Historically, VT refers to

an ancient cultural tradition which has been carried out in many countries such as Egypt, India and the southern part of Africa among the Zulu people of South Africa and Swazis from Swaziland. The goal was to ensure that women were ‘sexually clean’ or had not engaged in any form of sexual intercourse. It was a cultural practice of ensuring that women would get married as virgins. It was a measure to contain sexual and moral chastity (Kang’ethe, 2014:485).

VT in this way is not an end in itself but an instrument that was deemed efficient for ensuring that women refrained from culturally unauthorised sexual intercourse. Sylvia Tamale (Tamale, 2008:58) describes girls’ subjection to premarital and virginal purity as a patriarchal tool to ensure the “paternity and legitimacy of the children of the marriage”. According to the customs of many of the nations mentioned in Kang’ethe’s definition of VT, sex was deemed as a post-matrimonial right that a wedded couple would enjoy, with the view toward procreation and the continuation of the patrilineal lineage. Thus, it can be argued that VT, understood in this manner, served to promote the interests of patriarchy, which is nevertheless being largely rejected by the youth today.

However, this practice – like many other cultural practices that were communal celebrations – was abandoned because of colonisation, Christianity, industrialisation and the institution of poll taxes (George 2008:8). Adeyemi (2012:435) explicates this claim when he states that:

European colonial expansion in Africa disrupted and in instances stopped the celebration and development of traditional values in the colonised territories. This disruption is more acute in southern Africa, especially in the South African territory of Zululand, where the European economic and political policies led to a state of apartheid, which existed from 1948 to 1991, and uneven development afterwards.

In many ways, colonisers and missionaries were not interested in the culture of the colonised people, and most often undertook to estrange local men from their cultural roles by forcing them out of their homes and into labour in the formal, colonial economy, through coercive

policies such as poll taxes. Since many of the cultural practices did not rhyme with western philosophies and Christianity, many cultural rituals and beliefs were denounced by missionaries as being backward and pagan. Therefore, it is no surprise that many cultural rituals, practices and customs lost their former status, especially among those who had converted to Christianity.

VT as a cultural practice was in some cultures used in the hope of determining whether or not a girl had been sexually penetrated as we have seen from Kang'ethe's description. Those who practise VT – either as examiners or participating maidens – do so with the hope that they can reliably verify if girls who participate in this practice have ever had sex before the time of testing. The World Health Organisation (WHO) refers to VT practices as an “inspection of the female genitalia meant to determine whether a woman or girl has had vaginal intercourse.” (2018: 4). VT exists in various countries, regions and localities for diverse reasons, but always as a means to determine whether the girl's hymen has been ruptured as a result of sexual intercourse. The “results” of VT are deemed as interpretive of the moral status of the girl, tied exclusively to her sexual status, as perceived by her cultural community.

VT is usually undergone by young girls and in some cases by unmarried female adults. In KwaZulu Natal, “according to those involved in the practice, it is aimed primarily at celebrating culture, reducing the spread of Aids [sic], preventing teenage pregnancy and also teaching young girls to wait until marriage before making their sexual debut” (Children's Institute, 2005). In this way, VT is a pragmatic cultural tool believed (at least by its promoters) to be essential in the fight against HIV/AIDS, premarital pregnancy. Those who support VT, believe that it will assist the community in ensuring that maidens remain focused on more important aspects of their lives, such as education, while avoiding premature sexual relationships and the burdens of pregnancy and childcare.

In South Africa, VT is prevalent among the AmaZulu and Amaswati, who celebrate and “value it as part of their culture and see it as necessary especially in the era of HIV/AIDS in South Africa” (Mujapelo, 2010). Seen in this way, VT is both a way of life and an instrument that has two functions – first to celebrate and to take pride in one's culture, secondly as a tool understood to be a necessary culturally available means for the potential of slowing down and preventing new HIV/AIDS cases. By encouraging girls to abstain from any sexual activities through VT, the people of KwaZulu Natal hoped to conquer HIV/AIDS. Others have prized

the virginity of a woman in terms of the value of a dowry. Thus Chisale and Moyo (2016:95) describe VT as the tool used to affirm the girl's bridal worth, which is often charged in the value of 10 to 11 cows in Zulu culture. They state that:

“In some cultures, virginity testing is purely a patriarchal cultural tradition that is linked to the preparation of girls and unmarried women for marriage. In some cases, virginity testing increases the value of a woman in *lobola*<sup>12</sup> negotiations, while some countries revived virginity testing in efforts to reduce HIV infections among adolescent girls” (ibid).

What is clear from this discussion so far, is that the practice of VT has many and varied meanings and functions, even within any particular cultural group. The general number of cattle that a husband-to-be gives to the future bride's family is 11 for a woman who is declared a virgin. However, in the case where a bride-to-be is no longer a virgin, *ilobolo* is reduced to 10 cows. The eleventh cow is traditionally known as *ingquthu*, or *inkomo kamama* (“mother's cow”). In isiZulu, *inkomo kamama* is also used as a polite term referring to girls' genitalia. Thus, when a girl engages in premarital sex, she is depriving her mother of the honour of being a good moral guide for their daughter. This is symbolically visible from the absence of the eleventh cow in *ilobolo*. In this way, the girl's sexual purity is also interpreted as saying something about a mother's integrity and ability to “raise” a wife. It is for reasons such as these that parents might have a culturally vested interest in their daughter's virginity. However, in this chapter, I will argue that VT is tied not only to a parent's honour but also to a maiden's honour, pride and integrity, which has the potential to change the narrative in the agency of women, especially where sexual autonomy is concerned. In order to appreciate the broader cultural meanings of VT and its potential for empowering women, sexually and symbolically, we need to delve deeper into the roots of the practice.

Twice a year, maidens in KwaZulu-Natal come together in large gatherings to celebrate their virginity. One of these celebrations is connected to the local belief in a female deity, *Unomkhubulwane*. This goddess is said to rank second or immediately after the main creator deity known as *Umvelinqangi*, or *Unkulunkulu*. *Unomkhubulwane* is associated with virginal purity, believed to be responsible for fertility and worshipped as the provider of rain. According

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<sup>12</sup> *Ilobolo* is term in Isizulu referring to the gift of 10 to 11 or more cattle that a groom-to-be offers as a token of appreciation to the parents of the bride-to-be.

to sources from the Alan Paton Centre<sup>13</sup> (2014), centuries before the dawn of Christianity, AmaZulu were devoted to the aforementioned feminine deity. According to the information published on the webpage of the aforementioned Centre “a festival in honour of the goddess was held annually over 200 years ago, but with the introduction of Christianity, the worship of the female aspects of the gods waned, although the worship of the male aspect, *uNkulunkulu*, remained.” This may have been the case because of Christian monotheistic theology that only recognises the male Trinitarian God devoid of femininity. In this context, Ugandan scholar Tamale (2007:154) states that, “[t]hrough proselytising, Africans were encouraged to reject their previous beliefs and values ... and to adopt the ‘civilized ways’ of the colonial masters”. Consequently, the domination of indigenous belief by Christianity threatened to disintegrate some of the values, such as the unity of the family through rituals, cultural customs and practices, that were taken for granted as cornerstones of family life among the AmaZulu. For our purposes here, it is important that VT was once closely associated with goddess worship, which gave high (divine) social-symbolic importance to the procreative role of women. Also noteworthy is that it is precisely these aspects of the feminine of the divine that were lost through colonial (Western and Christian) domination, when so often, as we have seen in the Okin chapter, the West poses as the great liberator of women.

The maidens were the main devotees and primary intercessors between the nation and *uNomkhubulwane*. When the people experienced drought, and the king had declared a state of emergency, virgins were gathered to appease this goddess. She was regarded as “calmer and somewhat more accessible, though neither spirit [*Umvelinqangi* and *Nomkhubulwane*] can be approached directly by adults except through ancestral spirits. *Nomkhubulwane* does show herself to virgin girls and may be directly contacted through girls or spirits only” (Lombo, 2017:56). As per this belief, being a virgin was a treasure and a key to the spiritual realm, and in particular to how the spiritual realm relates to fertility, agriculture and procreation. Virgins pleased the goddess with their sexual purity, and in return for their sexual integrity, *uNomkhubulwane* rewarded their purity and their appeasement with rain and good crops.

According to Lombo (2017:56), the departure of the AmaZulu from their worship of *uNomkhubulwane* had detrimental repercussions. He suggests that the moral degeneration

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<sup>13</sup> Alan Paton Centre is a memorial Centre in honour Alan Paton, housed in the University of KwaZulu Natal. For more information see <http://paton.ukzn.ac.za/Homepage.aspx>

among the amaZulu may have been a direct consequence of their abandoning of this goddess in favour of Christianity. He argues that “the fact that *uNomkhubulwane* and such spiritual connection is no longer regarded highly by the Zulus may be a reason why the Zulu nation is experiencing social problems such as alcoholism, teenage pregnancy and other forms of crime”. It is not surprising to see that those who saw all these social problems as some sort of punishment from *uNomkhubulwane* needed to revive the devotions to the goddess. One of the requirements for ensuring that devotions were meaningful and “acceptable” to *uNomkhubulwane* was to find ways of proving that the girls tasked with the devotion were the right kind, in other words: virgins. The only way that people believed they would ascertain whether the girls were virgins was, at least according to Nomagugu Ngobese (IRIN News, 2005.n.p) , through VT.

