

# **NUDITY, PROTEST AND THE LAW IN UGANDA**



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Dedicated to Oloka, Kwame and Samora...  
*(The three apples of my eye)*

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## ***PROFILE***

Sylvia Tamale is a Professor of Law at Makerere University, who holds a Bachelor of Laws (LL.B) degree from Makerere University, a Masters in Law (LL.M) from Harvard University and a Ph.D in Sociology and Feminist Studies from the University of Minnesota. She also obtained a Diploma in Legal Practice (Dip.L.P) from the Law Development Centre in Kampala and is an advocate of the Courts of Judicature in Uganda. Professor Tamale was the first female Dean of Law at Makerere (2004-2008), and founded the Law, Gender & Sexuality (LGS) Research Centre at the School of Law. A leading feminist, Professor Tamale combines academia with activism and adopts a critical approach to the Law that aims at enhancing students' transformative personal growth and agency. She serves on many international boards and has been a visiting professor at several universities including Oxford, Pretoria and Zimbabwe. Professor Tamale is the author of numerous publications including the groundbreaking *When Hens Begin to Crow: Gender and Parliamentary Politics in Uganda* (Westview Press, 1999). She is the editor of *African Sexualities: A Reader* (Pambazuka Press, 2011), and her latest publication is *Research in Gender and Sexualities in African Contexts* (CODESRIA, 2016 – co-edited with Jane Bennett). She has won several awards for defending the human rights of marginalized groups.

## *ACKNOWLEDGEMENTS*

I was promoted to the rank of Professor of Law on April 3, 2013. When I reflect upon the academic journey that led me to this achievement, I realize that my career trajectory has been very much defined by a clash between the law as it exists on the law books and how it applies to real people. I was particularly disturbed by the many injustices within the law and about the role that law played in creating and perpetuating social inequalities. Along the way, several mentors helped equip me with the tools to analyze the law from the critical perspectives of Marxism, Feminism and Post-Colonialism. It is to them that I mostly attribute my rejection of what I call “Black-Letter Lawism” and embracing a contextual law approach that leads to social transformation. Among them are Frederick Jjuuko, Deogratius Mbirizi, Joe Oloka-Onyango, Jane Bennett, Amina Mama and Takiywaa Manuh.

Many thank-yous go out to my larger academic and activist “family”: Amy Tsanga, Julie Stewart, Patricia Mbote, Oliver Philips, Frans Viljoen, Sarah Mukasa, Hope Chigudu, Solome Nakawesi, Kasha Nabagesera; the list is too long for this space. For years, I have fed off and been empowered by the enthusiasm of my students who refuel my energies in the less-than-receptive halls of academia. All those “Aha!” moments that we share in class expand my intellectual horizons. My brilliant Book Club members are a great source of inspiration. I am also indebted to the “galoz” who have always cheered me on at each milestone of my academic journey.

Over the years I have also worked with many dedicated colleagues to engender the university curricula and to establish the university policies on sexual harassment prevention and on gender equality. These include women like Ruth Mukama, Joy Kwesiga, Grace Bantebya, Jessica Aguti, Nakanyike Musisi and Josephine Ahikire. Most are still here and working hard to ensure that the policies are fully implemented. Ben Twinomugisha deputized me when I served as Dean of Law and for those four years, was extremely supportive and generous with his time. I am also grateful to colleagues such as Abasi Kiyimba who have always stood up to defend my “controversial” views and principles in the name of social justice and academic freedom.

Finally, but by no means least, I wish to credit both my natal and marital families who have provided the many sparks that have lit my academic journey. Most importantly, I must acknowledge the tremendous support, compliments and love that I am constantly showered with by my partner Joe Oloka-Onyango and sons, Kwame Ayepa and Samora Sanga.

## *ABSTRACT*

The past few years in Uganda have witnessed several incidents of women stripping naked as a way of protesting what they perceive as gross injustice. This lecture attempts to analyze this age-old strategy from the perspectives of law, gender and power. In so doing, the institution of the law is understood broadly to include written legislation, unwritten customary law and the religious principles which underlie our legal jurisprudence. I step back in history to retrace naked protests in Africa before analyzing the local phenomenon. The analysis is guided by post-structuralist feminist understandings of the human body as a site of both power and control. This approach uses the imagery of bodies marked by written scripts which can be “read” and interpreted by society. Of major concern to the analysis is the role played by the law in “inscribing” the scripts of power and domination on men’s bodies, while simultaneously inscribing subordination, passivity and sexuality on the bodies of women. I also examine how the law responds to naked protests. My conclusion is that, through the spectacle of naked protests, women are attempting to re-write the script on their bodies by using nakedness as an instrument of power and to subvert the law in order to effect justice.

*The human body is itself a politically inscribed entity, its physiology and morphology shaped by histories and practices of containment and control.*

Susan Bordo (1993: 21)

*I view law(s) as an authorized discourse—as a language constituted by a series of symbols that is located in not merely the realm of the ‘ideal’ or the ‘real’ but a place somewhere in between... as an authorized language of the state.*

Zillah Eisenstein (1988: 4, 20)

*Where there is power, there is resistance.*

Michel Foucault (1978: 1)

## **I. Introduction: “Reading” the Political Body**

Naked protests may seem like the most unlikely topic imaginable for a professorial inaugural lecture in law. But as you well know, the law touches on literally every aspect of our day-to-day lives. Secondly, it is quite surprising that even though such protests have taken place at many different times and places in African history, there is very little historical, anthropological or sociological analysis of the phenomenon, especially with respect to the case of Uganda. As academics, we have left comment to the journalists, the political pundits and the radio talk-show hosts and hostesses. Finally, although approaching this topic from the perspective of the law, there is no doubt of its resonance across the intellectual landscape.

Allow me to begin with the story that inspired my choice of topic. Around 8.15 on the morning of Monday April 18, 2016, I was just leaving home to go to work when my cell phone rang. On the line was a friend whose words sounded frantic and desperate: “Sylvia you’re the nearest one; you’ve got to help... Oh my god! It’s on Facebook... Stella has stripped naked at MISR!” Later, she calmed down and explained that a mutual friend—Dr. Stella Nyanzi, a research fellow at the Makerere Institute of Social Research (MISR)—was staging a naked protest against what she considered gross maltreatment by her boss.

It took me less than five minutes to get to the scene of the remonstrance. By that time, Stella had put her clothes back on. But as soon as she saw me she stripped again: “Sylvia I didn’t want to burden you with my problems, but I’ve had enough. I’ve complained to the authorities, written several letters but no action has been taken. They have left me with no choice; I’ve had enough of my boss’s tyranny at this place.” I begged Stella to cover her naked body. I shouted at the reporters to put their video recorders away. She was yelling profanities, obscenities and vulgarities, waving her defiant fists in the air. But what I remember most of all were Nyanzi’s eyes as she yelled and shook her naked body in vigorous protest. It is difficult to describe the look in Nyanzi’s eyes at the time; they were ignited by some kind of wild emotion, bulging out of their sockets.

There have been numerous reactions to Nyanzi’s actions of that day—both specific to her individually and to the wider issues that she raised. It is not my intention to engage



in that debate. Instead, I want to briefly reflect on my own reactions to her stripping as a precursor to my analysis. I was shocked and horrified; embarrassed and ashamed. I thought my friend had completely lost it and must confess that I was left traumatized by the incident for several days.

With hindsight, however, I now realize that my emotive response to Nyanzi's protest was in keeping with societal attitudes that associate nakedness—especially the nakedness of a grown woman—with shame, perversity and taboo. When I rushed to MISR to try and remove Stella, I was responding to the impulse of my socialized brain and habits. Society constructs the female naked body as profane, indecent, shameful and sexual, never to be displayed in public. Women must therefore cover their bodies, particularly the areola, nipples and curves of their breasts, their butts and especially the *mons pubis*.

