

CONSTITUTING THE GLOBAL GAY:
ISSUES OF INDIVIDUAL SUBJECTIVITY AND SEXUALITY
IN SOUTHERN AFRICA

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The Globalisation of Lesbian and Gay Identities:

In the 1990's, the sexual activities of people living throughout the southern African region have alternately assumed and been allocated increasing significance as social markers. Botswana, Namibia, Swaziland, South Africa, Zambia and Zimbabwe have all witnessed unprecedented public discussion of the proclaimed rights or declaimed immorality of sexual activities between people of the same sex¹. Movements calling explicitly for 'lesbian and gay rights' have mushroomed in each of these states, both as a result of governmental derogation's of such rights, and as a result of individual affirmations of social identities which deliver these rights.

This proliferation appears to parallel social dynamics elsewhere in the world as organisations calling themselves 'gay' and 'lesbian' can now be found across all continents and in states as different from each other as Japan (OCCUR)², Bolivia³, and Russia⁴. Accounts of the establishment of these organisations suggest a global process of transformation whereby a variety of non-procreative same-sex behaviours become

homogenised under the rubric 'gay' or 'lesbian'. These accounts also make clear that in each case, these 'new' identities are merged into local histories and contexts, so that the end-product has signifiers of local significance while simultaneously providing a strategy for either laying claim to international human rights agreements, or enabling more effective AIDS/HIV preventative work, or simply buying into an expanding market of western signifiers of 'modern' and bourgeois status, or serving all of these purposes. What is clear is that these identities are not simply imposed through an imperialistic cultural discourse or economic dominance, but they are actively assumed and proclaimed from below, by those marginalised in these hegemonic formations :

Following the development of capitalism, gay and lesbian identity is dependent on certain material conditions. So accusations that gay and lesbian identity is a sign of cultural imperialism will inevitably contain a grain of truth. Nevertheless, the cultural imperialism model needs to be nuanced by acknowledging that ideas, strategies, and identities are transformed when they are used from below. It may only be the privileged, travelling, cosmopolitan intellectual who recognises these identities as western. And vulnerable groups can mobilise in their own interests the perceived prestige of things western. (Hoad 1998: 35-6)

Understanding the importance of agency then becomes central in understanding how it is that a boy of 16 years old, working and living on Harare's streets, recognises only his existential condition, and his relationships of dependence and desire as determining his identity as 'gay' or 'straight'. He assumes such labels and categories as interchangeable according to the capital (social and economic) that they offer him in different situations, thereby attesting to the fluid and inherently social construction of these identities for him, rather than to any fixed categorical predisposition (Thomas *Interview* 1993). In contrast, the educated and privileged President Mugabe sees these definitions as fixed categories between which one cannot slide and as definitive signifiers of cultural imperialism. Indeed,

it is this position of privilege which allows Mugabe to define the homosexual as specifically marginal and particularly deviant to Zimbabwean culture, as he implicitly defines heterosexuality as the universal, thereby affirming both the hegemonic ascendancy of heterosexism, as well as his own allegiance to it. But his assertion of a universalism that is specifically heterosexual, is predicated on the *a priori* concept of a binary division of hetero/homosexuality. This in itself relies on the psychoanalytic notion of 'a binary sexuality' that is fixed within individuals, and is a distinctly western European psychoanalytic polarisation of erotic desire as homo/hetero.

Homosexuality is not a conceptual category everywhere. ...When used to characterise individuals, it implies that erotic attraction originates in a relatively stable, more or less, exclusive attribute of the individual. Usually, it connotes an exclusive orientation: the homosexual is not also heterosexual; the heterosexual is not also homosexual. Most non-western societies make few of these assumptions. Distinctions of age, gender, and social status loom larger. The sexes are not necessarily conceived symmetrically. (Greenberg 1988:4)⁵

It is arguable that it is this categorical fixity of definition, rooted in the individual, that has been imported into Zimbabwe, rather than any new activities, and that this has taken place through a multiplicity of variously competing and connecting forces. Mugabe's assumption of (or dare one contend, his colonisation by) this binary notion, leads him to deprive the young urban sex-worker of the agency that his fluid sense of self-definition permits. Indeed, while Mugabe employs the category of homosexual as a criterion for exclusion from the polity, that same identity has served as a means of inclusion for many in South African townships (Stychin 1998:76). As Neville Hoad points out, "Claims of authenticity and/or foreignness take place in an extremely vexed representational field" (1998:36).

This chapter aims to focus on some of the conceptual patterns in law which have facilitated this increasingly fixed conception of sexuality as source of both repression and liberation. For colonial law brought with it a discourse of morality⁶ which was very significant in the construction of individual subjects (in possession of a 'sexuality'). Contemporary definitions of criminal liability, social responsibility, and human rights are all actively engaged in the promotion of these notions of individual subjectivity. These all develop in a tense relationship to conceptions of power and agency where individual desires and subjectivities are subordinate to lineage and the economics of the family. In this chapter, I want to focus on the development of individualised (as opposed to more 'communal') subjectivities, and trace their connection to the increasing significance of sexuality in the formation of identity in southern Africa.

Law, Civilisation And Discourses Of Morality

Zimbabwean common law is that which existed at the Cape in 1891 when the British South Africa Company (BSAC) settlers first arrived in Zimbabwe having travelled from the Cape⁷. The Cape had previously been governed by the Dutch and so the common law of the Cape (and subsequently of Zimbabwe) was Roman-Dutch law. The BSAC settled Rhodesia under a charter granted by Queen Victoria which held that in cases concerning 'natives', customary law would apply so long as the particular custom was not deemed to be "repugnant to natural justice or morality"⁸. It is immediately apparent not only that a whole discourse of 'morality' and law is being introduced, but that the morality of the late Victorian period was equated with notions of 'natural justice'. Unsurprisingly, therefore,

sexual relations tended to fall under common law rather than customary law, and various customary practices deemed to be immoral or unnatural were gradually eased into extinction or marginality by the settler administration.

But the settler administration was establishing as criminally sanctioned, a “natural justice or morality” which had already been promoted as having divine sanction. For prior to the settler’s arrival, the London Missionary Society had blazed the trail for Christianity in the region⁹. It is clear that the work of missionaries had a significant impact on the sexual practices of the people living in the region, and that many Shona/ndebele/Tonga ceremonies of circumcision and rituals of initiation were considerably sanitised and in some cases done away with¹⁰. In many cases, it is not clear what the offensive activities were, but simply that they were 'lascivious', 'immoral' or 'unmentionable vices'.