Hugo (2012.n.p) concurs with Lombo’s observation and states that “the celebration is said to promote respect for young women and preserve the custom of keeping girls virgins until marriage. Since only virgin girls are allowed to participate, the festival provides justification for virginity tests”. There was a culturally justifiable fear that the participation by those who already had sexual intercourse would bring bad luck. To avoid this foreseeable disaster, VT was one of the preventative strategies employed.

It was late in the 1990s that the celebrations and worship of *uNomkhubulwane* were revived amongst the Amazulu, in order to more fully acknowledge the ancient cultural context for VT, thanks to Nomagugu Ngobese, a former Honours student of Natal University (today know as University of KwaZulu Natal). According to her, VT is not only a practice, but its broader significance should be acknowledged, as part of a cultural aim anchored in an ancestral religion, which seeks to preserve the innocence and sexual purity of maidens. According to this ritual, sexual purity is not only a treasure but a perfect state necessary for maidens to meet and communicate with *uNomkhubulwane*. In defence of the commitment to VT, Nomagugu told news reporters that:

This is our religion, first and foremost. It's central to our upbringing as indigenous people of our country. When we go to the mountains for prayers, it's easier to communicate with the Gods when you're pure. Even when our virginity testers are married women, they abstain from sex so that when they carry out the inspections, they don't make the girls impure. So virginity testing is a part of our culture that is sacred to us, and we are not ashamed of it. (Rafudeen & Mkasi, 2016.n.p.)



According to Nomagugu, sexual purity was a prerequisite needed for access to *uNomkhubulwane*. Girls who were virgins, and only those sanctioned by *uNomkhubulwane* herself through the work of *abahloli*, such as *izangoma* or married women, could approach the goddess. The tester, as stated in the quotation above, had to abstain from conjugal sexual activities for the period until the ceremonies in devotion to *uNomkhubulwane* were completed.

In other words, “for those who subscribed to the Reed Dance ceremony, virginity testing had an added and more fundamental cosmological significance. Transcending pure concern with the physical body, it is seen as a practice that sustains the land and livelihood of the nation through appeasement of the supernatural entity, *Nomkhubulwane*” (Mkasi & Rafudeem, 2016:119). This is the deity responsible for prosperity and fertility. When she is upset, there is hunger, drought and other disasters. These catastrophes were interpreted as the retaliations from gods who were protesting and detesting the immorality of the society. According to Masondo (2013: 36), if the “African people turned away from their core spiritual entities, *Nomkhubulwane* in particular, society lost its balance”. Accordingly, sexual immorality is deemed as one way in which a person can practically turn away from *uNomkhubulwane*, something that is understood by promoters of VT to have far-reaching social consequences.

The second and biggest public event where AmaZulu expressly celebrate the maidens and perform VT is during *Umkhosi Womhlanga*, otherwise known as the Reed Dance ceremony. The King presides over the ceremony. The festival takes its name from the riverbed reeds, which are the central focus of this four-day event. The reed sticks are carried in a procession by thousands of young maidens who are invited to the King's palace each year. More than 30 000 maidens, from various communities throughout the province of KwaZulu- Natal and beyond, take part in the Reed Dance ceremony, with the rest of the Zulu nation helping them to celebrate their preparation for womanhood. As Lombo (2017:84) states, “[w]hile the lessons and ceremonies are steeped in Zulu tradition and culture, this mass gathering of young people is also an opportunity to discuss contemporary social issues that affect them, such as HIV and teen pregnancies”. Once again, the celebration is not devoid of discussions on current issues that affect girls and the community as a whole. In its current form, *Umkhosi Womhlanga* incorporates VT, the presentation of *umhlanga*<sup>14</sup> (the reed) to the reigning monarch of

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<sup>14</sup> The KwaZulu Natal Tourism Authority (n.d.) asserts that “according to Zulu Tradition, the original ancestor emerged from a reed bed. So laying reeds at the Kings feet symbolises respect for the Zulu culture.”

Amazulu, and moral and cultural education. Speeches during the ceremony are not limited to moral and cultural education, and also incorporate other information sharing such as career guidance, which is deemed necessary for the well-being of the maidens. Thus, *Umkhosi Womhlanga* entails much more than an inspection of girls' genitalia. It encompasses the various cultural interests of girls, their social development and instructions about the maidens' role in making the world a better place for themselves and future generations. VT is also about preparing maidens for motherhood.

Virgins are the focus of the celebration. They are the pride and expression of beauty of the Amazulu, and as such, they are referred to as “the flowers of the nation”, or “*izimbali zesizwe*” (Ntshingila, 2013). It is for them and through them that sexual integrity and moral education are emphasised. Girls, especially the maidens, are seen as the custodians of sexual morality. The nation takes pride in the beauty of its daughters, who are entrusted with the continuity of the nation as *Inzalabantu*.<sup>15</sup> A show of the beauty of the Amazulu, *Umkhosi Womhlanga* is therefore a “key element of keeping young girls virgins until they are ready to get married” (Eshowe, 2017). Promoters of VT thus believe that the practice will help with the fight against social problems arising from premarital sex. They embrace VT as an article or expression of faith deemed necessary to please the virgin goddess, *uNomkhubulwane*.

Leclerc-Madlala (2001) describes the actual practice of VT as something eventful, preceded by speeches that are usually done by the so-called self-professed traditionalists and testers, claiming to have some knowledge about how glorious the past was and how things have changed as the result of the influence of Christianity, colonialism and apartheid. It is well documented that the encounter between Christianity and indigenous religions was not smooth and cordial. Missionaries dismissed as pagan and mythological various African indigenous religions and rituals in favour of Christian monotheism and doctrines. Adamo (2011:1) makes this point clear: “whether they were Congregational, Methodist, Anglican and Lutheran or Catholic, [they] were aggressively opposed to traditional African practices that they considered barbaric and based on superstition”. Thus, those who embraced Christianity had two choices: either to abandon completely their African indigenous religions, or to publicly profess

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<sup>15</sup> *Inzalabantu* is a term in isiZulu exclusive to women and literally means those who give birth to people or to the nation. The obvious yet significant truth about the *Inzalabantu* is that, without them, there can be no nation. Perhaps what is even more important is that the AmaZulu use the term to refer only to those human beings who respect laws and treat other human beings with total respect for their human dignity. Those who have a disregard for human dignity are equated to animals, and the animal of choice in this regard is a dog.

Christianity while secretly practicing their traditional religions, customs and cultures that were deemed incompatible with Christianity. Speakers at these events would narrate the cultural utopia devoid of western influence and use try to explain how good life was before encounter with colonialists.

After listening to these speeches, girls are physically tested to establish their virginity status. At this point, the tester looks for visible signs relating to the physical state of the girl's hymen and vagina in order to determine whether or not the girl has had sexual intercourse. Testers are usually older women who are respected for their virtuous lifestyle and tasked with the responsibility of executing the VT. Apart from the visual inspection of the appearance of the vagina, the tester would insert a finger in the girl's vagina hoping to determine whether or not the hymen was intact, bruised or broken. If the hymen was found to be intact, this was celebrated as evidence that these girls have not engaged in penetrative sexual intercourse, whereas its absence, brokenness or bruises were taken to signify that the girl in question has already had sexual intercourse. Apart from a torn or missing hymen, testers investigated the lubricity of the vagina. If the vagina was found to be too wet, testers concluded that this was a "reliable" indicator of previous sexual penetration, whereas dryness of the vagina was taken to be the indicator of sexual purity. Other things the testers looked for were "external signs such as the colour and texture of the labia (very light pink and dry which they believe to be foremost signs of virginity) and look for signs of abuse (bruises and cuts) and STIs (pimples and sores and foul-smelling discharge)" (Leclerc-Madlala 2001: 538). For more on the VT procedure, see Scorje (2002:58).

Leclerc-Madlala (ibid.:539) further describes the three categories into which those who undergo testing are subsequently grouped. Category A is for those who are believed to have had no sexual intercourse. Category B is for those who are believed to have had sex, maybe once or twice, and includes especially girls who are suspected of having experienced abuse and may be in need of protection from future perpetrators. The last is Category C, for those girls who are believed to have had multiple instances of sexual intercourse and are deemed likely to engage in further premarital sexual intercourse. In contrast with Category B, these girls are seen as actively and freely of their own accord engaging in sexual intercourse. Leclerc-Madlala asserts that Category C girls are from then onwards excluded from future VT ceremonies and considered to be a possible bad influence for those in other categories. Participants are awarded virginity certificates according to the categories of their virginal status. Leclerc-Madlala (ibid.)

observed that Categories A and B's conferral was crowned with jubilation, while Category C's conferral was accompanied by sadness and some form of counselling. Sadness arose since many among the virginity testers believed that nothing much could be done for the girls in Category C. According to testers "it is too late" (Mbulu, 2016:18) to do anything to reverse the situation for Category C girls.

However, the "sadness" or "failure" associated with failing the test, has deeper implications for girls placed in Category C. While categorising girls' virginity in the manner explained above may have some incentive for Category A and B groups, it raises serious concerns for girls who "fail" VT, especially regarding the merciless treatment and shaming aspect that is inherent in Category C. Leclerc-Madlala (ibid.:540) asserts that for a girl "to be given a 'C' grade after a virginity test is to be marked with shame and disgrace". This aspect of the practice has cast a shadow on VT. Since VT is supposed to empower young women sexually and socially, it is unclear how shaming those that have lost their virginity before marriage contributes to the well-being of the women in general: the girl, the mothers and the grandmothers. If anything, this will traumatise those girls and their families alike, because we have seen how, in the calculation of *lobolo*, the mother is also shamed if the daughter is found not to be a virgin.