Much of the discourse that attended the Nyanzi incident was both sexualized and sensationalized. It provided considerable cannon-fodder for the tabloid press and of course—in this era of Facebook, Twitter and Instagram—became one of the highest trending stories on social media this year. Instead of looking at the more dramatic aspects of the incident, and indeed leaving out the reaction of the university and the wider society to what Nyanzi did, I want to use today's lecture to address a number of larger questions, *viz.*: Have African women's bodies always been viewed as shameful and a source of sin? Historically, what power, if any, did women's naked bodies hold? Have naked bodies been used as a tool of protest in the past? What does women's fecundity and maternal power signify in patriarchal-capitalist societies? What is the role of the law in the negative construction of women's bodies and in maintaining their subordinate status?

Most people are shocked when they learn that there is absolutely no written law in Uganda that prohibits public nudity *per se*; there is no bar against displaying the naked body. When Nyanzi stripped to her knickers, she did not breach any written law.<sup>1</sup> She may have run the risk of crossing established social and religious norms, but she certainly committed no penal offence. Nevertheless, Minister of Ethics and Integrity, Father Simon Lokodo's first reaction was to order for Nyanzi's arrest. In the end, the police did not proffer any

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<sup>1</sup> The offence of "Indecent Practices" found in section 148 of the Penal Code (Cap 120) only criminalizes acts of "gross indecency" committed with another person in public or private places.

charge probably because they had no law to back it up. Nyanzi's lawyer also told Lokodo to "zip [up] his mouth."<sup>2</sup> But in a legally pluralistic society like ours, where the written law operates side-by-side with customary law and where the principles of religion are deeply embedded in our statutory laws, when does public nakedness become unacceptable and why? How do we reconcile the fact that Lokodo's own people, the men and women of Karamoja even today move around naked or semi-naked in public and without sanction, with the fact that Lokodo is the same man attempting to impose punishment for public nakedness?

The written law may not prohibit public nakedness but the "living law" of most Ugandans—including law enforcement agencies—renders it not only "illegal" but also immoral and unethical to exhibit our bodies in this manner. Therefore, any reference to "law" in this lecture should be understood broadly to include codified or written law as well as the unscripted customary and religious laws. Nyanzi's protest might have appeared to be personal; what I want to explore today is whether, and the extent to which, it was also political. To help in this exploration the lecture draws on post-structural feminist theories of gender and embodiment and their application of discourse analysis oriented to the work of the French philosopher, Michel Foucault.<sup>3</sup> In particular, I am guided by the post-structural feminist understanding of the human body as a locus of power and control. I find their approach to the body as an inscriptive surface marked by culture and law quite compelling.

For instance, the fact that women's bodies are "read" through the discourse or narrative of sexuality will have significant implications for how society reacts to naked or semi-clothed protests. The post-structural feminist take on power, derived from Foucault, as both a disabling and enabling force is also useful in my exploration of the relationship between subjectivity and power relations as manifested through naked protests.

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<sup>2</sup> See "Nyanzi Lawyer tells Lokodo to zip his mouth," The Insider.ug, April 29, 2016 available at: <http://www.ugfix.com/blogs/p/77587/nyanzi-lawyer-tells-lokodo-to-zip-his-mouth> [last accessed July 26, 2016].

<sup>3</sup> Feminism is both an ideology and political movement that espouses gender equality, paying particular attention to the workings of power structures that privilege men. Feminism has multiple theories, including liberal, communist, post-colonial and post-structural.

This lecture focuses on the tripartite issues of *nakedness*, *law* and *protest*. I am mainly concerned with what we can refer to as the physical or cultural body bounded by the surface of our skins. I am also concerned with how that body relates to the law, particularly when it is deployed as a tool of protest. I seek to examine the ways in which women use their nakedness as an instrument of power in their everyday lives and how the intersecting narratives are interpreted by society, by the law and by the protesters.

Following this introduction, I set the stage for a feminist analysis of naked protests by looking back at the historical trajectory of naked protests globally in order to understand the context of activism in today's world. The third section discusses the theoretical underpinnings of gender, power and the human body. The conceptual tools for analyzing naked protests within the realm of the powerful institution of the law are exposed. I also briefly revisit the place of women's gendered and sexed bodies in nation-building and its implication for naked resistance. Section four then explores the intersections of the law (broadly understood to include legislation, culture and religion) and nudity, critically analyzing how relations of power shape and define our bodies, particularly naked protesting bodies. The lecture ends with some brief concluding remarks.

## **II. Publicly Naked Bodies and Protests: A Historical Overview**

Historically, the largely consistent warm weather in Sub-Saharan Africa did not require a lot of clothing. Prior to colonization, different cultures on the continent used various simple garments made of bark cloth, animal skin, bird feathers, grass or plant fibre to make aprons for covering the genitals or to be wrapped around their bodies. While external influence has completely changed dress patterns in most of Africa, a few communities have maintained their traditional ways of dressing to-date. Examples from Uganda include the Karamojong, the Batwa and the Bambuti (Otiso 2006).

The drastic change of stance to the naked or partially-naked body in public throughout tropical Africa coincided with "the civilizing mission" which the colonialists from Victorian Europe employed to legitimize their subjugation of non-European people. Even partial nakedness for them was inimical to "modernization" and everything that the

“superior” Western culture stood for. In Uganda, the colonialists did not waste time in imposing a new dress code:

Embarrassed by what they considered to be scanty native dressing, European Christian missionaries set out to change that, starting with Buganda, where contact between Western and Ugandan culture commenced in the mid-1800s. The missionaries designed an ankle-length Victorian dress (*gomesi* or *busuti*) for women and a similarly long tunic for men. Over time, the *gomesi* has become a popular national dress, made of bright multicolored cloth with padded shoulders and an equally elaborate sash for tying it around the waist. (Otiso 2006: 76)

Colonialists employed various methods to acculturate African people to Western beliefs, including religious proselytizing, the formal education system and criminalizing “immorality.” Hence, slowly but surely, where nakedness or half-nakedness had been part of the normal lifestyle of colonized people, they began to completely cover their bodies and to view such act as a symbol of progress or “modernization.” To-date, those African societies that have resisted the Western dress code such as the Karamojong or the San people of the Kalahari desert in Southern Africa, are viewed as “backward” and “primitive.” Aileen Goodson reports that “naked societies persist as primitive tribes whose members do not wear clothes” (Goodson 1991: 155). The value judgment implicit in describing naked societies as “primitive” corresponds to the trajectory of the attitudes and influence of dominant societies to nakedness.

Several scholars have written about the spiritual and philosophical foundations of nudism in ancient societies including such practices among the Greek, Egyptians, Indians and Ethiopians (Goodson 1991; LeValley 2007). Space does not allow us here to go into the details of gymnosophy<sup>4</sup> and religious nakedness but suffice to note that this philosophy was adopted by the nudist, naturalist movements of 20<sup>th</sup> century Europe and North America (Jirasek & Hlavinka 2010). The strict, uncompromising beliefs about public nudity have their seeds in the European Protestant Reformation Movement of the 16<sup>th</sup> century led by Martin Luther and John Calvin. After breaking off from the Catholic Church for what they perceived as overindulgent opulence and moral laxity, they created doctrines that had a

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<sup>4</sup> Gymnosophy is a philosophy and lifestyle based on the belief that nudity is a natural condition that should be embraced by all human beings (Jirasek & Hlavinka 2010).

powerful impact on, *inter alia*, how society viewed the naked body (Goodson 1991). In particular, their efforts to “purify” the church reinforced the “puritan ethic” of covering up and associating sex and sexuality with shame and embarrassment. Puritanism associated women’s bodies with sin, the devil and witchcraft much more than it did the bodies of men (Reis 1997). The Reformation reinforced the guilt and shame associated with the naked body in religion and set the patterns of morality in Europe and North America. As Goodson noted:

With the advent of Protestantism came biblical interpretations which stressed, as never before, the impurity and sin inherent in the human body. Also emphasized was devil-fear. While God was mind and spirit, the Devil represented evil and tantalizing body sensuality... Shame regarding sexual desires and activities reached such extremes that a woman in the mid-1800s minimized and hid all body parts except her face. She wore layers of petticoats and was enveloped in clothing from high-collared blouse to floor-length bustled skirt, a bonnet completely covering her head and a shawl drawn around the body. (Goodson 1991: 165)

The Catholic Church later launched a counter-Reformation with new religious orders that were more rigorous and strict in their spirituality (Dickens 1968). It is this brand of Christianity that was imported to Africa as part of the project of colonisation in the 19<sup>th</sup> Century.