What is clear, though, is that while no new sexual activities were brought to Southern Rhodesia by the settlers, new offences certainly were. For while the activities would not be new, the definitions of these activities would have been. The whole conception of how those acts that we now understand to be sexual fitted with gender and broader social relations was very different, and remains mediated by the political economy of gender and reproductive relations. The very idea of what acts constitute sex, and what are the implications of sex, are ideas which are culturally construed and contingent¹¹. This is most clearly illustrated by Kendall’s remarks about the confluences and differences between the conventional existence of erotic relationships between women, and lesbian identities.

What the situation in Lesotho suggests is that women can and do develop strong affectional and erotic ties with other women in a culture where there is no concept or social construction equivalent to 'lesbian', nor is there a concept of erotic exchanges among women as being 'sexual' at all. And yet, partly because of the 'no concept' issue and in part because women have difficulty supporting themselves without men in Lesotho, there has been no lesbian lifestyle option available to Basotho women. Lesbian or lesbian-like behaviour has been commonplace, conventional; but it has not been viewed as 'sexual', nor as an alternative to heterosexual marriage, which is both a sexual and an economic part of the culture. (Kendall 1998:239)

Kendall describes how 'sex' is assumed to require a *koai* (penis), so that erotic activities between two women are not regarded as 'sex' (1998:233). This would appear to combine with the fact that the establishment of these relationships between women do not require an individual's autonomy from family, marriage, and kinship. The relationship is seen as quite distinct from (but supplementary to) heterosexual marriage and so it does not disturb the economic and reproductive implications of heterosexual marriage. This means that the fixed categories which are so much a part of western European conceptions of sexuality do not reside within individuals, nor even within the relationships between individuals. The only fixity would appear to be the requirement of *koai* for something to be recognised as 'sex' – and it is this particular fixity which allows the fluidity of all other definitions. It is interesting to speculate whether this requirement is the distancing of potentially procreative sex from non-procreative erotic relations – Kendall does not mention the existence or non-existence of such erotic relations between men, but their existence might illustrate the point further.

This focus on procreative possibilities would certainly appear to have been of considerable significance in Zimbabwe, before the introduction of a colonial discourse of morality, for

prior to the arrival of missionaries and settlers,

Illicit sexual acts were only illicit in so far as the partners disrupted kinship relationships.The limits of sexual behaviour were defined by their likely impact on the family, rather than by fixed concepts of 'moral' and 'immoral' behaviour. (Jeater 1993:30-31)

In this way, sexual relations were not simply the business of the individuals directly involved, but were conceptualised, negotiated, and celebrated by whole lineage groups; they had an effect on the social identity of the entire lineage. They were not conceived as erotic acts separate from kin, but were physically and figuratively constitutive of kinship relations. Whereas, the introduction of a notion of abstract 'moral' judgement, separated eroticism further from questions of reproductive consequence, into an economy of desire which gave a social value to each confessed act, and each exhorted repression so that the sum of these values could be represented in the individual. For this 'discourse of morality' required the labelling and definition of specific acts of what were declared to be 'perversions' residing within the self, rather than a situation where sexual acts were regulated only when they impacted on the broader social context of the reproductive relationships between people.

The arrival of missionaries and settlers brought with it the Judeo-Christian construction of sexual desire as an object of discipline by, and for the sake of, one's self, rather than one's lineage, and introduced the admonishment of personal perversions as predilections to be hidden in private, and shamed in public. In other words, the notion of 'sin'. Crudely put, what had been important prior to Christianity's arrival, was who was doing it, and what the reproductive consequences (both social and biological) of their actions were, rather

than a prohibitive declaration that inquired into the morality of specific acts. What was important in pre-colonial times was consequential physical activity, rather than a projected cognitive desire to be measured as morality or perversion. This new conception of 'sexuality' which penetrated Shona society, was one which was embedded and delivered in a discourse of morality;

Sexuality was not primarily constructed in terms of lineage identity and obligation, and sexual matters were judged on the basis of a set of principles whose concerns were a long way from those of marriage alliance which dominated the African society. Sex occupied the realm of the moral, and was linked to concepts of sin, and of absolute right and wrong. Not only did these occupiers have new ideas about what constituted a sexual offence; they also had different views about whose business it was that such an offence might have been committed. Two concepts in particular, those of 'morality' and 'civilisation', dominated white discussions of African sexual behaviour. (Jeater 1993:35)

In the nineteenth century, the concepts of 'morality' and 'civilisation' provided a framework for the creation and regulation of a 'sexuality' which went beyond the functional structuring of reproductive relationships, by engaging with a consciousness of the self, centered around self-discipline¹². With the inculcation of a notion of divine sanction, the consequences of sexual acts became abstracted beyond the regulation of illicit partnerships between lineages, as they came to be loaded with a variety of differing values – of power and perversion - signifying the truth of an individual.

Conjuring fantasy and denial, this location of a metaphysical sex residing within the self, was accompanied by the more specific production of individual stereotypes of morality invoking the dangers of disease and the fruits of purity¹³. Out of this combination arose the capacity to alternatively create or censure individual identities through sex, and more

specifically through the binary division of homo/heterosexuality. This is a capacity which has come to be deeply embedded in the discourse around sex in contemporary Zimbabwe. To this degree Jeater would appear to be correct in allocating to the colonial occupiers, the role of “the serpent in the Garden of Eden: they brought the concept of ‘sin’, of individual sexual shame, into societies which had not used the idea before” (1993:266).

This discourse of morality was central to the civilising mission of the settlers as it relied on the twin qualities out of which Victorian concepts of a ‘civilised’ and ‘ordered’ society were fashioned - repression and discipline. Resting on the Cartesian concept of the mind’s rational capacity to cultivate order out of the untamed savage nature of the instinct-driven body, Victorian ideals of ‘civilisation’ pictured the primitive ‘nature’ of man as embodied in the supposed atavism of ‘the native’. They therefore glorified the exquisite pain of denial as constitutive of civilisation, and introduced a whole new dimension of sexual morality as a measure of social worth. Add to this the proselytizing of the Christian notion of sin and the introduction of a capitalist economy, and it suggests the development of a consciousness based around the commodification of sex and the erotic regulation of individual desire rather than the prioritizing of procreation and the making of social alliances (see also Phillips 1997b: 425).