The importance of VT for the AmaZulu only makes sense if it is placed back into its relevant context. While many commentators emphasise the material or dowry value placed on the virginity of the maidens, the interpretation and meanings associated with VT have evolved, and in this project I found at least twenty discernible interpretations or functions that participants discern in the practice of VT. Even though this spiritual exercise is no longer embraced by many among the AmaZulu, for reasons such as Christianity and urbanisation, it is certainly upheld by promoters of VT. In places such as Bulwer and Newcastle (in fact around KwaZulu-Natal in general), the revival of the *uNomkhubulwane* festivals echoes the African Renaissance, where there is a desire to revive cultural heritage that was unfairly suppressed by colonialism.

The motivation for the revival of VT in the early 1990s was also to fight the spread of HIV/AIDS. According to Hugo (2012: 2), "one of the strongest arguments supporting virginity testing today is that its practice at least attempts to do something to address the spread of HIV/AIDS, especially when, according to popular belief, the South African Government has failed to do so." Whether or not this was an effective way to deal with the pandemic is debatable

on both cultural and liberal grounds. Confronted with the fast-growing numbers of sick young mothers, children and the rising rate of orphans, promoters of VT saw an opportunity to provide an alternative to what they deemed was the inefficiency of the state to deal with the pandemic of HIV/AIDS. When HIV/AIDS threatened to wipe the society, promoters of VT and King Goodwill came together to find what they deemed was a culturally viable solution to a problem that knew neither liberalism nor culture.

The belief that VT may provide a culturally appropriate solution to a myriad of problems, including the AIDS epidemic and teenage pregnancy, is shared across various levels of society: traditional authorities, *izangoma*, some in the government, and some young and older women and men. While VT was at some point in history mainly a prenuptial custom associated with the negotiation of *lobolo* (after the suppression of the worship of *uNomkhubulwane* and before the practice was practically abolished by colonial and missionary forces), proponents of testing now maintain that, with its emphasis on total abstinence from sexual intercourse by girls, the practice provides an opportunity to prevent HIV infection and AIDS, to reduce teen pregnancy, to detect incest and abuse, and to re-instil and promote lost cultural values (George, 2007). Kang'ethe (2014:485) makes a similar point when he observes that the spread of HIV/AIDS and moral degeneration became the greatest concern of the time and alternatives such as VT were accepted as possible remedies needed to curb the epidemic. This view implies that culture has the potential to address some of the problems arising from the prevalence of the pandemic using cultural practices such as VT. Such practices could be used as a necessary platform to equip girls with the cultural principles that could help them to navigate sexual pressures arising from peer pressure, and thereby assist the community by creating sexually moral agents. In this manner, VT may be viewed as a way to equip girls with greater moral authority and agency in sexual matters.

Ngobese, explained her reasoning for performing VT. She stated that, “people say to me, 'why, why are you doing this?'...and I say to them, 'what have you done to stop AIDS, to limit abortion?'...We are going ahead with our virginity testing because we have nothing else” (Daley, 1999). Like many other promoters of VT, she held the view that the state had failed in its attempt to curb the spread of HIV/AIDS. In her opinion, the conventionally promoted use of condoms by health organisations as one of the viable means to slow and eventually prevent the transmission of the virus between sexual partners could not equal VT, which is upheld as a moral regenerative tool, with an implicit incentive to abstain from penetrative sexual

intercourse (Murphy, 2007). VT therefore made a comeback, not just as a cultural practise but also as a pragmatic response to an overwhelming social and medical problem.

One of the sentiments expressed by many girls participating in VT is that boys were both uncommitted and deceptive when it came to sexual matters. They felt that boys only proposed to them for sexual pleasure, and once boys had what they wanted, would disappear, leaving girls in messy situations in which, most of the time, they would get blamed for. These girls are taught by their testers that they have to watch out because boys would destroy the girls' future by making them pregnant and possibly running away or refusing to take responsibility. VT coupled with traditional sex education was deemed a viable tool to educate young maidens of the immense peer pressure to indulge in sexual relations, and the danger they might end up as unmarried mothers. Thus, both maidens who participate in the testing and their families embrace it as a liberating and empowering phenomenon in a highly sexualised world. In her research on the topic, Fiona Scorgie (2002) discovered that some girls embrace VT as a defence mechanism against boys who were only interested in them for sexual favour. In the words of the maidens as documented by Scorgie (2002:67), they felt that:

- a) *“Boys deceive us. They say they love us but they want our virginity.”*
- b) *“They want sex and they are rubbish.”*
- c) *“He is going to leave you with AIDS and you get pregnant.”*
- d) *“There are no best things about love because boys are devastating the nation.”*

While single parenthood – especially where fathers run away or refuse responsibility – remains a social problem, it is argued that women, both the mothers and grandmothers – more than men – are left with an enormous responsibility to raise children with very limited sources of income, including a very small state pension. This is so because “family arrangements created for the support and care of children born to unmarried women often disadvantage older women – who, as primary caregivers of these children ... are thus burdened by the consequences of their daughter's ‘indiscretion’” (Scorgie, 2002:63). Placing the full burden of unplanned pregnancy on the mothers and grandmothers seems to be in line with the older notion that a mother is to be blamed and shamed if her daughter loses her virginity before marriage, hence the loss of the 11<sup>th</sup> cow in the *lobolo* negotiations. Therefore, it should not be surprising to see that, from the perspective of the girls who participate in the testing, as well as older women, there is some

considerable acceptance of VT as a viable tool for protecting themselves from misfortunes arising from HIV/AIDS.

Fearing to be left alone and struggling with unplanned pregnancies and possible diseases after premarital sexual encounters, maidens find it a good thing to participate in VT. This serves as a motivation whereby a girl holds herself accountable for her own sexuality. While the girl might not need to prove to herself her own virginity, VT helps her and prevents her from engaging in premarital sexual intercourse and increases her self-confidence in doing so.

Boys who have engaged in sexual acts with virgins or other unmarried girls, if found, have to take responsibility and make cultural reparations. In her research on the question of what it means to be “*intombi*” (a word in isiZulu for a maiden), Ntuli (2018: 112) reports that any young man who was found guilty of an unsanctioned sexual encounter with any woman, virgins especially, was considered a dog that had destroyed something precious. A fine of a cow and a goat is imposed on a man who impregnates a virgin. The cow is a peace offering in atonement for disrespecting the family of the girl by having illicit sexual intercourse with their daughter and sister. The goat is for the ritual of cleansing the sister of the pregnant girl who has been shamed by the man who impregnated their sister.<sup>16</sup>

AmaZulu are patriarchal in their culture. Men initiate romantic relationships and are usually in multiple relationships. A man who has more than one girlfriend is referred to as *isoka*, and the term is rather positive in meaning, as opposed to *isifebe*, which is used to refer to a woman with no sexual morals, or a prostitute. Many of the girls who have been victims of these multiple relationships had also been left devastated by their boyfriends who opted to marry someone else. Families and friends have also been left to pick up the pieces – that might include unwanted pregnancy, sexually transmitted disease, abortion, single parenthood and a ruined reputation - while the boyfriend continued with his life as if nothing had happened. VT coupled with sex education and some feminist education (about the woman’s value and pride that is not dependent on men) could offer girls a chance to challenge the status quo. Ngipheni Ngcobo, a 65-year-old virgin who is a regular of the Reed Dance, believes that young women need to be taught that their life does not depend on men, and they do not need men to have a good life. In

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<sup>16</sup> For more information on *inhlawulo* (fines), see (Ray Nkonyeni Libraries, 2021).

fact, people like her manifest the feminist notion of female sexual autonomy, the expression of which might include some form of virginity.<sup>17</sup> She states:

I am not ashamed that I am not married. I also don't regret not having children of my own. In fact, I am fulfilled by the role I play in my community and by the example I am setting to young girls, that having a man and bearing children is not everything and definitely not something that defines us as women. (Quoted in Masuku, 2017.n.p.)

The fast-growing number of orphans, the heavy dependency on grandparents, the economic situation of grandparents, all seem to collectively provide, for some supporters, good enough pragmatic (in distinction from spiritual or moral) reasons for the justification of VT. Many poor Zulu-speaking families struggle with basic needs and it is often the case that many household members depend solely on the grandparents' pension. It is also a reality that many teenagers and young adult girls and boys would leave their children in the care of these grandmothers without financially supporting them. Mothers and grandmothers struggle to ensure that their grandchildren receive the necessary care, while the children's mothers and fathers escape their parental responsibilities. Thus, according to Leclerc-Madlala, VT was employed as one of the responses to what she calls "a cry from mothers and grandmothers" who were facing an impossible childcare burden (2001:535).

The parents who allow or encourage their children to participate in VT do so largely out of concern for their children's futures. They feel that their young daughters, because of lack of life experience, "need to be guided into adulthood, they need to be 'looked after', and this entails ensuring that they do not become sexually active before they are 'old enough'" (Scorgie, 2002:65). They thus view VT as a cultural ally in this task. This implies that sex is construed as the privilege of mature people who can take responsibility for the likely consequences. It is to teach girls to wait for the right moment, where sex is no longer just about temporal enjoyment but a meaningful self-giving to one's partner, without regretting what could have been should they have known better.