Prior to that, in the 7<sup>th</sup> century, Islam had spread to many parts of the northern half of Africa, particularly along the trade routes from the Arabian peninsula. Although this version of Islam was quite different from the “political Islam” of the veiled woman that we know today, Shari’ah laws dictated modesty and non-exposure of the *aurat*<sup>5</sup> and gender segregation at public events (Othman 2006; Mernissi 1996). Patriarchal conceptions of gender roles and the female body filtered through the interpretations of religious teachings, further altering the discourse relating to the body. The paradoxes and contradictions created by religions that construct taboos on the ‘natural’ body created an opening for the protesting body (Tamale 2015).

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<sup>5</sup> *Aurat* is an Arabic term that refers to those parts of the body that are not supposed to be seen by the public. The male *aurat* includes the area between the navel and the knees and the female *aurat* involves the entire body except for the face and hands.

Given the historical “reading” of the African body, how can we relate it to the naked protesting body? Today, in the “civilized” world of clothed bodies, stripping naked in public is guaranteed to draw immediate attention. The naked body “speaks” the language of spectacle, of rebellion, of subversion. It is a strategy that has been used effectively all over the world where covered bodies are the norm. From Lady Godiva of 13<sup>th</sup> Century England to the Doukhobors (Russian pacifists) of early 20<sup>th</sup> Century Canada to the present-day naked environmental protesters, they always succeed in casting a global spotlight on their issues.

In Africa, women have used their bodies to protest extremities; it is usually a weapon of last resort when they find themselves pushed to the edge of the cliff. It is very powerful and always effective in that it draws attention to the issue under dispute. The act of public stripping is even more potent if the women are married and/or mothers. Cultural beliefs about stripping mothers of twins signify double trouble, and Nyanzi—who is a mother of twins (*Nnalongo*)—capitalized on this issue throughout her stunt. The shocking primordial exposure of women’s nakedness in public acts of irreverence and parody has proved quite effective. Desiree Lewis (2009) explains that subversion of power through spectacle such as women enlisting their naked bodies in resistance signals a form of “politics” beyond formal politics. Such politics undermines the foundations of the hegemony of repressive regimes.

African women’s embodied protests predate colonialism and have been effectively deployed every time women have been pushed to the brink (Awe 1992; Mba 1982). In the pre-colonial West African Oyo Empire, for example, women of Oyo-Ile protested naked to show their rejection of Bashorun Gaa’s savage rule in the 17<sup>th</sup> and 18<sup>th</sup> century (Oyeniya 2015:150).<sup>6</sup> Among the Igbo in West Africa there was the custom practiced by women known as “sitting on a man” or *ogu umunwanye* which was invoked to sanction disrespectful men (Oriji 2000; Van Allen 1997; Tamale 1996). In 1929 women used the same custom in their tens of thousands to challenge British colonialist policies in the now famous “women’s war,” described by one of the colonial lieutenants thus:

Some were nearly naked wearing only wreaths of grass round their heads, waist and knees and some were wearing tails made of grass... I [told] the women not to make a

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<sup>6</sup> The Oyo Empire of the Yoruba was found in West Africa covering the area of present-day Western and North-Central Nigeria as well as Eastern Benin.

noise. They took no notice and told me that I was the son of a pig and not of a woman. (Nigerian Government, 1930: 7)

It is reported that “the women were led by an old and nude woman of great bulk. They acted in a strange manner, some lying on the ground and kicking their legs in the air, and others making obscene gestures” (Ifeker-Moller 1975: 129). The British colonialists described the uprising as riots; the women called it *umunwanye* or war. At the end of the day, the women of eastern Nigeria succeeded in halting the offensive colonial policies and even secured a few seats in the native courts.

Another historical example can be found in the areas of the Kom and the Kedjom in modern day Cameroon where women in their thousands unleashed the age-old tradition of the *anlu*. *Anlu* was a women’s network traditionally used to punish those that transgressed social norms. In 1958 the *anlu* women utilized this method to challenge colonial threats to their farmland. In a campaign that lasted almost three years:

[T]he *anlu* women began to protest with screams, songs, and wild dancing. They were dressed mostly in rags and greenery, although some also wore men’s clothing to symbolically claim the power reserved for men, and carried branches over their shoulders in imitation of guns (which women were not allowed to carry).... At some of their protests the women stripped naked and painted themselves in oil and red cam-wood powder before staging public disruptions of meetings. Had men attempted the same sort of disruptions they would have been forcefully removed [by the colonial forces], but officials had no idea of how to deal with naked *anlu* women. (Global Nonviolent Action Database, n/d)

*Anlu* was extremely successful and spurred social change, including the establishment of a women’s court and a “shadow government” that remained in place for one year (Tamale 1996; Shanklin 1990). Accompanying naked protesting female bodies with profanities and sexually-explicit language deepens the disturbance and disruption of the spectacle, making it more effective.

In more contemporary Africa, women have repeatedly and successfully deployed the weapon of naked protests in various contexts and causes. In 1990, during the transition from apartheid to democracy in South Africa, angry homeless women in Soweto stripped off their clothes as the police moved in to bulldoze their shacks from an illegal settlement in

the Township of Dobsonville (Meintjes 2007). In 1992, Kenyan mothers of political prisoners staged a hunger strike and stripped naked in Nairobi's Uhuru (Freedom) Park demanding the immediate release of their sons. Maria Nzomo described this act of defiance as "the most effective traditional method of cursing the Moi government" (Nzomo 1993: 68). Nine years later in 2001, more than 300 Kenyan women stripped again and run into a nature reserve camp near River Tana. They were demonstrating against the annexation of their land to expand the camp, forcing a group of scientists to flee from the nature reserve.<sup>7</sup> In 2002 Nigerian women in the Niger Delta stripped to register their anguish against the environmental pollution by oil companies. Liberian women who wished to see the end of the civil war in 2003 also stripped naked when the talks between President Charles Taylor and the rebel groups stalled in Accra. In 2016 students at the University of Rhodes in South Africa stripped against sexual violence on their campus.

In Uganda a group of women political activists stripped to their bras in front of the central police station in Kampala to protest against the sexual assault of female opposition leader, Ingrid Turinawe by the police force in 2012.<sup>8</sup> The police arrested and detained them for two hours but did not press any charges. Just one year prior to the Nyanzi saga, in April 2015, women in Amuru district in Northern Uganda stripped naked in protest against what they perceived as the grabbing of their ancestral land by government. The Minister of Lands and that of Internal Affairs had travelled to Amuru to try and mediate the situation only to be confronted by naked protesting women shouting profanities and asking pointed questions: "We were born on this land, where will we the elderly mothers go to? Why is the government targeting our land? Why, why?"<sup>9</sup> The ministers ordered the immediate withdrawal of the army and the police that had been camping on the disputed land for two weeks. They also instructed the government officials at the site to abandon their plans to demarcate the land.

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<sup>7</sup> See BBC online report at: <http://news.bbc.co.uk/2/hi/africa/1158492.stm> [last accessed August 30, 2016.