These ideals of order and discipline were not only reflective of metropolitan concerns, but became imprinted more definitively on the lives of the colonised as the colonial (and then neo-colonial) state relied on pathologies and demarcations within both the social body and the individual body to establish itself with increasing efficiency. For the arrival of Christian

'civilisation' and colonial authority brought with it not just the notion of individual identity, but also the accompanying techniques and signifiers which produce both stereotypes and the possibility of individualism within the context of the bureaucratic nation-state. Indeed, just as individual identities ironically rely on stereotypes to assert their individualism, so surveillance of individuals is necessary to produce the normative stereotypes required for the patrolling of social margins -

..the distinction between normality and abnormality, between bourgeois respectability and sexual deviance, and between moral degeneracy and eugenic cleansing were the elements of a discourse that made unconventional sex a national threat and thus put a premium on managed sexuality for the health of a state. Foucault writes, "Sex was a means of access both to the life of the body and the life of the species. It was employed as a standard for the disciplines and as a basis of regulation." (HS:146) Through this new biopolitic "management of life", sex not only stamped individuality; it emerged as "the theme of political operations" and as an "index of a society's strength, revealing of both its political energy and biological vigor" (HS:146). (Stoler, A.L. *Race and the Education of Desire: Foucault's History of Sexuality and the Colonial Order of Things* Duke University Press: 1995: 34-5)

In this way, the imposition of an 'anatamo-politics' of the individual body (health and hygiene, work, efficiency, morality, production¹⁴) as well as a demographic regulation of the social body (land apportionment, pass laws, curfews, compounds etc.), are significant in that they supply the 'normalizing judgement' which produces self-disciplined 'obedient subjects' (Foucault 1978: 139-141). This 'obedient subject' is constituted by

..habits, rules, orders, an authority that is exercised continually around him and upon him and which he must allow to function automatically in him. (Foucault, M. *Discipline and Punish: The Birth of the Prison* 1978: 128)

The construction of African customary law and the imposition of Roman-Dutch common law codified the legal constitution of African men¹⁵, but the real constitution of African

people as colonial subjects could only take place through a process which would impact upon both their individual lives as well as their collective lives. In this way, with a migrant labour system regulated strictly in terms of the sexual division of labour, individual bodies became differently valued, but labour became generally commodified. The creation of a moral discourse was very significant in constituting these individual subjects. With its Christian and medico-scientific elements, it distinguished the sins of erotic sex from the biology of reproduction, thereby furthering the construction of a new distinctive concept of an individual subject in possession of a 'sexuality'. Sex began to be reconceptualized as the location of individual truths, so that ignorance of a 'sexual morality' was seen as one of the primary indicators of the 'savage' status of 'heathen' natives. The inculcation of a moral discourse was considered to be of paramount importance in the development of civilisation.

Courts around the world have always found it notoriously difficult to accurately define 'the homosexual' or 'a homosexual act'. The changing faces of the sodomite, and the varied specifications of the bugger, are clear examples of the necessity for this discourse of morality to define and redefine specific acts of perversion. From Roman-Dutch jurists' attempts to define sodomy¹⁶ through to the attempts of the Wolfenden committee in England to define 'the homosexual' and 'homosexual offences' there is an overriding preoccupation with specifying particular acts of perversion¹⁷. Roman-Dutch jurists disputed the inclusiveness of 'unnatural offences' ('onkuisheid tegen die natuur') over the last 700 years. During this time, they were at different times construed to include such things as masturbation, sex between people of different races, and sex between a Jew and a Christian.

The process of definition which leads into this categorisation of 'natural/unnatural', is in itself a very conscious process of deliberation, and is far from being 'natural' in the sense of 'self-evident' or 'given'. Each specific act is carefully considered and judged by the court to be 'unnatural' and enshrined through precedent as an unnatural act. Those on trial will be charged with a variety of acts, each representing a specific and individual breach of what has been defined as 'nature'.

Les Moran's discussion of the syntactical complexities encountered by the Wolfenden committee demonstrates clearly this preoccupation. Precisely what constituted transgression, lay not so much in the identity of a homosexual, as there was "no necessary connection between the sexual identity that is used to name a category of unlawful act and the sexual identity of the person that performs the act"¹⁸. What was of more significance was how specific acts came to be relied on as the measure of immorality, both because and despite the fact that it was clear that the commission of these acts did not signify a homosexual identity. But this was the only locus around which the homosexual's 'self' could come close to being identified. For the neat binary division of homo/heterosexual has never been so clearly replicated in activity as it was in ideology.

Constituting Individual Subjectivities:

The introduction of this moral discourse in colonial Zimbabwe has thus been very significant in constituting individual subjects. With its Christian and medico-scientific elements, it has distinguished the sins of sex from the biology of reproduction, and so has furthered the construction of a new distinctive concept of an individual subject in

possession of a 'sexuality', rather than one person whose existence and partnerships are regulated through his/her relationship to a clan or kinship group. Where previously relationships were regulated according to the collective interests of the group whose continuation was assured both socially and physically through marriage ties¹⁹, in this new individualised 'sexuality', lies the potential for both the denigration of specific perversions as 'deviant', and the simultaneous normativity of a moral rectitude of individual salvation.

It is this creation of individual subjectivities with the emphasis on the self which is contended to be of contemporary significance, as it appears both in the current notions of criminal liability and custodial punishment²⁰, as well as the designation of sexual offences, and it is also an integral part of the notion of individual human rights. This emphasis on individual subjectivity provides a thread of continuity between the colonial law's creation of individual subjects bound by their specific proclivities, who are held individually responsible for specific social acts, and the globalisation of a notion of human rights which reside in the individual and are often signified through these same proclivities.

As the trace of this thread of continuity, individual subjectivity can also be seen to represent the growth of a particular conception of the individual in society. For implicit in this contention of continuity is the question of 'tradition'. Indeed, cultural tradition is frequently claimed to be under threat from the irrepressible and continuous growth of individual subjectivity as prioritised over lineage, just as 'traditional culture' is also claimed (by the same 'traditionalist' campaigners) to impede the state's ability to invest in individual rights and duties. This is illustrated not just by the contentions that same-sex

love is against Zimbabweans tradition²¹, but also by the conflicts over the changing status of women. For when the 1982 Legal Age of Majority Act (L.A.M.A) conferred legal subjectivity on all Zimbabweans over the age of 18 – immediately granting women the unprecedented possibilities of legal subjectivity, with the attendant rights of autonomy – it met with fierce resistance.