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<sup>17</sup> French feminist philosopher Luce Irigaray (2008) for instance, encourages women to follow a process of "becoming virgin", where virginity stands as a metaphor for integrity, and a mental and spiritual stance in the world. She writes: "When I speak of a spiritual virginity, I allude to the capacity of gathering, keeping and transforming an energy of one's own" (Irigaray, 2008: 105).



VT is therefore, rightly or wrongly, used as a tool to educate young girls to protect themselves and their loved ones against hardships that may arise from early sexual activities. By encouraging their daughters to partake in VT, parents believe they have a better chance to eradicate teenage pregnancy and diseases, as well as to detect sexual assault or rape.

In general, the AmaZulu are known for the pride they take in their cultural heritage, which includes but is not limited to music, ritual and rites of passage. *Ukuhlolwa kwezintombi* is one of the important aspects of *ukwemuliswa kwentombi* (coming of age), which has been largely perceived as being definitive of the culture of the Amazulu. In her investigation of VT at Kwa-Nongoma, Mhlongo (2009:39) explains the meaning that participants of the practice attach to it in the following manner: “Virginity testing is associated with pride and self-respect. A girl should be proud of herself that she has conducted herself in a culturally acceptable manner. The elders will respect her and also her peers.” In this way, a girl who treasures and keeps her virginity intact until marriage is revered and admired, by both her peers and the elders of the society. She can walk tall in society as one who encompasses great moral aptitude and a symbol of sexual purity. Maidens also value their virginity as something that gives them some satisfaction, a sense of pride and a feeling of integrity. Beyond its supposed potential to curb the spread of sexually transmitted diseases, VT is understood to allow and encourage maidens to promote and protect a Zulu standard of moral integrity, even if this were to make sense only within the community of the Amazulu. According to Kaarsholm (2006:4):

Virginity testing restores what is known as ancient Zulu respect for Zulu girls, literally, the womb of the nation, to reinvest aspects of Zulu tradition which were eclipsed by colonialism and Christianisation and to contribute to the development of self-respect, self-esteem and pride in the Zulu people, particularly the youth in the modern environment.

A girl’s “no” to premarital sex, and her outward demonstration of that “no” by publically participating in the practice of VT, should be seen as indicating the girl’s desire for a better future for herself and her family. It symbolises individual and communal strength by defying the general expectation that, given a chance, girls or unmarried women will choose to have premarital sex instead of chastity. VT challenges the rapid sexualisation of the youth and may help to signal to the culture as a whole that a girl’s sexuality belongs to no-one but herself.

The Amazulu, typically patriarchal in their gender and social roles, make provisions for men and boys to have multiple partners, while at the same time discouraging girls and women in general from doing the same, as we have seen with the different meanings associated with the gendered terms *isoka* and *isifebe*. Thus, one might view VT as a kind of internal remedy or balancing act against cultural gender bias in which women, but not men, are shamed for sexual activity. In an effort to combat the prevalence of such cultural victimisation, girls and their mothers take consolation in practices such as VT, where women themselves are assertive and given the platform to educate their daughters about the consequences of sleeping around. Maidens passing the VT test take pride in that, and feel they are in control of their own destiny and that no boy can change that. Thus, their pride is intertwined with two other things: a hope for a good future, and a desire for good health. Girls' participation in VT is indicative of their saying "no [to sex as] not only their right but also an exercise in learning to set boundaries to sexual expression and freedom" (Scorgie, 2002:67). In other words, their embrace of chastity is not just an effort to make their parents proud, but also a determination to ensure that, whether their parents are there or not, girls can live with honour. Therefore, VT can be perceived as a tool that the maidens use to take control of their bodies and change the status quo. Maidens from Centocow area, a Catholic mission near Underberg, confirmed this sense of pride in an interview with Scorgie (2002:67-68):

- Girl 1. "I'm proud of myself because no one can destroy my future. I want to have a good goal for myself."*
- Girl 2. "It is important to me [to be an intombi] because I want to preserve myself, preserve my body."*
- Girl 3. "I want a good future and to make my parents happy about me."*
- Girl 4. "I'm proud of being intombi and Nomkhubulwana protects me from viruses."*

Being a virgin is a personally, socially and culturally valued status. A girl who remains a virgin until matrimony is seen as a moral and cultured girl. She is the one who is used as an example of what it means *ukuziphatha kahle* ("to behave becomingly"). Her commitment to chastity also symbolises obedience to her parents, with a special tribute to her mother's ability to raise a daughter, associated with the eleventh cow for *ilobolo*. If a girl can avoid sexual intercourse until such a time deemed appropriate by both her parents and the larger cultural community, she has a reason to be proud of herself and to rejoice over her exemplary life to her younger sisters and fellow maidens from her social group; those who attend the same testing centre. It

allows the girls to determine their future without the constant fear of what might happen if they indulged in unprotected premarital sex. Any girl who can set boundaries for herself and resist pressure from boys is seen as a principled young woman of integrity, and is usually respected by both her peers (male and female) and her elders. This is evident in Mandisa Pelsler's feeling about her own participation in VT. She claims "it wasn't about pleasing anyone but about the pride I had regarding my womanhood" (interviewed by Mnisi, 2017.n.p).

What this shows is that VT is not an end in itself but a pragmatic and alternative tool available to women to ensure that girls' futures are secured and bright. It is practical in that it deals with real and concrete life problems, where communities need to find answers to life problems that the government seems unable to resolve. It is consciously employed as a tool to create a community where women play an important role in fighting some social ills, such as sexual promiscuity, sexually transmitted diseases, and unwanted pregnancies, as well as single parenthood. It is construed that those girls who participate in VT are empowered to have a better chance of dealing with external sexual pressure in comparison to those that do not. The fear of being found out that they have disgraced themselves and their peers serves as an incentive to stay away from the temptation to have penetrative sexual intercourse. However, such positive outlooks on VT is not cherished by everyone. Civil organisations such as the ANCWL, the SAHRC and the CGE want to see VT banned from South Africa. Below I discuss the views of these organisations.

### **5.3. Debate on Virginity Testing in South Africa**

In this section, I give an overview of the unfolding of the debate on VT in South Africa, and point out how it was mainly understood as a clash between cultural (group) rights and individual (women's) rights. The robust debate arising from VT is on the one hand informed by liberal multicultural principles, where culture is seen as a necessary framework for any individual's exercise of meaningful choice and agency, in this instance, for Zulu girls to exercise their sexual agency. The VT groups then become a support base for maidens to exercise their sexuality in a manner that will maximise their well-being. On the other hand, promoters of universal human rights, especially proponents of gender equality, use the liberal framework as a basis to challenge VT viewed as oppressive to Zulu girls and an infringement on their equality, dignity and privacy.

Recall that Kymlicka's multiculturalism as a protector of national minority cultures, rejects external domination as well as internal restrictions, and also calls for special representation rights both within and outside the culture. AmaZulu celebrate VT, and in Kymlicka's view, such celebration cannot be correct if coercive methods are used within the cultural group (internal restriction) to compel girls into participation. At the same time, both special representation and self-government rights, according to Kymlicka, are necessary to ensure that a minority is not "outbid by the majority on decisions that are of particular importance to their culture" (1995:37–38). Maidens are not a national minority, but represent the interests of another kind of minority within a national minority (the Zulu nation). As we have concluded, following Okin and Phillips, Kymlicka's multiculturalism makes sense only if its application can be explicitly extended to such groups, in other words, if an argument can be made that VT is in the interests of these girls' freedom, dignity and equality, and that participation is freely chosen.

The debate on VT in KwaZulu is also informed by the liberal principles, not only in theory, but also through legal instruments such as the South African Bill of Rights and the Children's Act No 38 of 2005. It is also informed by feminist principles that seek to promote the welfare of young girls in society. Thus, in her article, Nicola Hugo (2012) echoes Fiona Scourgie (2002), who stated that the dilemma in the question of the permissibility and morality of VT demonstrates the challenges that become apparent when we apply the notion of universal human rights (and women's rights) to issues that are not universal, but are very particular to a specific context with a very particular circumstance and understanding. In other words, the AmaZulu perform VT "as part of their culture and see it as necessary especially in the era of HIV/AIDS in South Africa, while human and women's rights groups consider it archaic and a violation of young women" (Mujapelo, 2010). This means that the advocates of cultural freedom will promote VT insofar as it affirms cultural autonomy and cultural moral standards, while some feminist groups demand that the practice should be stopped, because, according to them, it infringes on the rights of young women whether or not they are aware of this violation.

A joint investigation organised by the CGE and the SAHRC in KwaZulu-Natal in June 2000 revealed that VT, at least in its current form and methodology, did not enjoy constitutional support. While the practice may have been revived with the best of intentions, the organisations were concerned that its proponents displayed "a significant disregard for Human Rights, as enshrined in the Bill of Rights in the Constitution, when testing is done" (2000:5). The CGE

also found that administering VT only to young girls was inherently gendered. Girls and not boys are tested. Only “non-virgin” girls, as opposed to “non-virgin” boys, are stigmatised. In the same document they argue that VT polices girls' sexuality in a manner that is alarmingly disproportionate in comparison to boys.

In 2003, the SAHRC denounced VT and called for its total ban. They argued that VT violated the most fundamental rights of girls. According to them, these rights included: the right to dignity, the right to equality, freedom and safety, and the right to privacy. They argued that “the founding values of our constitution include amongst others, human dignity, the achievement of equality and non-sexism. The Commission is not convinced that VT, as it is currently practiced, promotes these values” (SAHRC, 2003:6). Therefore, they argued that it was necessary to overhaul or to completely ban VT because it was doing more harm than good to girls.