<sup>8</sup> The police officers violently squeezed the breast of an opposition political leader, Ingrid Turinawe in the process of arresting her. See, John Njoroge, "Police Arrest Women Activists," *Daily Monitor*, April 23, 2012. Available at: <http://www.monitor.co.ug/News/National/-/688334/1392006/-/avjh6iz/-/index.html> accessed Dec 27, 2012

<sup>9</sup> Julius Ocungi and Stephen Okello, "Women Undress Before Migereko, Gen Aronda," *Daily Monitor*, April 18, 2015.



Three months later, women in Nakasongola also stripped in front of the office of the Resident District Commissioner to protest against perceived threats to their land when the adjacent army facility started surveying their customary land. Similar land-related naked protests by women occurred in Bukedea and Lakang. All these women had one thing in common—they had found themselves between the rock of neoliberal market-centred land policies and the hard place of protecting their food security and agro-based livelihoods. As people primarily responsible for household food production, these desperate women used their nakedness to protest power inequalities.

The examples of reported and unreported cases across the continent could go on *ad infinitum*. The strategy is mostly used in groups but also by single protesters like Stella Nyanzi and Noerina Mubiru. In 1996, Mubiru had been recently widowed. Soon after the burial of her husband, a group of his relatives went to Mubiru's home in Mubende demanding for their son's property. The desolate Mubiru stripped naked in front of her property-grabbing in-laws, daring them to first collect the "most-prized" asset (her nakedness) of their relative (the dead husband) before they can touch any other property. The father-in-law who had led the delegation fainted and the rest fled her home in horror at her "curse."<sup>10</sup> The power in all the embodied subversive protests demonstrated above is derived from the reversal of positions where the social superior is subjected to the position of spectator of the naked spectacle put on by the social inferior. It cannot be denied that those spaces of protest have a counter-hegemonic effect on society.

Exposing the nakedness of elderly women and mothers is especially symbolic in most African cultures and is considered the ultimate curse: "The reason is said to be that through pregnancy, childbirth and nurturing, women are the givers of life. By stripping naked in front of men old enough to be her children or grandchildren, a mother is symbolically taking back the life that she gave, and so in a way, pronouncing death upon them."<sup>11</sup> It is conferring "social death" on those violating their freedoms. It represents a

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<sup>10</sup> See "Widow strips naked, Father-in-Law faints," *The Monitor*, 22-23 March, 1996.

<sup>11</sup> See Christine Mungai, "Naked protests in Africa—they cause mayhem; are they necessary, useful or effective?" *Mail and Guardian Africa*, April 23, 2016 available at: <http://mgafrica.com/article/2016-04-21-naked-protests-in-africa> [last accessed August 8, 2016]. Ugandans were stunned when General Aronda died five months after the Amuru women stripped before him!

deep traditional curse emanating from women's generative power and a symbolic social execution effected by the "mothers of the nation."

Before discussing the legal aspects of naked protests and to better understand the potency of women's naked protests, it is important to delve into the theoretical aspects of the body and its links to power in the next section.

### **III. Gendered Meanings of Power and the Body**

What is the relationship between power and the body? Specifically, how do both the macro unequal power relations engendered by patriarchy<sup>12</sup> and neoliberal capitalism<sup>13</sup> (negative power), as well as the localized empowerment exercised at the micro-political level by women who seek to disrupt dominant power and to transform society (positive power) operate?

The historical account has provided us with a glimpse of the various ways that protesting women deployed the diffuse power located in their naked bodies to engender social or political transformation. Their actions doubtlessly subverted patriarchal-capitalist power dynamics, but they also dealt with myriad other issues along the spectrum of discontent with the existing order. There is a manifest duality in the action of stripping in order to secure a political or economic goal. Michel Foucault clarified that "power, after investing itself in the body, finds itself exposed to a counter attack in that same body" (Foucault 1977: 56). In short, the complexity of power is such that it can operate both as a sword as well as a shield, with immense potential to do considerable good as well as causing significant damage. Power is in constant flux, improvisation and negotiation. Power is a balancing act.

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<sup>12</sup> The term "Patriarchy" refers to men's structural control over political, legal, economic, cultural and religious institutions as well as their domination in both public and private spheres (Goldberg 1993 cited in Glick and Fiske 1997).

<sup>13</sup> Capitalism generally refers to an economic system where the factors of production (land, raw materials, labour, capital, technology) are privately owned. "Neoliberal capitalism" as a concept captures a new model of capitalism that emerged in the 20th century which promotes liberalization, deregulation, privatization, cost-sharing, reduction of subsidies, marginalization of labour unions, etc and prioritizes markets over people. Neoliberal capitalism arrived in Africa via World Bank- and IMF-prescribed structural adjustment policies (SAPs) in the early 1980s.

Foucault is arguing that the body is vested with power. Power in the female body is also inscribed with a bold sexual script. In other words, the female body is also considered as a sexual body, much more than that of the male. Throughout history, the female body has been an object of attention, desire, and lust. Indeed, the Bible is full of instances in which the female body is the centre of excessive attraction. In Genesis 12:15, we are told that Pharaoh could not resist the “very fair” Sarai, and he took her into his harem; you also remember the story relayed in Judges 16 of how Samson was so enamored of Delilah that he revealed the secret power that lay behind his hair. Or the story told in the Second book of Samuel 11: 2-5, where David was unable to resist Bathsheba after seeing her bathing. While the Qur’an commands both men and women to restrain their gaze and guard their chastity, it only instructs women to cover their (desirable?) bodies (24: 30-31). Given this history, it is of no surprise that women’s bodies have become the object of the voyeuristic male gaze and desire. Nude and half-nude female bodies are routinely exhibited on public cinema screens, videos, magazines, advertizing bill boards and tabloids such as *Red Pepper*. Moreover, these are primarily for the gaze and satisfaction of the male consumer.

The complexities, dilemmas and contradictions that female nakedness throws up have been the subject of scholarly research for years (e.g., Sultana 2013; Barcan 2002; Mba 1982; Ifeka-Moller 1975). What is clear from all the research in this area is that the protesting naked female body is not viewed in the same way as the male and therein lays the paradox of patriarchal-capitalist societies. Depending on the context, in the same public space, the same naked body will invoke desire and allure while being “read” with the discourse of shame and humiliation (Sutton 2007). Through this ambiguity, the naked protesting body represents what Shirley Ardener refers to as the “condensed symbols of female power” (Ardener 1973: 16).

A *naked* body is not the same as a *nude* one. There is a significant conceptual distinction between the terms “nudity” and “nakedness.” Nudity presupposes display and invites sexual connotations. On the other hand, nakedness asserts agency in the shedding of clothes: “A naked body has to be seen as an object in order to become nude” (Berger 1972: 54). When women bare their nakedness to the public they are not engaging in sexual provocation. Rather, they are drawing on dominant gender norms, challenging and

subverting them to draw attention to their plight. As powerless people, they mobilize their bodies as a powerful resource, thereby transforming the negative associations of nudity into positive power.

The meanings that society attaches to gendered bodies through culture, law and religion exist in discourse (Tamale 2015). Historically, various discourses around the world have “inscribed” the naked human body with cultural and legal meanings. Zillah Eisenstein explains that discourse “is more than language—it moves into the realm of thinking and acting” (Eisenstein 1988: 11). In other words, discourse is a system of knowing that entails linguistic practices, subtle cultural codes and interpretive processes. It is through discourse that we see and interpret information, categorize people and events and justify power relations. Discourse constructs our world of meaning and experience (Belsey 1980: 54). And the law is pivotal in such construction. As Eisenstein explains:

Recognizing law as a discourse calls attention to how law establishes regulations, thoughts, and behavior and institutes expectations of what is legitimate and illegitimate behavior, what is acceptable and unacceptable, what is criminal and legal, what is rational and irrational, what is natural and unnatural. (Eisenstein 1988: 43)

The legal discourse of the law engraves or inscribes our bodies with particular characteristics and symbols. Indeed, it is the semantic significance of the body that makes it an effective tool of protest. When the body is deployed as an instrument of resistance outside the institutionalized systems of protest, it can be quite effective.