Before Independence in Zimbabwe, black women were perpetually legal minors - they had no legal status as adults and were permanently under the authority of a guardian, either their father, brother, or husband. The LAMA has extensive repercussions for relations between men and women, particularly as it means that women no longer need the consent of their guardian to marry²². While many women continue to operate in a 'traditional' framework whereby they remain under the guardianship of a man, some women make an explicit choice to opt for the individual autonomy which lies outside of that 'traditional' structure. This choice represents a potential autonomy for women and so, implicitly jeopardises the system of customary marriage which involves the payment of bridewealth (*lobola*) to the guardian in exchange for his daughter. The assurance of exclusive access to a woman's reproductive system is what makes her a 'good wife', and this assurance, most commonly understood to be signified through virginity, clearly excludes a woman's sexual independence. Thus, a sexually independent daughter will not bring her guardian much in the way of *lobola*, and her brothers will in turn not be able to rely on her *lobola* to afford 'good wives'. Furthermore the guardian is often reluctant to invest much in the education of a daughter who will not recoup his expenditure through *lobola*. The LAMA has therefore undermined not only men's wielding of officially sanctioned control over women, but also their entitlement to derive economic benefit from

them. Elder men's perceptions are that it has fundamentally interfered with their ability to control independent women and their economic and social lives (Seidman 1984). In view of the kinship relations of production that exist around the marriage of a woman, the LAMA is therefore bound to have a profound impact not just on the lives of those women who choose to exercise their legal subjectivity and lead autonomous lives, but it also brings about considerable changes in the relationships and lives of all the men and women in the extended family.

Resistance to the LAMA amongst men, particularly chiefs and elder men, not only obliged the then Prime Minister (now President) Mugabe to explain its purpose as being primarily to extend the franchise²³, but also inhibited changes to the institution of *lobola*. In the war of liberation leading to Independence, Mugabe's party ZANU²⁴ had relied on the participation of a number of Women (including as combatants), and the drive of a revolution which promised to liberate women, and the working classes, just as it promised to liberate Zimbabwe from segregation and discrimination. It was recognised that its commodification and inflation had changed *lobola* from a traditional bond between lineage groups, to a capitalist transaction between men²⁵. But when discussion arose around its abolition, and the stable governing support of older men was of more use to government than the disruptive arguments of gender reformers, *lobola* was defended as "part of the national heritage, an essential element of stable social relations", which should resist "western feminism, ...a new form of cultural imperialism."²⁶

Similarly, at the most recent (March 1998) United Nations Human Rights Committee consideration of Zimbabwe's Report under the International Covenant on Civil and

Political Rights²⁷, members of the Committee repeatedly expressed their concern with the outlawing of sodomy, as well as other measures and activities of the state which discriminated against or persecuted homosexuals, and they requested a commitment from the Zimbabwean delegation that these measures be repealed. No such commitment was forthcoming on the issue of homosexuality, with the delegation claiming that the government's hands were tied by the social opprobrium for homosexuality which had its origins in local cultures. The delegation suggested that homosexuality

was not accepted by Zimbabwe's varied cultures, which had only been introduced to the concept of human rights upon the attainment of independence 18 years earlier. Legislative change was usually effective only when it was culturally acceptable; to that end, much remained to be done in the field of education. (UN Human Rights Committee summary CCPR/C/SR.1651 @27)

This argument was not accepted by the Committee which pointed out that many provisions of the Universal Declaration of Human Rights itself contained revolutionary ideas which had not been supported by many cultures, "including Western cultures", but which had then helped to transform situations. The Committee concluded by saying that "education alone was not sufficient; appropriate legislation was also necessary"²⁸.

Both the arguments raised against women's autonomous subjectivity, and the decriminalisation of homosexuality, defend a particular conception of culture as immutable. Such definitions of 'traditional heritage' choose to ignore the fact that the relative novelty of a Zimbabwean national identity arises from a new political process which relies on modern notions of citizenship within a democratic polity. They also refuse to acknowledge the impact of industrialisation and a capitalist economic system in the

construction of individual wage-earners and consumers, as well as the inevitable growth of global dynamics to produce new kinds of cultural interactions and new hybrid identities agglomerated from a wider variety of sources. Choosing to defend or ignore selective perceptions of 'tradition', is a political process carried out through constructing a consensus around the choices which best serve the maintenance of (the hegemonic) order. The creation of Zimbabwean nationhood, as much as ethnicities, cannot be taken for granted as the ontological evolution that it is popularly taken to be. Indeed, the development of strong notions of 'primal sovereignty' is argued to have been highly instrumental in the colonizing process as a notion of collective identity was emphasised in order to develop a notion of a colonised ethnic subjectivity²⁹. Comaroff explains this well in relation to 'the Bechuana':

Most of the evangelists saw no contradiction, no disjuncture in the discourse of rights, between the register of radical individualism and that of primal sovereignty; indeed, they did not explicitly distinguish them at all. The effort to implant modern, right-bearing individualism might have pointed toward a society of free *universal citizens*, while the conjuring of a primordial Bechuana identity gestured toward the creation of *ethnic subjects*. From their perspective, however, the two things were part of a seamless campaign to rework the indigenous world, one describing that world as it was, the other as it ought to be. The former, in short was a narrative of being, of congealed 'tradition'; the latter, a narrative of becoming, of revealed 'modernity'. (1997:225).

The selection of 'empowering' women in the struggle to redistribute power as among free 'universal citizens', followed by its explicit refusal once that notion challenged the consensus of national subjectivity which came to exist between traditional patriarchs and the bureaucrats of the nation-state, is an explicit example of this process of 'selecting tradition'.

What is at issue is not that a selection is made, but rather how that selection is made, and what

it represents in a constant process of selecting which customs we value, which we devalue, and which we ignore. We have to accept that we constantly reinvent tradition to suit our contemporary interests³⁰. This is how we make law, it is how we make government policy, it is how we produce values and discourse – through the renegotiation and reinvention of tradition..

But who is this 'We'? It is not a neutral term for the collective interests of all people living in a state, but for the interests of those who are in a position to exercise some influence over the process, and have the desire to do so. This question becomes particularly pertinent in examining the assertions of 'traditional' sexual practice, for these practices represent structures of gendered power and social hierarchies. While pre-colonial Zimbabwe may not have had the conception of this 'sexuality' that we have now, it certainly distributed social power through the medium of gender. The introduction of a sexual subjectivity, built around a notion of perversion and predicated on a binary division of hetero/homosexual, will inevitably impact on gender relations (which were never static in any case). While contemporary theorists such as Judith Butler, write about the 'performative substance' of gender, and 'the regulatory practices of gender coherence'³¹, there is little doubt that the significance of this performance, regulation and coherence was also great prior to the arrival of colonising settlers 100 years ago. The notion of 'tradition' is a primary modality through which structures of power, and so gender coherence, are defended, melded, and asserted.

The specificity of assessment and labelling wrought through the proclamation of tradition,

is contrasted by a lack of precision in locating tradition in a specific historical time-frame. For the question - “When was tradition?” – becomes usefully revealing when we consider the transmission of sexual values. Were traditional practices those which existed before the arrival of missionaries or afterwards? What happened to the activities sanitised by missionaries? Not all attempts at sanitation succeeded, for some rituals and ceremonies which had been denounced as immoral, continued secretly when the missionaries were absent. Did these activities lose their 'traditional' status, or gain the status of ‘resistance’ – how were they altered? What process determined which practices should be allowed to die, and which to continue?