In the event it was not possible for the government to completely ban VT, the SAHRC recommended that it was necessary to instead regulate the practice in a manner that promotes the values that are enshrined in the Constitution. The Commission acknowledged that the promoters of VT were driven by some concrete, contextual and circumstantial challenges that were either neglected or inadequately responded to by the government. The communities were affected by HIV/AIDS, which was growing rapidly, and the number of orphans were rising exponentially as a result. It was therefore understandable that the communities in KwaZulu-Natal had resorted to VT as a crisis management tool. Many of the challenges had come as a result of the change of attitude towards traditional sexual norms. Therefore, “those who support and practice virginity testing are taking proactive steps to address the sexuality of our young people in this country. The challenge is to bring these steps within constitutional parameters” (SAHRC, 2003:16). This said, the SAHRC still maintained that VT was not the right answer, and it could be said to not even have the tiniest ability to promote individual girls' human rights. On the contrary, the Commission argued that it should be either banned or re-evaluated in such a manner that girls are given a right to decide for themselves if they want to participate in VT:

The Children's Bill only prohibits virginity testing being conducted on children. The practice can be conducted on persons over the age of 18 years. However, the Commission, even then, has serious concerns about the rights of those who engage

voluntarily or involuntarily in the practice. The rights that are involved in determining the constitutionality of the practice are not limited to children only. These rights extend to everyone. It needs to be seriously questioned whether our constitutional values support a practice that on the face of it violates a number of constitutionally entrenched rights. (SAHRC, 2003:174)

In the year 2006, the Children's Act No 38 of 2005 came into effect, and one of the issues that it addressed was VT. This came as a result of protests from various civil organisations, both local and international, calling for the prohibition of "harmful cultural practices", especially those that discriminate against girls and young women in general. Chapter 2, Section 12 (4) of the Act lists VT along with female genital mutilation as some of these harmful practices. The Act emphatically prohibits the testing of girls who are under 16 years old, while providing parameters or constitutional guidelines regulating the testing of girls older than 16<sup>18</sup>. In Section 12 (5–7) the Act stipulates three conditions under which girls over 16 years of age can undergo VT. These conditions are:

- 5) *(a) if the child has given consent to the testing in the prescribed manner; (b) after proper counselling of the child, and (c) in the manner prescribed.*
- 6) *The results of a virginity test may not be disclosed without the consent of the child*
- 7) *The body of a child who has undergone virginity testing may not be marked.*

The Act presupposes that girls older than 16 years of age have agency, and are mature enough to decide for themselves about the pros and cons of VT. They know how to look after themselves, hence the willingness of the Act to guarantee these girls the deciding power in what happens to their bodies. Consequently, the Act carefully avoided making a blanket ban on VT because it recognised that some reasonable girls make a mature choice to embrace VT as part of their culture. However, even with the Act banning the VT of minors and regulating the testing of those above a certain age, VT continued. King Goodwill Zulu together with *Izintombi*, were not pleased with some aspects of the Act, especially those that directly addressed VT, and vowed to continue with the practice. The King and his subjects and promoters of VT believed they were doing a service to the nation by erecting a structure that

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<sup>18</sup> Since the Act deals only with children, the category it refers to here, is only children or girls, in other words older than 16 but younger than 18, which is the legal age of majority (adulthood) in this country. This is why the conditions speak of 'the child'.

would facilitate VT. Thus, they felt estranged by the Act, since they felt it did not speak to the problems of AmaZulu people at grassroots level who were experiencing familial disintegration as a result of HIV/AIDS and other related problems.

Years later, in 2013, the ANCWL pronounced its position in the VT debate. Angie Motshekga, then ANCWL president, stated, “cultural practices and traditions that promote the violation of women’s rights must be abolished and these include amongst others *ukuthwala*, *ukungenwa* and virginity testing” (ibid.:n.p.). The League subscribed to the promotion of human rights and wanted to see women being fully recognised as deserving of these rights and protected by the same Constitution. Therefore, it was no longer tolerable for them to witness what they deemed as a continued patriarchal assault on girls through practices such as VT. However, only a year later, the ANCWL changed its abolitionist stance on VT and adopted a more tolerant attitude on the matter. In relation to VT, Meogo Matuba (2015) – the Secretary General of the ANCWL – articulated the new resolution of the organisation. She stated that they as the ANCWL would “not force anybody to stop practising what they believe in. If you feel it’s your culture then we won’t be against it. There are things we also do as part of our culture, but we don’t talk about them” (quoted in the Hlabathi 2015: n.p.) This change of heart was viewed as a victory for some KwaZulu-Natal members of the League who were unhappy with the League’s advocacy for an abolition of what they felt was at the heart of their culture. Of course such a view is unfortunate as it is intolerant of dialogue and sometimes needed interventions. It is dangerous to communicate a message that cultures cannot be criticised nor challenged even when there are clear reasons to do so.

In January 2016, a story circulated in the media about the bursary from the uThukela Municipality in KwaZulu-Natal that exclusively targeted girls who were still virgins. According to the CGE’s 2016 report, recipients of this bursary had to prove that they were indeed virgins by providing a maiden certificate before the bursary could be awarded to them. The second condition was that they had to maintain their virginity throughout their studies (ibid.:18–19). This led to an outcry, and the bursary scheme was successfully challenged in court. The CGE found that the bursary scheme was flawed and inherently discriminatory. Among many reasons why this was deemed unlawful, the Commission stated that it was only the girls who had an extra burden to keep their virginity intact throughout the academic programme. Boys, on the other hand, could apply for other bursaries offered by the same municipality, without having to worry about the virginity clause (ibid.:21).

Those who object to VT from a medical point of view, do so on two grounds. Firstly, it was argued that the rupture or the absence of the hymen was not a reliable indicator of penile penetration. There are instances where girls were born without the hymen or, for example, where the hymen was ruptured as a result of extensive exercise. While promoters of VT argued that it had the potential to prevent the spread of HIV/AIDS and other STDs, “gender rights activists say that virginity testing not only violates the rights of the girl-child but also will do nothing to stop the spread of HIV. They argue that customary practices like these are unconstitutional and should be prohibited” (Barrett-Grant et al., 2003:221). The problem, however, is that there are little or no empirical studies conducted among participants to establish whether or not VT does in fact help to stop the spread of HIV/AIDS, and curbing the other social ills mentioned.

#### **5.4. Problematising the Debate on Virginity Testing**

The numerous debates surrounding the practice of *ukuhlolwa* highlight the limitations of prevalent conceptions of rights (as rigid), culture (as static), and gender equality (as conflicting with cultural autonomy). (Mswane n.d.:26)

“Women can reclaim their bodily integrity as well as their sexual and reproductive rights, even in the context of the taboos associated with sexual matters” (Tamale 2007:160).

The debate on VT is a mirror reflection of the theoretical multiculturalism vs feminism debate that I set out in Chapters Two to Four. Promoters of the practice want it protected on the basis that it resonates with much needed cultural remedies to social problems. Thus, they demand that external forces, such as civil organisations, back off (Khoza, 2016) in the name of Zulu national minority self-determination. Human right organisations on the other hand call for the ban of VT. Just as in the multiculturalism vs. feminism debate, most of the conflict described above arises from the rigid and essentialist interpretations of VT by both camps. The same is observable with regard to human rights. Promoters of human rights often display non-negotiable universalism regarding individual human rights, which becomes problematic when confronted with practices that have multiple meanings. Both camps claim to be protected by (or promoting some aspects of) the SA Constitution, which endorses both women’s rights and cultural rights.



Whatever the case, by its very nature, the Constitution is the supreme law of South Africa, and by that decree, culture must at all times be interpreted and practiced within the parameters of those provisions, as stated in Section 31(2) of the Constitution. Anything outside the limits of the Constitution is unlawful. In other words, for culture and religion to enjoy the support of the Constitution, they must be aligned with its fundamental values. It was because of this reasoning that the SAHRC (2003) recommended that VT be regulated in a manner that guarantees the protection of children's and young women's constitutional rights. What the Commission desired were cultural practices that contribute positively to girls' well-being, and by the Commission's standards VT was not one of those practices, except when they were regulated and modified through liberal and Constitutional principles.

All cultures frown upon murder, even before the Universal Declaration of Human Rights was created. It is my view that VT is not similarly universally accepted (or rejected). It is widely practiced globally, and also widely condemned by others. In a case such as this, where a human rights (women's rights / feminist) framework confronts a practice like VT, the ever-present danger is, as Du Toit (2013) explains, that both the cultural practice and human rights (feminism) itself will be treated as an essence, as a timeless monolith. Rather, in each confrontation between cultural and individual rights, such essentialist understandings should be revised, if a proper dialogue is to ensue. The rejection of VT by human rights proponents largely relies on the assumption that all citizens of South Africa know and support the Bill of Rights that the Constitution enshrined. However, this proves to be a challenge when a static or essentialist understanding of human rights threatens to abolish a practice such as VT. Some parents felt estranged by the laws that were said to protect children. In 2005 for example, Nomagugu Ngobese questioned the signing into law the Children's Act. She questioned the "Protecting children? They are creating laws that are destroying families" (IRIN New, 2005: n.p.). According to Ngobese, laws in the Constitution were not in touch with the reality of the family. She shared the pain of many parents who were overburdened with responsibility as a result of HIV/AIDS mortality, abandoned children from young mothers and poverty. VT was thought to be the alternative solution. Possibly most hurtful, for the parents to be told they were abusing children was not a welcomed conclusion (Scorgie, 2002:66).