Poststructural feminist analysis allows us to see how dominant discourses drive us to conform to conventional norms. Poststructural theory questions that which is assumed to be normal or common sense. It challenges the idea that individuals exist as essential beings and argues that our “being” is socially constructed. Bronwyn Davies explains that “we speak ourselves into existence within the terms of existing discourses” (Davies 2000: 55). Hence we are subjects of cultural narratives and discourses. In other words, we are not the authors of the ideologies that construct our subjectivity (Barrett 2005). We have little control of the narratives and meanings attached to our bodies. But as oppressed people,

women can mobilize the narrative of “vulnerability” that is written on their bodies into a political tool by rewriting it as “power.”

In her essay, ‘Uses of the Erotic: The Erotic as Power,’ African-American theorist, Audre Lorde writes about how women can reclaim their erotic power. But she does not use the term “erotic” in the usual sense of the word. Rather, she reconceptualizes it by challenging the false dichotomy that separates the erotic from the spiritual and the political. Lorde’s notion of the erotic embeds much more than superficial sensations such as pornography and extends beyond sexuality:

The erotic is a resource within each of us that lies in a deeply female and spiritual plane, firmly rooted in the power of our unexpressed or unrecognized feeling. . . . We have been taught to suspect this resource, vilified, abused, and devalued.... Of course, women so empowered are dangerous. So we are taught to separate the erotic from most vital areas of our lives other than sex. . . . I find the erotic such a kernel within myself. When released from its intense and constrained pellet, it flows through and colors my life with a kind of energy that heightens and sensitizes and strengthens all my experience. (Lorde 1984: 53-56)

When oppressed, women are pushed to the brink with no more options to protect their self-respect and dignity. They will tap into the depth of Lorde’s erotic and utilize it even if it means stripping off their clothes. They will use their nakedness to demand for what they believe to be rightfully theirs. Their acts against oppression “become integral with their self, motivated and empowered from within” (ibid: 58). Lorde instructs women on how to access the “creative harmony” of the erotic by emphasizing a system of expression instead of oppression (Rashedi 2011: 2).

### ***3.1 The Place of the Body in Relations of Power and Gender***

What is the link between the processes of changing the oppressive structures of power and making changes in the self? In other words, how do the subversive bodily actions of oppressed individuals (or groups of individuals) work to alter complex structures of power? To come to grips with these questions it is necessary to understand that the body should not be simply viewed through the lens of biology. Rather, the body needs to be understood as both a material and a political entity. The “natural” body derives meaning from culture, history and society (Karpin & Mykitiuk 2011; Sclater 2002). Michel Foucault saw different

markings engraved on our bodies (Foucault 1977, 1978; also see Giddens 1991). According to Foucault, the way we view reality and interpret the world is based on a discourse that has been historically, socially and culturally constructed. It is through the discursive or constructed sense of reality that we know anything about our bodies. The nib of the law is instrumental in metaphorically inscribing our bodies and thus lending meaning to them.

When Foucault theorized the body as a medium of communication, i.e. the surface on which the social is inscribed, he flung open the conceptual doors for us to problematize it as discourse. He offered us the analytical tools to deepen our understanding of how history, culture, law, religion and other institutional forces impose rules and regulations upon our bodies. He pushed us to see the body as a site of power struggle, self-expression and of numerous contradictions. If one imagines the naked body to be a blank slate at the time of birth, culture then proceeds to inscribe gendered, racialized, sexualized, and classist hierarchies that give character to that body.<sup>14</sup> The text that culture inscribes on our bodies is a crucial medium for effecting social control. But, most importantly, conceptualizing the body as discourse powerfully suggests that our bodies have the capacity to “speak” and to be “read” in particular social and historical contexts.

The markings, engravings or script that Foucault spoke of were not necessarily limited to the visible tattoos or beautiful scarification like those we see on the traditional bodies of the Karamojong or the Masaai. They constitute rules, images, symbols and even hierarchies, all of which give shape and character to male and female bodies. We are “fabricated” onto our bodies by discursive practices and formations. Thus, the plastic surgery industry is one of the most lucrative fields of medicine today. Here at home, shops which sell false “bums” are doing brisk business. In fact, “ideal” body shapes keep evolving along a spectrum, depending on the cultural context. Women in different cultural contexts spend a lot of resources manipulating their bodies to conform to the dominant ideologies to achieve the desired packaged shapes.

The bodies of men and women are represented differently; in other words, the cultural script written on men’s bodies is quite different from that which has been inscribed

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<sup>14</sup> In actual fact there is no such thing as a ‘pre-cultural’ body. The body emerges from the womb as a contested site (Karpin and Mykitiuk 2011; Sclater 2002).

on the bodies of women. They are sexed and gendered bodies. It is also interesting to note the variations across cultures in the way in which the bodies of men and women are perceived. For instance, there is no “ideal” universal or standard sexy female body shape. A well-endowed bust, slim waist, narrow hips and long legs (the Barbie-image) may pass as “beautiful” in Europe. In most parts of Africa the description “beautiful” tends towards a more voluptuous curvy silhouette, especially in terms of the backside.

An example to demonstrate how the law engraves scripts on men’s and women’s bodies is the Penal Code of the State of New York which criminalizes the exposure of women’s breasts but is silent about a similar action with respect to men. This sends out a strong message to the public about the two bodies (Glazer 1993).<sup>15</sup> Barbara Behrmann writes about the difficulties that mothers in the U.S. face while navigating nursing babies in public spaces, including hiding in bathrooms (Behrmann 2005). This is the same culture where “breasts are used to sell everything from cars to beer; in which deep cleavage dominates the checkout isle... and in which the number of women who artificially enhance their breasts has increased 533% from 1992 to 2002” (Behrmann 2005: 190). But it is interesting that a publically breast-feeding woman in Uganda, as is the case in most of Africa, does not raise any eye-brows. The resilience of that part of African culture is quite intriguing when compared to women in the West. However, through religions such as Christianity and Islam and cultural globalization, Ugandan dominant culture is being influenced to adopt similar negative views about women’s breasts. This illustrates the contradictions and paradoxes that are associated with the body as a site of cultural and political contestation.

Analysing naked protests brings out in bold relief the link between power, the human body and sexuality. Foucault redefined the concept of power beyond the commonly-held notion of a negative repressive force exercised in top-down fashion through the instruments of law, taboos and censorship (Foucault 1978). Power is something that is exercised, rather than possessed; power is unfixed and diffuse, permeates all aspects of social life and operates through discourse, knowledge and what Foucault called “regimes of truths” (Foucault 1977; Rabinow 1991). This also marked a major theoretical breakthrough about

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<sup>15</sup> E.g., see section 245.01 of the New York Penal Code.

the concept of power. When we conceive of power as not resting on the external but as incorporated into numerous practices and embedded in everyday relations, it becomes easier for us to comprehend both its negative and positive aspects. The positive potential of power is seen when it is understood to work *through* people rather than *on* them.

This complex re-conceptualization of power as a relational concept that works through the actions of people at the micro-structural level is extremely useful in analyzing the complex link between naked protests and the law. When one understands power as being diffused throughout the social structure, circulating through the entire society, one then begins to appreciate the role of power in the lives of oppressed social groups such as women. Indeed, feminists have adopted the Foucauldian conceptualization of power and taken it a step further by emphasizing the role of subjectivity and agency in this system of power, acknowledging people's ability to determine their own destinies (King 2004; Balsamo 1996; Butler 1990; Bordo 1993; Barrett 1991). As Anne Balsamo writes, "Although the female body is subordinated within institutionalized systems of power and knowledge and crisscrossed by incompatible discourses, it is not fully determined by those systems of meaning" (Balsamo 1996: 39). In other words, women (and other subordinated groups) transgress and resist the discourses that seek to contain them. Adopting this approach facilitates our clear grasp of the experiences, capacities, self-understanding and subversive actions of those who resist as they attempt to achieve change.