The pledging of young girls in marriage is now widely recognised as wrong and inappropriate, but it was customary and frequent. Yet few demand its reinstatement as a cultural tradition, as part of the national heritage. Whereas, homosexuality is castigated and decried as 'against tradition' and by implication totally unacceptable. Besides the fact that research suggests this to be the christianised tradition of missionaries, rather than the authentic unblemished home-grown tradition that it is made out to be, the question which needs to be asked is what process underlies this selection and labelling of traditions?

Furthermore, it might be pointed out that Christianity itself is not 'traditional' (as relates to pre-colonial authenticity) to Southern Africa, but few Zimbabweans would make the argument that it should therefore be done away with – so how tradition is viewed and when it is given any importance can be significant indicators of powerful interests. Diana Jeater, in writing about the way that the criminalisation of adultery deliberately focused on

African women, suggested that 'tradition' actually reflects more the present than the past in that "The past to which the family heads looked back seems suspiciously to reflect the concerns of their present" (1993:142).

These strategies of present power relations would also appear to be reflected in the process of selection which produces the gendered configurations of 'tradition' mentioned earlier, and which makes the universalisation of individual autonomy and subjectivity so problematic. For the promotion of individual rights inevitably conflicts with the proprietorial interests that exist in inherited and historically structured relations of gender power. A measure of individual autonomy is fundamental to one's accession to rights, to liberties, and it is argued, to social responsibilities. For individual legal subjectivity is vital to both claiming rights, and being held accountable for one's actions. The first Native Marriage Ordinance (1901) attempted to protect African women from being forced into marriage, and immediately bestowed on women a measure of potential autonomy from the men who were their custodians:

The African idea that sexual identity was an aspect of lineage membership, and that individual members were answerable to the family group for the uses they made of their sexuality, was undermined at a stroke by the Ordinance's provision that no woman should be made to marry against her will. The women's rights were given priority over the rights of the lineage.....

.... In effect, the State was usurping the rights of family heads to control the sexual choices of members of their households and lineages. The shift from answerability to the ancestors and the lineage to answerability to the State had major political implications in terms of the authority of 'big men' over the people, presenting client men and women as individuals not necessarily bound by or wholly defined in terms of lineage membership.(Jeater 1993:81)

Ironically, this was compounded by the attempts of family heads to use the colonial law to bring women back into their control. In persuading the colonial authorities to pass the Native Adultery Punishment Ordinance of 1916 (NAPO), they specifically prohibited married African

women from an act that was permitted for anyone else³². What it penalised was not an illicit sexual act, but the specific person of the errant married woman. While this was aimed at disempowering women, it also brought African women's particular social status increasingly within the realm of legal regulation. Implicitly, it constituted in law the criminality of African women's sexual autonomy, and so initiated a partial legal subjectivity. For women were to be treated as legal subjects in that they could be held responsible for committing the offence of adultery, but they did not have the subjective status to be offended by a man's adulterous behaviour. Their individual autonomy was to be limited to the ability to offend, and nowhere else were they to be given any legal subjectivity.

The NAPO was explicitly aimed at controlling women and was clearly intended to empower husbands but in constituting the criminality of women's sexual autonomy, it implicitly relied on a notion of women's independent action and their specific responsibility. By shifting the source of control from lineage to the state, there was a commensurate shift from the control of lineage-bound relationships, to the control the State exercises over people in their individual capacity which makes them specifically responsible.

For the law (like any form of power) does not just prohibit and control, it does not simply denounce and discredit. It also produces and delivers, and it has the capacity to empower people. It engenders behaviour, it generates ideas and action, it bounds individual responsibility as well as promoting individual capacity and agency, and in so doing, it constitutes individualised notions of identity. Thus, the laws defining sexual offences play a role in giving shape to gender and conceptions of sexuality – they regulate sexual relations between

individual people and shape interaction between men and women, and between different men, and different women. They reward certain behaviour and punish other behaviour, and in doing so assess behaviour which fits or does not fit with certain conceptions of masculinity and femininity.

Zimbabwean laws around rape have their origin in the Roman-Dutch laws concerning abduction, and consequently they show a preoccupation with protecting a man's exclusive access to his wife's reproductive capacity, and little concern for the bodily integrity of a woman³³. Similarly, customary law shared this preoccupation with the interests of men in an undisturbed relationship to a woman's reproductive system. While the law is now showing some more concern with the well-being of women (rather than solely considering the interests of her husband/male guardian), the socio-historical origins of this law are still clear in its impact and in its interpretation; *vide* the difficulty that the law has in protecting women.

The Implications of a Sexualised Identity:

But this issue becomes most interesting when we consider the issue of men who have sex with men, and the manner in which it has arisen in the 1990's. It might appear that the approach adopted towards gay and lesbian rights in Zimbabwe is in complete contrast to that adopted in South Africa where the new constitution was the first in the world to prohibit discrimination against someone on account of their sexual orientation (see the chapter by Pierre De Vos in this edition). While in many ways this does contrast with Zimbabwe, both situations do share something very striking, and that is the recognition of new identities based around sex. The increasing problematisation of same-sex desire is one that must inevitably also speak of

different-sex desire, and so must address the question of sexual desire in general. For in defining the homosexual, one implicitly defines the heterosexual. Carl Stychin accurately describes how the erasure of gay identity from the dominant discourse prioritises the heterosexual subject as “universal and univocal”³⁴. But in order to make this prioritisation explicit, in order to assert this universalism as one which is specifically heterosexual, one has first of all to allude to a marginality predicated on the binary division of hetero/homosexuality, and to do that, one has to engage with the *a priori* concept of an individualised 'sexuality'.

Thus, Mugabe has not only been responsible for producing a conception of homosexuality in the Zimbabwean context, but also that of heterosexuality. All those Zimbabweans who have previously not incorporated this notion of a 'sexuality' into their identity, now find themselves blessed with one. By designating others as 'homosexual', Mugabe has automatically emphasised the norm as 'heterosexual', and so many Zimbabweans have come to see themselves as 'heterosexual', where they did not have such a categorically sexual self-consciousness before. This is not to suggest that there was no homosexual or indeed heterosexual sex going on in the past, nor that people never thought about sex. But they thought about it differently outside of this binary division of heterosexual and homosexual, so that the identity of a homo/heterosexual was not one publicly recognised and acknowledged. Through two very different processes, this has now taken place in both SA and Zimbabwe.