Both the CGE and SAHRC acknowledge the role of culture in women's daily lives. However, they recognise culture as only acceptable if cultural practices adhere to the Constitution. Even

though both organisations are aware of the main reasons for the revival of VT, both argue that the return to VT as a remedy for social problems was misplaced and needed to be stopped. Many from the human rights camp and from medical quarters have argued that VT did not in actual fact reduce the rapid rise in HIV/AIDS infections. While it may be true that VT alone was not enough or even adequate for addressing the scientific and medical problem that HIV/AIDS posed for the community, government initiatives were seemingly equally ineffective. Whether people took condoms or participated in VT, the rate of infection continued to rise. It is my opinion that the return to VT was a culturally calculated move to address the need of the time. VT was not only focused on the pandemic, but was also a rejection of what the AmaZulu saw as a sexual moral degeneration created by the government's initiatives through the distribution of condoms. It is not implausible to imagine that the amaZulu interpreted freely available condoms as a licence for their children to engage in premarital sex, which had the potential to cause more social instability. Thus, the total rejection of VT based on the universal of human rights rhetoric demonstrates that the rights activists show an "acute lack of sensitivity to and recognition of grassroots and local initiatives undertaken by African groups and activists" (Tamale, 2007: 152). In other words, human rights activists, despite some attempts from the side of the SAHRC, did not sufficiently engage with insiders on the meanings, aims and functions of the practice and therefore banned something they did not truly understand. Also, it would seem, they did not sufficiently consult with the women and girls directly affected by the practice, in order to hear from them whether they experienced the practice as empowering or oppressive.

In contrast with outsiders who apply static and essentialist versions of human rights to the matter, Leclerc-Madlala at least directly engaged the women involved in the practice to hear their perspectives. In her 2001 article, "Virginity Testing: Managing Sexuality in a Maturing HIV/AIDS Epidemic", Leclerc-Madlala dedicated a section to what she termed "A Cry from Mothers and Grandmothers". In this section, she addressed the desire of these mostly rural and marginalised women to see their daughters protected from HIV/AIDS and the hazards of child-bearing outside of wedlock (with its attendant support structures) as well as to see themselves protected from having to maintain high numbers of pension-dependent grandchildren. Thus, to these women, VT is not a tool to prevent girls from having sex, but a tool to protect mothers and grandmothers from having to deal with the burden of supporting both their children and grandchildren, especially in situations where these parents were already struggling to make ends meet. Anyone who is sincerely interested in understanding the revival and popularity of

VT, must properly contextualise it within rural, impoverished female-headed households. In many cases, social grants were not enough to subsidise every member of the household, yet young mothers and their children expected that their mothers and grandmothers would provide for their basic needs. Since neither the state nor fathers were taking responsibility for these children, and since older women themselves were struggling to make a living for themselves and those who were dependent on them, VT promised a solution. Thus, it is my opinion that when those mothers and grandmothers encouraged their children to partake in VT, they did so with the best interest of both the children and themselves at heart. They meant no harm, which is the opposite of what some of the advocates of human rights would have us believe – recall Okin’s view of older women’s role in minority cultures.

Along these lines, Fiona Scorgie (2002:66) describes the condemnation of VT as a personal attack on parents who encourage their children to participate in VT: “That opponents of virginity testing should dare to suggest that the *abahloli* [virginity testers] are, effectively, abusing their children is therefore interpreted as insulting in the extreme.” It is therefore not surprising to see that, despite the banning of VT in the Children’s Act, the practices have continued as both a form of defiance towards external domination and as a protest to such an insult.

In my view, VT has a potential to empower both young and old participants. While VT can be seen as a tool of patriarchy, it can be equally viewed and explicitly used as a tool for women’s empowerment (Tamale, 2007) when the celebration of women’s sexuality is placed in the centre and the women themselves can infuse the celebration with emancipatory and empowering meanings. VT is a woman’s practice, and is conducted by women for women.<sup>19</sup> VT is a platform where women have enormous power to influence the direction of the future their daughters – and the larger culture as a whole - take. However, this empowerment is only visibly comprehensible if we are willing to reject the commonly accepted thesis that assumes the inherent conflict between culture and rights, and in particular the inherent and necessary

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<sup>19</sup> I am aware of the challenge arising from making a statement such as this one. As Tamale (2007:159) observed, practices such as VT were initially intended to prepare woman to become good wives and, secondly, it was “supposed to guarantee the paternity and legitimacy of the children of the marriage”. However, I believe that women can change that, and create a feminist platform where they educate girls about their worth independent of men. There is no reason why the meanings and functions of any traditional practice need to remain the same over time – as indeed we have seen with the recent revival of VT explicitly for the sake of combatting the spread of HIV/AIDS and the rise in teenage pregnancies. The earlier meanings of VT also varied from spiritual / religious fertility celebrations and ceremonies, to a function of determining the bride price.

clash between VT and feminist aims. Drawing on Phillips for inspiration, we have to reject the culture/rights schizophrenia, which seems to push women who belong to the culture in question to the corners of this either/or discourse – recall the silencing of young Muslim women in France, whether the traditional fathers wanted to force them to wear the hijab, or whether the secular government wanted to prohibit them doing the same. As long as this clash continues, it seems to silence the women about whom it rages. Women are not at one moment members of the culture and another moment rights activists. A woman should not have to choose between her culture and her rights. Her rights must be realisable from within her cultural circumstances and her lived context, which shape the meaningfulness of her choices. Important in this regard, Tamale (ibid.:152) sees culture and the struggle for the liberation of women on the African continent as interwoven. According to her, “the close connection between gender, sexuality, culture and identity requires that African feminists work within the specificities of culture to realise their goals. This requires us to move away from the dogmatic and rigid view of culture” (ibid.:155). In other words, the value of VT cannot be understood without first listening to the stories of those affected by the practice. It only really presents itself as a concrete moral problem for people faced with the option to either participate in it or not, and this first and foremost means the women themselves. It is from this perspective, and with acknowledgement of the different meanings the practice holds for them, that the dialogue between feminist insiders and outsiders can start. Both promoters and critics of VT need to allow themselves to be informed by the lived experience of the maidens and their immediate families – their mothers in particular - and refrain from making statements that have a totalising effect on the relevance of both cultural practices and human rights.

Empowerment entails responsibility and agency. It has been argued that VT, as a means to control the spread of HIV/AIDS, places too much responsibility on women. Scorgie (2002), for example, argues that promoters assume that by targeting maidens and encouraging the maiden to participate in VT, boys will refrain from making sexual advances to these girls, and the natural consequence of this would be the reduction in the number of people infected and affected by HIV/AIDS, and other problems arising from premarital sex. Promoters of women’s and children’s rights reject singling women out to take responsibility for culture-wide sexual moral degeneration. Rights-orientated bodies believe that targeting women through VT in the fight against HIV/AIDS perpetuates the discrimination against women, while not rendering boys responsible. This criticism is warranted, especially because heterosexual intercourse involves both men and women, therefore to single out women and subject them to VT seems

both unfair and unjustifiable. However, we cannot run away from the fact that women have been the ones, more than men, who suffered the brunt of HIV and other related social problems. Thus, it seems sensible to target them for empowerment in this respect. Speaking of empowerment, Anette Wickström states that “when campaigns are aimed at strengthening women, they also place responsibility on women. Perhaps that is an inevitable effect of empowerment. Women all over the world are often the targets of campaigns aimed at helping young people make good choices in relation to lifestyle” (2010:537). Promoters of VT aim to ensure that women have the power to say no to sex that they are not ready for. While culture (and tradition) is the paradigm from which VT has been practiced, the practice can be internally, by the practitioners themselves, shaped in a manner that facilitates the initiation of young girls to womanhood, where older women share the experience of their own lives with the maidens.

One of the ignored aspects of VT is the fact that mothers and grandmothers coach their daughters about real-life situations. Therefore, by encouraging their daughters to participate in VT, “people are trying to protect them from engaging in sexual activities too early, to increase individual responsibility via collective pressure and support. The testing entails an urgent call for women to assert themselves and for men to respect women” (Wickström, 2010:538). Testers hope that the men/boys will respect women out of reverence for the culture, but even more so out of fear of being punished should they be discovered to have had unsanctioned sexual intercourse with the virgins. Leclerc-Madlala (2001:546–547) also believes that, since women are the ones who control what happens in VT and ceremonies surrounding it, there is a real opportunity for women to assert themselves and to make the practice a truly female-led platform that is fundamentally concerned with the well-being of women. Sylvia Tamale describes similar initiatives with regard to girls’ initiation practices in Uganda, where traditional practices, values and meanings had been consciously reformed by insiders in such a way that they unambiguously advocate for the feminist agenda.

Du Toit (2013) argues that the current meanings in cultural practices are not necessarily the reflection of what a practice represented a few decades or centuries ago. What VT was in pre-colonial times might not necessarily be the case in a democratic South Africa beset with new problems and challenges. In this way, promoters of VT would be ill-advised to treat the practise as if it was a mirror reflection of what their ancestors believed VT entailed. Thus, the condoning or condemnation of VT makes sense only if the meanings given to the practise reflect the true

circumstance and context for women in a particular time. If the meaning is contextualised, it cannot be cast in stone but “contested and reinterpreted, and...kept alive and open to new inputs and new interpretations, and as long as the space for the rebirth of the imagination is kept open and can be participated in by everyone” (Du Toit, 2013:31) a proper dialogue between the promoters and critics (in which the initial understanding of both shift) will be better informed by people’s experience. VT, as we know it today, is hardly a return to an ancient world for the sake of preservation of the culture, but is rather a pragmatic move in an effort to assist women in their quest to “protect” their daughters and themselves from excessive social pressures. I put the word “protect” in quotation marks to indicate that the term is highly contested by both camps. What promoters of VT see as a protection, promoters of women’s rights see as a violation.