The script written on our bodies is scribbled with the power-infused ink of numerous forms of oppression. The way that society "reads" the body of a youthful married woman is very different from how the body of an older unmarried woman or that of a poor disabled woman is read. The subtext of a traditionalist woman "speaks" differently from that of a Muslim woman. To further demonstrate how power is constituted through accepted forms of knowledge or "regimes of truth" I offer some examples from Kiganda culture. The "truth" regime in Kiganda culture orders that a skimpily-dressed woman who exposes her thighs and cleavage in public is dishonorable and deserves no respect. Most Baganda women conform to this "truth" and, as they seek social acceptability, they cover their bodies without giving it a second thought. Such performance gives meaning to social constructions, covering it with the flavor of "reality" and "naturalness" (Goffman 1969;



Butler 1980). The non-conformists or deviants who dare to breach and challenge this “truth,” face the wrath of the law (written and customary). Deviance highlights the political aspects of performance (Butler 1990). The same culture also instructs that a naked woman bending over in public represents the ultimate curse. These “truths” among the Baganda are not necessarily “true” in the culture of the Karamojong where women routinely move about half-naked in public. Through bodily expressions (e.g., gestures, movements and enactments such as kneeling before her elders and husband), a Muganda woman constitutes the illusion of her ethnic self. And only her transgressive acts of performance (say, through naked protests) can lead to social change (Tamale 2008).

The meaning of “covering up” is as important as the performance of “undressing in public”; both constitute the process by which a bodily norm is accepted or rejected. Each society has its “regimes of truth” but there seems to be a huge global overlap when it comes to the meaning of female naked bodies in public. These “truths” are created and reinforced through systems of formal and informal education, science, religious teachings and the mass media. They are constructed mostly by those that hold structural power. The crucial point here is that all these “truths” are constructed by society for political reasons and hold no essential core. Oppressed groups, through a twist of politics, an alternative performance, can subvert the meanings imposed on their bodies to their own advantage. Humiliated bodies can be “resignified to humiliate the humiliator” (Sultana 2013: 35).

Theorizing about “public” and “private” spaces is also important when thinking about naked protests. The separation of the personal from the political or speaking of the private/public as dichotomous spheres is an artificial construct designed to support the oppressive status quo (Tamale 2004; Butler 1990). The dominant system that accepts naked bodies in “private” but proscribes them in “public” has political motivations. The meaning of the fictitious private/public divide gets especially muddled when it comes to issues of sexuality where we see the same institutional power turning our “private” sexual issues into “public” matters to be regulated and controlled by law. For example, the “private” matter of who we choose to have sex with as consenting adults is regulated by laws such as those that criminalize sex work and homosexuality (Tamale 2009b). Even the maternalistic

discourse associated with women's domesticated bodies is deployed by patriarchal-capitalist states for political ends, a point demonstrated in the next subsection.

### **3.2 *Female Nudity, Cultural Values and the Symbolism of the Motherland***

Our knowledge of the body is derived from and mediated through discourse—discourse that is always subject to interpretation. One of the avowed missions of the colonizers who subjugated Africa was to bring “civilization” and “modernity” to the “dark continent” (McClintock 1995). The process of changing Africans followed many forms but the most potent came in the shape of religion, education and the law. In Uganda, the effects of proselytization, enculturation and acculturation were tremendous, including the values, beliefs and meanings that we associated to our bodies.

To fully understand the female body as a symbol of a broader politics, it is important to appreciate the association of that body with nationhood and the motherland. The concept of nationalism invents or imagines nations where they do not exist (Anderson 1991). As one way of social organization, the nation is built on the basis of shared language, dialects and culture. For instance, in pre-colonial Africa, the Kingdoms of Buganda, Bunyoro, Ankole and Toro were separate “nations” with centralized political systems. On the other hand, the Alur, Acholi, Langi, Iteso, Karamojong and the Bakiga organized themselves along decentralized, clan-based social and political structures. When the imperial powers met in Berlin in 1884 to divide Africa among themselves, they carved it into different nation-states, paying no attention to any commonalities or shared cultures. Indeed, many “nations” were separated in this process and post-Berlin families and kin found themselves on different sides of national borders. In Uganda, the British colonizers faced the challenge of patching together such diverse “nations” that inhabited the newly-created geographical space baptized “Uganda.” The task of nation-building or imbuing a sense of oneness and patriotism among the citizens of the invented country was monumental—one that continues to dog our post-independence governments.

Motherhood is metaphorically important in nation-building as the mother image is a signifier of nationalism (Mostov 1999; Eisenstein 1988). This is more true today within the

context of accelerated neoliberal capitalism than ever before. In its institutionalized form, motherhood includes the nurturing of children and the maintenance of the household (for no pay)—critical aspects in the preservation of patriarchal capitalism. Hence, the “political economy” of the woman’s body is highlighted in its value and utility for shifting needs. As producers and reproducers of gendered members of the national collectives and as transmitters of culture, women are implicated in nationalism (Yuval-Davis and Anthias 1989). Reference to “our *motherland*,” “our *mother country*,” “our *mother tongues*” or even “*mama Africa*” and the use of feminine pronouns abundant in nationalist discourse are mainly designed to invoke the sense of love and care for our nation; it serves to salute the nation as a “doting mother” for the ordinary citizen. The cultural power of the motherhood metaphor is clearly mobilized in the service of nation-building.

As the primary caretakers of the family, women are also “construed as the symbolic bearers of the nation” (McClintock 1993: 62). It is symbolic because it rarely goes beyond political rhetoric and rarely translates into women holding *real* political power. Indeed, motherhood is much more associated with cultural than political citizenship. The “mothercrafting” process of building the nation must involve the valorization of motherhood as the iconic care-giver and preserver of cultural values. As reproducers, women reinforce national boundaries and are constructed as the source of national pride. Their bodies—representing the motherland—must therefore remain pure, uncontaminated and honorable. The law inscribes the script of decency and modesty on women’s bodies. We see this, for example, in the absurd position of our criminal law which only penalizes the “indecent assault” or “insulting the modesty” of women but not men’s bodies.<sup>16</sup>

After pushing women’s bodies through a purifying sieve, they must work hard to maintain these values and not soil this script. Those who try to erase or re-write the script by, for example, asserting their subjective autonomy, are not only held in contempt but also face punitive action. Hence as “mothers of the nation,” the naked protesting bodies of women are viewed as polluting the very purity of the nation and undermining its solidarity. In order to deprive it of its radical political content, the protesters are framed through

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<sup>16</sup> See Section 128 of the Penal Code (Cap. 120). Section 147 protects only minor boys under the age of eighteen from indecent assaults.

descriptions such as “irrational” “mad” “crazy” or even “primitive.”<sup>17</sup> The fact is that the naked bodies of protesting women are reconfiguring nakedness on their own terms, struggling to move away from objectification (Sultana 2013).

As one of the most important “scribers” of bodily narratives, we turn to the law and how it addresses naked protests. If the body is ultimately an instrument of power, what role does the nib of the law play in engraving our bodies with various scripts? In which ways do the imposed scripts clash with our self-inscribed narratives? What legal means does the state deploy to try and erase our self-written scripts? And what are the consequences of molding our own bodily inscriptions through our agency and activities?