The inclusion of sexual orientation in the South African constitution's equality clause, has led to the decriminalisation of homosexual acts, and also to the recognition and development of particular rights of citizenship for South African gays and lesbians. It has led to a debate around

the inclusivity of human rights in which organisations representing lesbians and gay people are able to participate fully and are given relatively equal access to the means of the debate's production. Human rights, legal and constitutional discourse (both popular and intellectual) in South Africa abounds with references which recognise sexuality as a constituent marker of identity and citizenship.

In 1995, President Mugabe suggested that being gay was a 'white man's disease'. This prompted a number of black Zimbabweans who felt themselves to be gay or lesbian to identify themselves as such and insist "We do exist". The numbers and visibility of black Zimbabweans identifying as lesbians and gay men has increased considerably since³⁵, and unwittingly, Mugabe finds he has been the most effective publicist that the identity and the organisation which has been the specific target of many of his attacks (GALZ - Gays and Lesbians of Zimbabwe) has ever had. Indeed, he has introduced the word and concept of a 'sexuality' into a previously virginal public discourse; he has been a virulent propagandist for the whole concept of a binary division, where those boundaries were previously blurred. This is not to suggest that Zimbabwe is now flooded with self-identified same-sex lovers – it is simply to suggest that he has participated in the constitution of a new identity – one that is individualised, sexualised, and in this form, historically marginalised. Further, by publicising his homophobia President Mugabe has given an identity to many who were previously ignorant of or uncaring about it. Just as he defines the agenda for the way that much of the country comes to see homosexuals, so he helps define the way people come to see themselves. Whereas they were previously identified through other social markers, now people are also either heterosexual or homosexual and accordingly develop a binary conception of sexuality. This is a conception which can be

criticised as limited, in that it concretises what has previously been fluid and often carries an anticipation of immutably entrenched identities, but it simultaneously allows for an appeal to specific late twentieth-century notions of rights. In this case, it can be argued that the identity of gay/lesbian has arisen out of a contestation of rights. I would argue that the structure of law is not in itself antithetical to the empowerment of women, as has been suggested by Carol Smart in her book *Feminism and the Power of Law* (1989), and that a rights-based discourse can be helpful. Rights are contested and asserted through challenging existing structures of power rather than simply as ontological givens. Agency is therefore of paramount importance, and legal subjectivity is clearly a precondition of rights. The irony is that this subjectivity may arise through the contestation of its denial - autonomy thereby being produced through resistance.

Just as the South African constitution has the effect of constituting a gay identity – giving it form and substance, recognition in terms of rights, legal subjectivity - so too does the refusal of these substantive social attributes. Simply put, saying you *do* deserve these rights specifically because you are gay, and saying you *don't* deserve these rights because you are not heterosexual, both have the effect of elevating sexuality as a significant constituent of citizenship and identity. What we are seeing is the increasing use, in both countries, of sex as a medium through which more and more people identify themselves; sex as constitutive of people, as an identifier of social and legal subjectivity.

This is a process which has been compounded by the challenges presented to all Zimbabweans with the spread of HIV/AIDS. And interestingly, it is the very heterosexual course of HIV

infection in Zimbabwe which has heightened the awareness of the significance of sex in the constitution of the social body. For example, the silences around the sexual which were so deeply embedded in Shona language had to be filled with an articulate currency of anatomical terms and definitions of sexual behaviour. Where previously certain references to sexual practices and relations were spoken only between men or between women, there has had to be a concerted attempt to develop language accessible to all³⁶. HIV/AIDS has impacted enormously on how much sex is spoken about, and in what manner³⁷, but the vital need to discuss it is constantly challenging the manner in which sex is configured by what are seen to be 'traditional' gender relations. Women are known to be the section of the population most vulnerable to infection, partly on account of their structural position and consequent powerlessness to negotiate safe sexual practices, and partly on account of the gendered silences around sex; it is these factors which figure prominently in the tremendous difficulties in establishing sex/health education classes for women and girls³⁸. But nevertheless, the discourse surrounding sex has been considerably affected by the development of AIDS/HIV and related illnesses. The increasing use of language which is so tied into the conceptualisation of 'a sexuality' which resides in the individual, is of enormous importance. This new currency of language not only renders sexual what may not have been considered 'sexual' before, but also fixes an unspecified fluidity in the concrete shape of definition. Creating terms and definitions inescapably binds and fixes behaviour which might before have been more malleable, removing a potential variety of interpretations, and fitting it into a larger (and binary) discourse around sex as a whole.

In Zimbabwe, with blind attempts to encourage sexual abstinence, the discourse around HIV

has so far been shaped to emphasise a concept of individual morality constructed around marriage and the notion of fidelity. This has implied a certain elision of individual responsibility, as safety is portrayed as resting on the ‘good behaviour’ and morality of couples joined in marriage. The notions of individual responsibility within a diversity of chosen lifestyles, are sidelined in attempts to discourage sex outside of marriage, and to rely on conventional relationships of monogamous fidelity. The responsibility is seen as shared in that it resides in (presumably monogamous) joint fidelity³⁹, rather than the individual and personalised methods of ensuring ones’ own safety and thereby the safety of those with whom one interacts. Despite the dangerousness of this ‘morality’ approach in a predominantly polygynous society, its promotion is not surprising in that it dovetails with attempts to conserve 'traditional' gender roles and the importance of lineage. One might tentatively suggest that the notion of individual responsibility (for safe sex or for other issues of health and justice) is something which can only develop where there is a more developed concept of individual rights and subjectivities. This concept of individual responsibility and rights runs counter to the hegemonic relationships built on an alliance of modern bureaucratic and ‘traditional’ polygynous patriarchies, which depend on women’s lack of autonomy. It is also a concept which can only develop at the expense of those whose power resides in structures which subordinate individual subjectivities in their claim to represent communal interests. Thus, the call to sexual abstinence outside of monogamous married relationships is a call to a lineage-based morality, rather than the potentially ‘safer’ practice of rooting protection in a notion of individual responsibility. The efficacy of an approach of individual responsibility would require an emphasis on individual rights and individual autonomy, and to proclaim these would be to challenge both a heteronormative notion of fidelity (practised in a sexist manner), and also the ‘traditional’

subordinated position of women under the power of a male guardian. The recognition of the importance of individual responsibility can only be predicated on a similar recognition of individual rights, and the development of a rights discourse cannot avoid invoking notions of autonomy and so a degree of responsibility for one's self. On the one hand, the establishment of these individual rights and responsibilities presupposes a democratic framework, through which people are able to represent their own interests and account for their own behaviour. On the other, the development of these individual rights and responsibilities might be claimed to be a precondition for the operation of an effective democracy.