Some organisations find it difficult to accept that girls can voluntarily participate in VT. The SAHRC (2002:9), for example, rejected any claim that girls are able to make this choice without external pressure. According to the Commission, the familial and other social expectations – *ilobolo*, the fear of being seen as sexually active, and so on – drive girls to VT. The CGE also subscribes to the theory that children, both male and female, are incapable of making such a choice, consequently, “it was inconceivable that a child below the age of 18 could consent to VT. She or he does not have the capacity to give consent” (2000:29). Denying youths the capacity of consent thus renders the participants of VT as the victims of their cultures, and promoters of human rights feel it is legitimate for the state to paternalistically intervene and ban VT in order to save the girls from their culture and from themselves. The problem with such an approach is that it removes agency from the *izintombi* and *abahloli*, and they are all viewed as being guided by a false consciousness. Okin (1999) viewed older women in cultural societies as being enablers of women’s subordination, and felt it was up to outsiders to intervene and save girls from internal restrictions. Louise Vincent makes this point clear when she states that, “in denying the participants in virginity testing ceremonies the veracity of their own choices, the suggestion is that these are not civil subjects, that they are not in the position to exercise ‘true’ or real choice and that choice must therefore be denied them until such time as they are recreated, liberal selves” (2006:22).

Another problem arises with the prohibition of VT by the Children’s Act of 2005, when the practice and its regulations are compared to the practice of the circumcision of male children. Article 10 of Section 12 of the aforementioned Act reads as follows: “taking into consideration

the child's age, maturity and stage of development, every male child has the right to refuse circumcision". At no point does this Act explicitly afford the girls the same opportunity. The girl may choose to give consent or not, but so can the boy. Yet the Act makes an extra effort to spell out the right to refuse, not just to consent but to refuse to participate in the circumcision initiation. It would have been better if the Act explicitly bestowed on female children the right to refuse to participate in VT. The stipulations from the Act therefore reveals the bias towards the subject status of the male child while at the same time depriving the same status to the girl child. Thus, the claim that culture is the enemy of the women's rights movement, while liberal principles are friendlier to feminism, is not always true. Liberal principles are themselves informed by male-dominated philosophies and traditions that need to be challenged and renegotiated (Du Toit, 2003; Vincent, 2006; Phillips, 2018).

In my opinion, the narrow focus on the vaginal inspection that takes place during VT distorts the meaning of the practice. While I do not necessarily advocate for the non-scientific inspection of the hymen, I do think that many other features of the ceremony of VT celebrates the womanhood of those who participate in the practice and are actually empowering, without saying they cannot be made even more explicitly and intentionally so. Like any celebration, VT has various aspects that positively shape the story of every girl that participates in the ceremony. The message of VT is not only in genital inspection but on every little detail that accompanies it.

### **5.5. VT Through the Lens of Anne Philips**

In Chapter Four, I spent time discussing Anne Phillips's efforts in diffusing the so-called intractable dilemma between Kymlicka's multiculturalism and Okin's defence for women's rights. Phillips rejects the stonecast ascriptions of culture and argues that the dilemma is flawed since it is premised on incorrect culturally deterministic assumptions. She reckons that if both multiculturalists and feminists were to forego the rigid commitments of their relative positions, there can be a new and refreshing approach to the debate that will solve some of the puzzles that arise from a commitment to multiculturalism. In this section, I explore how Phillips would respond to the VT debate.

The first thing that can be addressed, using Phillips, is the question of the universality of VT among the Amazulu. Phillips (2018:n.p.) rejects the blanket labelling of any practice as a

“cultural practice”, because it assumes and implies that such practices are fully endorsed by all. Treating VT as a cultural practice would render it a norm and a standard of living for all girls among the AmaZulu, and this is not the case. There are many girls among the AmaZulu who have nothing to do with VT, and those who do not accept VT and are also not penalised for rejecting it out of hand. Like with every cultural practice, as Phillips also states, there are many voices and perspectives on the inside. While VT may be encouraged by cultural authorities, and by many parents, at no point is it widely accepted by every girl or mother. Yet there are mothers and grandmothers who accept VT as a cultural means by which young women can change their situation and empower themselves and protect their wider families from undue financial burdens. The women who embrace VT therefore adopted it as an alternative option, while rejecting as immoral the governmental distribution of condoms at a time when HIV/AIDS was ravaging the population. Thus, VT can be seen as a choice rather than a norm, even inside the culture, and since it is a choice it should be negotiable both within the culture, between members with different views, and between insiders and interested outsiders such as the SAHRC and the GCE.

Secondly, as suggested by Phillips (*ibid*), people from within a culture have a lot to teach those who are outside the culture. I have discussed how the debate over VT predominantly revolves around vaginal inspection and the inferences made based on the scientific disproof of VT methodologies. Even though the CGE conducted a consultative conference on VT in the early 2000s, it did so with a vested interest: their interest was never on culture or on understanding the cultural meanings of the practice. The approach was rather aimed at demonstrating that VT could not pass the constitutional test. This criticism arises from the clear statement the Commission makes in reference to the mentioned conference. Through its gender equality monitoring system, the Commission sought to provide:

Step-by-step guidance, through workshops and consultative meetings, which will ultimately result in policy formulation for the abolition of discriminatory cultural practices, such as VT for girls. If the practice of VT is to be upheld, it needs to be conducted within the policy framework and should not be in contravention of the Constitution, which is the supreme law of the land. (CGE, 2000:1)

Clearly, therefore, the interest of the Commission was to persuade promoters of VT to stop conducting and participating in this practice. The conference ignored all celebrative, empowering and educational aspects of VT and reduced it to one event, the examination of the



hymen, through traditional inspection of the girls' genitals. Such an approach has the potential to misrepresent the intentions, larger context and historical and contemporary backdrop of VT, and not as an initiative to protect girls first and foremost from complications arising from premarital sex, and as a sharing of experience by elderly women through discussions and preparing younger women for womanhood (Mswane, n.d.). Tamale affirms this observation when she notes with regard to female circumcision (but which can equally be applied to VT), that "the bulk of [outside, especially human rights] approaches to the subject matter are culturally insensitive, focus narrowly on the negative aspects of female circumcision and completely overlook the multifaceted nature of the practice and the meanings attached to the rituals associated with it" (2011:30). Amongst many other functions, VT ceremonies prepare girls for womanhood. It offers older women a golden opportunity to prepare their daughters for marriage through experience-sharing sessions. Through VT, girls are taught that their sexuality is theirs to keep as a treasure. Even though there is a family interest, ultimately VT is about the girl and ensuring a well-planned, autonomously shaped future. Every mother wants her daughter to succeed in life without being delayed by unplanned pregnancy or sicknesses.

The Commission made it clear that the conference intended to abolish, not to find anything positive about the practice. The decision and the fate of VT were already sealed even before the conference was held; this speaks of a lack of genuine dialogue and the refusal to ask the question what women's sexual emancipation potentially looks like within the broad parameters of Zulu culture. Indeed, VT was eventually regulated by a constitutional policy because such was the natural outcome of the events that the Commission had set into motion. The unfortunate consequence of side-lining the voices of the promoters and participants of VT was resentment from the people for whom the conversation was intended. Battle lines were drawn, and the CGE and partners lost some of the key figures who could have been their allies in the process. It also diminished the authority and credibility of the CGE in the eyes of many from this community. Years later, in 2016, when the CGE condemned maiden bursaries, King Goodwill expressed his displeasure with the Commission and vowed to continue with VT:

"These organisations, looting money with spades... talk too much. They don't even know about the kingdom or what the reed dance is about. They know nothing about us. They do not have Ubuntu because they don't know what they are talking about." (Khoza 2016:n.p.)

Phillips (2018) warns against condescension. Just because VT does not sit well with the promoters of women's rights, it does not mean it is at all times and everywhere oppressive to all women. It also does not mean that women who participate in it are forced into it. Phillips (ibid.) wants us to realise that, even in situations where it is difficult for outsiders to imagine how female promoters and participants of VT can possibly find meaning and value in the practice, their participation is a real choice. People's choices are not valid just because we say they are, they remain valid because in embracing the practice they are exercising their agency. In situations where it appears that a woman's choice has been restricted, Phillips suggests that "the most useful thing is to work with those organisations of women within the various cultural groups who are campaigning against the practices that they find problematic for women" (ibid.). Phillips's own example involves Muslim women in Europe being expected to wear full-body clothes. She believes that, inasmuch as such clothing is only prescribed for women and not for men, such prescription is "astonishingly illiberal...but you have to recognise that people are agents and have choices and make choices for themselves" (ibid.). Rejecting VT by assuming that women who accept it do so as victims of their culture does not only infantilise young women, but also imposes a general straightjacketing effect by assuming that young women have reduced or no agency in sexual matters. Such an approach yields resistance and, as such, VT has continued to draw more participation from those who want to see the practice continue.