#### **IV. Law, Culture and Religion on Naked Bodies**

Legal orthodoxy presents law as a neutral and objective arbiter. But as we have intimated, nothing can be further from the truth. Law plays a crucial role in inscribing our bodies with rules, symbols, images, meanings and hierarchies. Legal discourse constructs and reinforces the “normal” body and any breach or deviation from the “norm” exposes one to punishment. The constructs of law mirror patriarchal-capitalist social relations and “truths.” Eisenstein elaborates:

[Law] constructs and mirrors patriarchal social relations through its phallographic interpretations of truth, but there is no one interpretation through the law. The law names reality at the same time that it mystifies reality.... Law reflects and impacts the world.... Law operates as a political language because it establishes and curtails choices and action. (Eisenstein 1988: 21-22, 46)

There is a diversity of discourses that make up the body of law (Karpin and Mykitiuk 2011). In other words, statutory law is but one cog of the public administration system which includes several other facets such as policies, culture, religion, social regulation and implementing institutions. Legislators, judges, lawyers and law professors who make, apply, interpret and disseminate the law all contribute in establishing law as a discourse. As

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<sup>17</sup> Stella Nyanzi’s mental state came under serious scrutiny on social media platforms and even with the University Committee that was set up to investigate the issues surrounding her protest.

a post-colonial country, Uganda operates a pluralistic legal system that embraces both codified statutory law and uncoded customary law mainly rooted in culture. Although not stated anywhere that religion has the force of law in Uganda—indeed the Constitution explicitly underscores the secular character of the State<sup>18</sup>— many patriarchal religious principles find expression in the legal codes and are often used to justify and legitimize culture and the law (Tamale 2014; Nyamu 2000). Together all these laws participate in inscribing our bodies. But the fluidity and contingency of our embodied selves always pose the challenge of subverting the dominant script.

This part of the lecture engages with a critical analysis of the law, expanding upon its more nuanced and complex nexus with gender and power and exposing the contradictions that such a relationship entails. The legal discussion is of course linked to naked protests. While the issue of nudity, indecency and pornography in Uganda has recently emerged as an important one, the jurisprudence on these issues is grossly underdeveloped. This means that much of our analysis has to draw on discussions from elsewhere.

#### ***4.1 Natural Law Doctrine and the Criminalization of Sexual Morality***

Although positive law dealt a serious blow to natural law theory over two centuries ago and displaced it as the orthodox jurisprudential school of thought, residual influence of natural law endures into the 21<sup>st</sup> century (e.g., Finnis 1980). The basic tenet of natural law theory is that law is based on morality, and the standards of what is “right” and “wrong” governing human behavior are derived from the command of a super-natural power. Given that one of the “truth” values of Natural law theorists is that everything natural is moral, it is ironic that they view “natural” nakedness as immoral.

Rooted in patriarchal religious authority, natural law theorists continue to operate with underlying beliefs espoused by St. Thomas Aquinas who viewed woman as an “imperfect man” or Aristotle who considered women to be “naturally inferior” (de Beauvoir 1988: 16). Law is structured through the dualism of man/woman, privileging the male as the default human and the female as the “other.” The new-fangled natural law schools of

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<sup>18</sup> See Article 7 of the 1995 Constitution which clearly states, “Uganda shall not adopt a State religion.”

thought, such as those espoused by John Finnis (1980), Germain Grisez (1987) and al-Buti (1982), all manifest as a resurgence of Christian and Islamic fundamentalisms which seek to subjugate women through their bodies. The subjugation proceeds along the channels of morality and decency engraved on the surface of women's bodies.

In Uganda, such morality is firmly implanted in the British-designed Penal Code which came to us via India under the chapter entitled, "Offences against Morality."<sup>19</sup> The common denominator that links all morality offences in Uganda's law is sexuality, particularly women's sexuality.<sup>20</sup> It is here that we see the law functioning to both name reality and mystify it at the same time, declaring men and women as different while simultaneously obscuring the many similarities that they share (Eisenstein 1988: 22). Our penal system generally constructs and enacts morality, not so much to protect as to confine and repress particular expressions of sexuality (Tamale 2009a; Hubbard 2000). Such legal moralism rests on two problematic assumptions. First, that there exists a moral consensus in what is a pluralistic Ugandan society. Secondly, and more importantly, it assumes that elements of human rights and democratic freedoms are absent from the law (Bakare-Yusuf, 2011). That same outlook has been given expression much more deeply in some of our more recent laws. Thus, in 2014 the Anti-Pornography Act (APA) was passed to reinforce this "morality framework."<sup>21</sup>

Even where the law appears to protect females, say from sexual assault, its approach is highly problematic. The offence of rape, for example, revolves around the "lack of consent" and the proof of penetration. However, a sexual assault victim will not be protected by rape law if she did not consent to having sex with her abusive husband as he is exempted from such assaults.<sup>22</sup> Moreover, the only penetration that the law envisaged was penile-vaginal, which means that if a man rapes a woman through the mouth or penetrates

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<sup>19</sup> See Chapter XIV of the Penal Code Act (Cap 120).

<sup>20</sup> The offences listed under Chapter XIV include: rape, abduction (with intent to marry or to have sexual intercourse), elopement, indecent assault, defilement, child to child sex, procurement, detention with sexual intent, prostitution, abortion, unnatural offences (sodomy), indecent practices and incest.

<sup>21</sup> See the Anti-Pornography Act of 2014.

<sup>22</sup> The Common Law jurist, Sir Matthew Hale, in his *History of the Pleas of the Crown*, (1736) Vol. 1, at 629 wrote, "But the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given herself up in this kind unto her husband which she cannot retract."

her with a gun barrel or a broken bottle, he can only be prosecuted for the lesser offence of indecent assault. When it comes to prostitution, the crime is only restricted to the sellers of sex (mostly women) but not the buyers (the majority being men). Similarly, criminal adultery is restricted to wives and not husbands.<sup>23</sup> This clearly reflects a husband's control over his wife's body, which was viewed as chattel. Indeed, in 1707 English Lord Chief Justice John Holt described adultery as "the highest invasion of property."<sup>24</sup>

Such double-standards in the sexual morality of men and women clearly indicate that the aim of the law is not to protect but to regulate and control women's bodies. Wives were viewed as their husband's property or chattel and therefore the crime of rape was taken like any other property crime (Adamo 1989). The time is overdue for Uganda to overhaul these outdated sexist penal laws. The foundation of such laws was English Common Law which is rooted in Natural Law principles. The focus should not be on the *morality* of the sexual offences but rather on the *illegality* of the sexual assaults committed against women. That will help to rewrite the script on women's bodies.

A critical analysis of the morality offences defined under the law exposes not only the means by which dominant structures engrave particular scripts on women's bodies, but also the ways that such scripts are "read" and interpreted by society. In other words, a feminist deconstruction of morality laws gives us an opportunity to sharpen our understanding of the context in which women's naked protests erupt and to assess the response of society to them.

This was made clear with the call by the minister of Ethics and Integrity for the arrest and prosecution of naked protesters under the Anti-Pornography Act. However, elements of the offence introduced by this law are restricted to "producing, trafficking in, publishing,

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<sup>23</sup> This particular law (section 154 of the Penal Code) was challenged and the Constitutional Court declared it unconstitutional for its gender discrimination. See case of *Law and Advocacy for Women in Uganda v. Attorney General* [2007] UGCC 1. However, since that ruling parliament has done nothing to remove the offending section in the Penal Code.

<sup>24</sup> See *R. v. Smith (Morgan)* [2001] 1AC 146 at 169

broadcasting, procuring, importing, exporting, selling or abetting any form of pornography.”<sup>25</sup> Section 2 of the APA defines “pornography” as:

...any representation through publication, exhibition, cinematography, *indecent* show, information technology or by whatever means, of a person engaged in real or stimulated explicit sexual activities or *any representation of the sexual parts of a person for primarily sexual excitement*. [Emphasis added]

Although the phrase “sexual parts” is not defined in the law, we know that the popular understanding of this term differs for men’s and women’s bodies. While men’s sexual parts are normatively restricted to their external genitalia, for women there are many more body parts that are sexualized including breasts, thighs, buttocks, hips, even hair and lips (Tamale 2016). Indeed, the draft version of the law had also explicitly banned the depiction of the clearly gendered “sexual parts of a person such as breasts, thighs, buttocks or genitalia.”<sup>26</sup> The term “indecent” is not defined in the law either. Failure to provide an explicit definition of this illusive term opens it up to the unsatisfactory I-know-it-when-I-see-it standard.<sup>27</sup> Moreover, it would be stretching the law too far to argue that naked female protesters are exhibiting their bodies primarily for sexual excitement.