Conclusion:

Foucault wrote much about sex being increasingly invested with power (both as a source of 'oppression' and as a source of 'liberation') within an increasingly bureaucratised and bourgeois state. He wrote about sex being "originally, historically bourgeois" but inducing "specific class effects"⁴⁰. This is because rather than just being perceived as symbolic of life and causative of procreation, sex has come to be seen as the location of some individual truths. It is held to be a veritable treasure trove of dangerous but vital secrets in need of investigation and monitoring. It is seen to call for correction through techniques which render truth rational, engender a discipline of the self, and reveal the subjectivity of an individual desire which locates the person within a social structure of subordination and universal values. Zimbabwe may not be undergoing a rapid process of bourgeoisification at the level of macro-economics, but the increasing urbanisation, the quick growth of a middle-class, the slow deterioration of old community ties, an incremental commodification, and the growth of individual (as opposed to communal)

subjectivities, all suggest a process similar to that depicted by Foucault.

As the certainties which lay behind the old categories of gender identification are increasingly challenged, and the old boundaries of nation-states become transgressed by increasing loads of information flowing further and further, so the old categories of power and collectivity become increasingly fragmented. This process of globalisation invokes new identities which traverse old boundaries. Whether in Africa, Asia, the Americas, or Europe, it is clear that gendered relationships are being buffeted by the newly discovered global titles of identity for what are ancient activities.

These 'gay/lesbian' names for identities might originate in North America and Western Europe, but they have been appropriated by people the world over as they imply a claim to the protection and rights guaranteed under international treaties, and a way out of an almost universal form of marginalisation. By proclaiming these identities, people not only lay claim to their corresponding rights, but they also assume a certain level of individual responsibility and autonomy. But this claim immediately makes them vulnerable to the accusation that they are ignoring their indigenous cultural traditions, by adopting foreign ones. The 'gay/lesbian' identity is now so global, that this is an almost inevitable process. It remains to be seen to what extent people adopt and proclaim the identity in such a way that it does not obscure same-sex identities which were accommodated in a local context, and that these local histories augment and help constitute the identity of 'gay', rather than become hidden by it. This process of globalisation surfs the electronic wave which accompanies the avaricious multi-national spread of the free market, but it entertains a liberal human rights discourse, which carries with it an

inevitable growth of individualism. Out of this can spring a more radical pluralism which develops a non-reductive politics of social justice.

Such a radical pluralist approach can be seen to refuse reductionism in that an analysis of the persecution of homosexuals in Zimbabwe, and the contrary extent of their emancipation in South Africa, indicates how sexuality as a whole, regardless of hetero/homosexuality, comes to be a more significant constituent of subjectivity, and so becomes an increasingly constitutive, but certainly not exclusive, ingredient of national identity. The broader lesson learnt from this, is that analysis of one form of categorical oppression can illustrate the need for a politics of diversity, and suggest a platform from which to develop that. Sexual politics can contribute to the reimagining of the nation-state as coalitional and so intrinsically diverse, rather than essentialist⁴¹. And interestingly, the contrast in these two countries, shows us how sexuality comes to constitute identity through its proclamation as much as through its oppression, for it is a process which takes place as much through the assertion of individual human rights, as it does through the denigration of specific stereotypes of individual perversion. It arises from the process of contestation itself.

¹ In 1998 the Botswana government, fearful that its prohibition of sex between men would be challenged on the grounds of sexual discrimination, passed legislation that prohibited sex between women; in the same year, the Lesbian and Gay Botswana Association was formed. In 1997, Namibian President Sam Nujoma said homosexuality “should be uprooted totally” from Namibia, calling it “a hideous deviation of decrepit and inhuman sordid behaviour” (Weekly Mail and Guardian 14/2/1997); the Rainbow Coalition was founded earlier that same year. In March 1997, the newly formed Gays and Lesbians of Swaziland (GaLeSwa) was refused recognition by the Prime Minister of Swaziland, although there appears to be no existing legal prohibition against homosexual acts. In August 1998, the Lesbians, Gays, Bi-Sexual and Transgender Persons Association (LEGATRA) of Zambia was formed, amid uproar from government and press (see The Daily Mail of Zambia 2/9/98). For information on South Africa, see Gevisser, M. and Cameron, E. (eds.) 1995.

² Association for the Lesbian and Gay Movement – see Pinkerton, S.D. and Abramson, P.R. in West, D. & Green, R. *The Socio-legal Control of Homosexuality: a Multi-nation Comparison* (New York: Plenum: 1997:81-82).

³ For an analysis of how AIDS transformed Bolivian *gente de ambiente* (‘people of the atmosphere’) into

'gay' people, see Wright, T. and Wright, R. in West, D. & Green, R. (*Op.Cit.* 1997:97-108)

⁴ See Kon, I. in West, D. & Green, R. (*Op. Cit.* 1997:221-242)

⁵ Quoted in Kendall “ ‘When a Woman Loves a Woman’ in Lesotho: Love, Sex, and the (Western) Construction of Homophobia” in Murray, S.O. and Roscoe, W. (eds.) *Boy Wives and Female Husbands: Studies of African Homosexualities* (New York: St Martin's Press: 1998:229).

⁶ See Jeater, D. *Marriage, Perversion and Power: The Construction of Moral Discourse in Southern Rhodesia 1894 - 1930* (Oxford: Clarendon Press: 1993)

⁷ Section 89 of the Constitution of Zimbabwe.

⁸ 1889 Charter of the British South Africa Company

⁹ “After Mzilikazi’s flight to Matabeleland, (Reverend Robert) Moffat was the first European to visit him there in 1854, and five years later he established the London Missionary Society in Matabeleland” Martin, D. and Johnson, P. *The Struggle for Zimbabwe: The Chimurenga War* (London: Faber and Faber: 1981: 40).

¹⁰ See Bullock, C. *The Mashona and the Matabele* (Cape Town: Juta & Co.: 1950: 45 & 50). See more generally Phillips, O. (1997) “Zimbabwean law and the production of a white man’s disease” in *Social and Legal Studies* Vol. 6 (4) p.475-476

¹¹ See generally, Caplan, P. *The Cultural Construction of Sexuality* (London: Tavistock: 1987), and Greenberg, D. *The Construction of Homosexuality* (Chicago: University of Chicago Press: 1988).

¹² The Nineteenth century saw the beginnings of a ‘scientific’ approach of ‘sexuality’; to varying degrees, the works of Krafft-Ebbing, Sigmund Freud, Havelock Ellis, etc. were premised on the belief that a methodologically structured approach to sex would reveal the “truth” about sex, and hence the “truth” about life. Similarly, it was in the nineteenth century that the terms homo/heterosexual were first used. See Foucault, M. *The History of Sexuality: An Introduction* (London: Peregrine: 1978), and Weeks, J. *Sex, Politics, and Society, the Regulation of Sexuality since 1800* (Harlow: Longman: 1989) and Plummer, K. (ed.) *The Making of the Modern Homosexual* (London: Hutchinson: 1981).