A third criticism of the multiculturalism vs. feminism debate from Phillips (2007; 2010) is that the debate is structured in such a way that it erroneously leads to the conclusion that multiculturalism and feminism are incommensurable. This fault arises from the implicit assumption that both camps disagree fundamentally on liberal values. Phillips (ibid.) says this is not the reality. Both camps are committed to the struggle of the liberation of minorities and both groups take liberalism as their point of departure. Therefore, both groups are committed to the well-being of individuals as autonomous subjects. What is at stake is the interpretation that each group gives to values such as dignity, freedom, autonomy and privacy. The VT debate has a potential to pit culture and gender against each other only if we accept that they are completely oppositional. However, promoters of both VT and human rights have shared values, and through these shared values a compromise can be achieved. If girls are a concern for both groups, then it should be possible to look for all those instances where the CGE and VT promoters find common ground, which may assist with the way forward.

The parents and grandparents, especially the mothers and grandmothers, of the maidens have the best interest of their children at heart when they encourage them to participate in VT. It is the mothers and grandmothers after all who know the pain of seeing their children's future perish before it even begins. The human rights organizations are also driven by the commitment to liberalism to maximise every individual child's interest, and in ensuring that everyone complies with policies that are meant to promote the welfare of the child. Where VT is concerned, the value is good health and a prosperous future for girls, their families and the society at large. I believe this is shared both by traditionalists and human and women's rights organisations alike.

Phillips (2018) wants promoters of culture and those of women's rights to recognise that they are after the same thing. If they can find common ground, first by rejecting the idea of a deep value conflict, then they will be open to a dialogue where both camps can learn from each other. Most importantly, human rights campaigners must learn from minorities within minorities why they choose to participate in practices that seem on the face of it to violate their basic human rights. When participants claim that such practices have more than one meaning, and that at least some of those meanings are empowering and emancipatory within their lived context, then outsiders should not reject such claims simply because feminist agency and activism looks very different from what they know from majority culture and majoritarian forms of feminism. Perhaps if the CGE and SAHRC gave the parents whose lives had been made difficult by mortality arising from HIV/AIDS more credence, then they could arrive at different conclusions about VT. Perhaps if the promoters of VT were drawn into the discussions as equals, their attitude towards the CGE, during and after the so-called consultative conference, would have been friendlier. An ideal outcome would have been if multiple meanings of the practice in question were acknowledged, and if its opponents walked away with a better appreciation of its (potential or actual) capacity to empower girls and young women, and if its practitioners walked away with a stronger commitment to highlight and strengthen those aspects of its practice that are actually strongly beneficial to the girls and to downplay aspects that tend to violate them, such as the shaming associated with failing the test.

## 5.6. Summary

The multiculturalism/feminism debate is echoed in the VT debate in South Africa, particularly in KwaZulu-Natal, where VT is mostly practiced. What the VT debate reveals is that most of the so-called cultural practices are multifaceted practices that cannot be reduced to one single narrative. Most of what we have witnessed concerning these debates is the reductionist approach to issues that are rather complex and cannot be exhausted by the unilateral, static and supposedly universal application of universal rights. While it is important to uphold people's human rights, doing so through an outright rejection of cultural alternatives will lead to some form of imperialism. In this chapter, I have alluded to at least 20 meanings that participants of VT attach to the practice. It is possible that more meanings of VT in KwaZulu-Natal can be traced, but the following meanings were discussed in this chapter:

1. Prevents spread of HIV/AIDS and other STDs.	2. Prevents teenage pregnancy.
3. Prevents financial burdening of grandmothers.	4. Ancestral practice.
5. Protecting patrilineal lineage.	6. Communal celebration; national pride
7. Decolonisation imperative and to promote forgotten cultural values.	8. Moral status of girl is tied to virginity dowry implications; maiden's honour, pride, self-respect.
9. Separating sexually active girls from virgins.	10. Spiritual function: women as guardians of birth and the future of the nation ("womb of the nation").
11. Virginity understood as sexual integrity and belonging to oneself sexually.	12. Promotion of communal respect for young women.
13. Initiation/transition ritual: Reed Dance.	14. Education and training into sexual and cultural maturity/motherhood.
15. Female solidarity and female communal power – by women, for women.	16. To limit (the need for) abortion.
17. A kind of internal cultural corrective for patriarchy, which does not hold boys responsible for their sexual behaviours (multiple partners; absent fathers).	18. Girls strengthened by community to say "No" – public demonstration that their sexuality belongs to them.

19. In spite of increased policing, some girls say they do it for themselves (agency).	20. Discovering incest and sexual abuse.
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In Chapter Three, I showed how Okin (1999) sensationalised the multiculturalism and feminism debate by narrowly focussing on extreme cases where men abused and tortured their women in the name of culture. The result of Okin's discontent with multiculturalism is the unfortunate feminist rejection of the call to have minorities treated with equality and dignity in the same way as majorities. The debate over VT reveals that rejecting a practice simply because of one or two negative aspects associated with that practice, or due to ignorance of important role players from the outside, ignores many other possible positive aspects of the practice. These positive aspects have the potential to liberate the previously disempowered group in the society.

## CHAPTER SIX

### Conclusion

VT continues to thrive in KwaZulu-Natal and elsewhere in the country. The number of participants are growing even though the Children's Act has tried to put a stop to the practice. This is, to a larger or lesser extent, because those who participate in it find value in what happens when they are there. *Abahloli* and *izintombi* stubbornly display, through annual participation in *Umkhosi Womhlanga*, their intention to forge ahead with the practice, no matter what the CGE thinks. The SAHRC, on the other hand, watches closely for anything that might counter their mission to protect children from coercive cultural practices. None of the two parties is ready to compromise on their position, and that is because both parties believe their actions are the right things to do and because the kind of dialogue that Phillips proposes has not yet gotten off the ground. Thus, it is my opinion that a practice as politically charged as VT cannot be ignored nor suppressed through liberal policies. I believe that both parties need to revisit their positions and negotiate from a position of good faith and be open-minded in order to learn from each other. Thus, I propose the following way forward:

- a) Since the debate around VT is ultimately a struggle about which rights are a priority – the human (and women's) rights or cultural rights (multiculturalist or feminist) – there is a need to revisit the universal concepts of “culture” and “rights”. We ought to ask ourselves about how far we can apply each of these universals in day-to-day situations. Some among the Amazulu see culture as one of the non-negotiable aspects of their lives. Not only is it non-negotiable, but it is also a right that is guaranteed by the South African Constitution. The understanding is that VT, as a local cultural initiative, is defensible by invocation of Chapter 2, Section 31 in the Bill of Rights, which guarantees the right of cultural association. However, the CGE disagrees with that kind of interpretation of the Bill of Rights, and recommend that VT should be prohibited. While both promoters of VT and human rights organisations agree that the Constitution makes provisions for cultural rights, the contextual interpretation remains a challenge for both parties. Thus, I propose that both parties should allow for the concrete context of the relevant women's lived experience and attitude towards the practice, to shape and inform their understanding both of the meanings of VT and what women's rights and human rights will mean in that specific context. Both parties can and should learn from one another.

- b) VT as an alternative relies on the hope that it can reliably assert if a girl/woman is still or is not a virgin. The scientific view discredits such a hope and places the promoters of the practice in a difficult position. Perhaps proponents of VT need to refrain from the stubbornness of wanting to prove that their methods are equally valid to scientific methods where virginity is concerned. Evidence has shown that there are reasons other than penetration that could lead to the rupture of the hymen. Acceptance of this claim by the proponents of VT will most likely collapse the actual inspection of VT, and perhaps will give birth to new ways in which girls' sexual morality can be encouraged and celebrated.
- c) One of the complaints that CGE has against VT is that VT targets only girls. It is as if girls are blamed for their sexual misconduct and the consequences thereof. Boys are left untouched. Surely, if VT is about the prevention of sexually transmitted diseases and unwanted pregnancy, boys must be equally engaged in the process. Even though there are claims concerning the enactment of VT for boys, this makes little sense and there is no general agreement on how this would be done. Instead of subjecting boys and girls to genital inspection, perhaps it will be more beneficial for the culture to establish initiatives such as a sexual *indaba*, a platform where boys and girls can be coached about the realities of life and be prepared for the future. This *indaba* can draw from different cultural experts and civil society, as long as the focus will be on empowering the attendees so that they are able to navigate their lives in a way that is meaningful and beneficial to themselves and others around them.
- d) Those who oppose VT do so with an understanding that VT is a tool for patriarchy (Bathabile Dlamini, 2016), and should be rejected. While this may be at least historically true, it has been argued that practices that seem oppressive can in fact be used to empower those women who are directly or indirectly affected by the practice (Tamale 2008; Phillips 2018). Where VT is concerned, it might be beneficial for its critics to closely investigate the empowering aspects of the practice for women. VT is not an isolated event, it is a culmination of many other things, such as a celebration of one's virginity as a treasure that cannot be placed at the disposal of any boy. Thus, feminists and human rights organizations should heed the call by Phillips to listen to the people who are immediately affected by VT, since there is a lesson to be learned from people's experience.

- e) Practices in culture evolve. It does not help the traditionalists to hold onto ancient definitions of the practice. Since cultures borrow and lend (Tamale 2008), promoters of VT need to ask the question of what is useful in the practice today, and which part of the practice needs to be discontinued. This should ideally not be by external forces, but instead through true introspection from the promoters, coupled with advice from other cultures, which might help steer VT into a direction that is acceptable to everyone interested in the practice.



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