¹³ For an account of stereotypes of race and sex from the middle ages to the twentieth century (but with “a primary focus on the turn of the century” (p.11)) see Gilman, S. *Difference and Pathology: Stereotypes of Sexuality, Race, and Madness* (New York: Cornell University Press: 1985)

¹⁴ See Burke, T. *Lifebuoy Men, Lux Women: Commodification, Consumption and Cleanliness in Modern Zimbabwe* (London: Leicester University Press: 1996)

¹⁵ Prior to the 1982 Legal Age of Majority Act, black African women in Rhodesia/Zimbabwe had no legal subjectivity, and were subject to the control of their male guardian (father/brother/husband/uncle), though certain legislative efforts did specifically prohibit women from certain acts, lending them a *de facto* subjectivity but only in so far as to restrict their behaviour, rather than empower them. (e.g. the Native’s Adultery Punishment Ordinance 1916).

¹⁶ For a summary of these various attempts see Botha, K. and Cameron, E. “South Africa” in West, D. and Green, R. *Socio-legal Control of Homosexuality: A Multi-Nation Comparison* (NY: Plenum: 1997 pp5-38). For an analysis more relevant to contemporary Zimbabwean interpretations, see Propotkin, P. “Getting to the Bottom of Sodomy” (University of Zimbabwe: unpublished article: 1997).

¹⁷ For a contemporary Zimbabwean example of this specificity see *S v Meager 1977(2) RLR 327* and see the discussion of this case in Phillips, O. “Zimbabwe” in West, D. and Green, R. *Op Cit.* (1997:43-55).

¹⁸ Moran, L. “The Homosexualisation of English Law” in Herman, D, and Stychin, C. *Legal Inversions: Lesbians, Gay Men and the Politics of Law* Philadelphia: Temple University Press: 1995:9-10).

¹⁹ Jeater, D. (1993) *Op. Cit.*

²⁰ Therapeutic treatments and rehabilitative programmes for (sexual or ordinary) offenders held in custody are extremely rare in Zimbabwe, and the sentence of custody is predicated on the belief that punishment of the individual is a suitable mechanism of retribution for anti-social acts. Traditionally, restitution would be made through lineage structures (for example the paying of damages in the form of livestock which would not simply belong to one person, but to the family, or more specifically, the male head of that family) rather than being embodied in the custody of the individual.

²¹ For discussion of this see Phillips 1997.

²² Under the LAMA, consent is not required for a civil law marriage, into which any adult may freely enter - however, it would seem that the consent of a guardian is still required when a woman enters into a marriage under Customary Law (Jacobs, S.M. and Howard, T. ‘Women in Zimbabwe: Stated Policy and

State Action' in Afshar, H. (ed.) *Women, State, and Ideology: Studies from Africa and Asia* (London: Macmillan:1987:32)).

²³ *Ibid.* 1987:32; and Folbre, N. 'Patriarchal Social Formations in Zimbabwe' in Stichter, S.B. and Parpart, J.L. (eds.) *Patriarchy and Class: African Women in the Home and the Workforce* Boulder: Westview Press: 1988:75).

²⁴ Zimbabwe African National Union - in 1980 it became the ruling party.

²⁵ Seidman, G.W. 'Women in Zimbabwe: Post-Independence Struggles' *Feminist Studies* 10(3), (Fall 1984:432).

²⁶ *Ibid.*

²⁷ "Consideration of Reports Submitted by States Parties Under Article 40 to the Covenant" United Nations Human Rights Committee 1651st Meeting, 26 March 1998 CCPR/C/74/Add.3, HRI/CORE/1/Add.55

²⁸ UN Human Rights Committee – Summary record of the 1651st meeting released 28 July 1998 - CCPR/C/SR.1651 @31

²⁹ In this paper, for reasons of space, I shall assume but not critically address this understanding of the creation of ethnic identities, and for an exposition of more direct relevance to the history of ethnicities in Zimbabwe, I suggest Beach, D.N. *The Shona and Zimbabwe, 900-1850* (London: 1980) and Ranger, T. 'Missionaries, Migrants, and the Manyika: The Invention of Ethnicity in Zimbabwe' in Vail, L. (ed.) *The Creation of Tribalism in Southern Africa* (London: James Currey: 1989).

³⁰ See Hobsbawm, E. and Ranger, T.(eds.) *The Invention of Tradition* (Cambridge: Cambridge University Press: 1983).

³¹ Butler, J *Gender Trouble* (Routledge: London: 1990:24)

³² The *Native Adultery Punishment Ordinance* (NAPO) of 1916 was intended to strengthen African marriages by making adultery a criminal offence, punishable by up to a year's imprisonment. While this referred to both men and women, the fact that African marriages were polygynous, meant that its application was persistently gender bound. For a married woman to sleep with any man other than her husband would be committing adultery, while a married man could be convicted of adultery only if he slept with another man's wife. Thus, he could sleep with any woman who was not married to another man. So while the NAPO was superficially symmetrical in its design, in effect it penalised only married women and the men they slept with.

³³ The requirement of penile-vaginal penetration and the impunity with which a man could rape his wife, are both symbolic of this preoccupation.

³⁴ Stychin, C. *Law's Desire* (London: Routledge: 1995:30)

³⁵ This increase is seen to be reflected in the growth of the organisation GALZ and the fact that black members of galz are now the most numerous, and the most active executive positions are occupied by black Zimbabweans.

³⁶ In June 1998, at the trial of ex-President Canaan Banana, the first interpreter had to be replaced as she could not cope with the translation of such clinical terms as "erections" and "semen". (Matyszak, D., *pers.comm.* Faculty of Law, University of Zimbabwe)

³⁷ See Pattman, R. *Discourses of Sex, Aids, and Sex/Aids Education in Zimbabwe* (Unpublished Ph.D thesis, Institute of Education, University of London: 1995).

³⁸ Misihairambwi, P. "The WASN Youth Programme in Zimbabwe" unpublished paper given at conference on *Community Responses to HIV in Southern Africa* (Sheffield: October: 1997).

³⁹ A substantial number of marriages are still polygynous, and even where the marriage is not officially polygynous, many men appear to believe that fidelity is an obligation which falls only to a wife.

⁴⁰ Foucault, M. *The History of Sexuality: An Introduction* (London: Penguin: 1978:127)

⁴¹ Stychin, C. *A Nation by Rights* (Philadelphia: Temple University Press: 1998: 198)