The case of *Uganda v. Nabakooza and 9 Others*<sup>28</sup> further illustrates how the law dictates the meaning of the body. Specifically, it demonstrates the contribution made by the law to inscribing sexuality onto women’s bodies. On July 6, 2004 several African heads of state were travelling from Entebbe airport to Kampala for the Common Market for Eastern and Southern Africa (COMESA) meeting. Jackline Nabakooza and her music troupe were also travelling atop a pick-up truck along the Entebbe highway for a fete on the same day. They were adorned in skimpy costumes and dancing to amplified music en route. The police arrested them and charged them with being “idle and disorderly” contrary to section 167(d) of the Penal Code.

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<sup>25</sup> See Section 13 of the Anti-Pornography Act, 2014.

<sup>26</sup> See Clause 2 of the Anti-Pornography Bill No. 12 of 2011. Reference to the explicit body parts was removed after women’s rights activists objected to its gendered import.

<sup>27</sup> This phrase was famously used by the U.S. Supreme Court Justice Potter Stewart decades ago in the case of *Jacobellis v. Ohio* 377 US 184 (1964).

<sup>28</sup> HC Criminal Revision No. 8 of 2004 (Unreported).



Finding them guilty of the offence, the Chief Magistrate held that the women “depicted a high level of moral decadence of the country” to the visiting heads of state and sentenced them to three months in prison. He described their performance as “a shame to the nation,” and further ordered that for future deterrence, the women’s skimpy dresses be handed to the police for immediate burning, their big weaves undone and their heads shaven. The sentence he meted out to the young women was harsher than what he gave to their male counterparts. This gendered, morally-oriented interpretation of the law by the magistrate and the visiting of shame on the young women’s performance was very telling given that, traditionally, most female dancers around Africa are skimpily-dressed. Indeed, on review by the High Court, gender-sensitive Justice Okumu-Wengi, set aside the order holding that destroying their clothing and shaving their heads “smacked of a discriminatory treatment that also demeaned the girls and assailed their dignity as women amounting to them suffering cruel, degrading treatment and punishment.”<sup>29</sup>

What needs to be emphasized is that the expressive act of protest is very different from pornographic expression. To interpret the law in that way would amount to denying the protesters agency and power, turning their bodies into passive sexual objects. When women strip in protest, at best they rewrite and overwrite the dominant sexual script associated with their nude bodies. At worst they render it illegible. It is an insult to undermine their mobilizing potential and their ability to rally against oppression. Naked protesting women are stretching the personal to relate it to the political in a dramatic fashion. Society must therefore “read” their naked bodies as powerful icons of defiance and not as the objects of sexual display.

#### ***4.2 Naked Protesting as a Constitutional Right and Freedom***

The 1995 Constitution provides the fundamental principles of law to which all other laws of the land must conform. This premier law recognizes the right to peaceful protest and indeed, such right is integral to any functioning democracy. The basis of this right is preserved in the fundamental freedoms of conscience, expression, assembly and association,

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<sup>29</sup> See *Uganda v. Nabakooza Jackline and 9 others*, HC Criminal Revision No. 8 of 2004 (Unreported).

all of which are enshrined in the Constitution.<sup>30</sup> If we continue with the “speaking body” metaphor, it is quite clear that individuals are free to use their bodies as a tool of communication. Indeed, an expansive conception of expression has been extended to non-verbal conduct by courts of law.<sup>31</sup> However, the rights which stand as the foundation for protest and resistance come with legal caveats. Specifically, individuals exercising these rights and freedoms must justify them with evidence that their actions are not detrimental to the “public interest.” Article 43(1) of the Constitution provides:

In the enjoyment of the rights and freedoms prescribed in this Chapter, no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest.

In other words, the enjoyment of one’s rights is contingent upon one’s fulfillment of the public interest duty. But what are the parameters of the concept of “public interest”? The premier law does not delineate the limits beyond the fact that it must not go “beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in this Constitution.”<sup>32</sup>

So under what circumstances would *expressive* nakedness be acceptable and demonstrably justifiable as per the Constitution? We turn to judicial interpretation for proper guidance on this crucial concept. Unfortunately, Ugandan jurisprudence is yet to clarify and interpret the right to freedom of “expressive” nakedness as protected under Article 43. However, a similarly-worded provision in the New Zealand Bill of Rights Act (1990) was scrutinized in the 2012 public nakedness case of *Pointon v. New Zealand Police*.<sup>33</sup> Pointon was a naturalist who did not believe in covering the natural human body with clothing. When he went jogging in the park wearing nothing but his running shoes, members of the public complained and he was charged and convicted of “behaving offensively” contrary to section 27 of New Zealand’s Summary Offences Act. Pointon successfully appealed his conviction, arguing that the charge negated his right to freedom of

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<sup>30</sup> See Article 29 of the 1995 Constitution of the Republic of Uganda.

<sup>31</sup> E.g., see the Canadian the Supreme Court judgment in the case of *Irwin Toy Ltd v Attorney General (Quebec)* [1989] 1 SCR 927 (SCC).

<sup>32</sup> See Article 43(2)(c) of the Constitution.

<sup>33</sup> [2012] NZHC 3208. See section 5 of the New Zealand Bill of Rights Act.

expression. Pointon's nakedness was distinguished from nudity exhibited in cases such as strip-tease shows.<sup>34</sup> In fact, *Pointon* represents the current jurisprudence in New Zealand on this issue; that is, that the nakedness of protesters (or naturalists) does not amount to indecent behavior (Lincoln 2013).

In Uganda, two basic principles developed by the Courts of Law define the idea of "acceptable and demonstrably justifiable in a free and democratic society": first that individual rights and freedoms are inherent<sup>35</sup>; and secondly, that all organs and agencies of government and all persons must respect, uphold and promote all human rights.<sup>36</sup> Therefore, any limitations imposed on a right guaranteed by the Constitution have to be precise and clear.

The Supreme Court of Uganda in the case of *Onyango Obbo and Another v. Attorney General*,<sup>37</sup> expounded upon the meaning and rationale of the phrase "acceptable and demonstrably justifiable in a free and democratic society." Relying on persuasive authorities from jurisdictions such as South Africa, the USA and Canada, the court was quite generous when drawing the boundary lines on the right to freedom of expression. It noted that the words "acceptable and justifiable," clearly presuppose the existence of universal values and principles to which every democratic state is committed and underscored the fact that legislation which seeks to limit the enjoyment of fundamental human rights and freedoms is invalid unless it is in accordance with the universal democratic values and principles that every free and democratic society adheres to.<sup>38</sup> The court ruled, "[A]ny one seeking to restrict that freedom must be prepared to show that special and clear circumstances do exist that justify such restriction of the freedom. The task is not insurmountable but it is quite a demanding one."<sup>39</sup> This means that anyone asserting that a naked protest is detrimental to the "public interest" would have to meet the high standard of scrutiny set by the Supreme Court.

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<sup>34</sup> E.g., in the case of *Philpott v. Police* HC Christchurch AP-138-142, 13 July 1993 (cited in Lincoln 2013: 13).

<sup>35</sup> See Article 20(1) of the Constitution.

<sup>36</sup> See Article 20(2) of the Constitution.

<sup>37</sup> Constitutional Appeal No. 2 of 2002; [2004] UGSC 1 (February 2004).

<sup>38</sup> *Mark Gova and Anor v. Minister of Home Affairs and Anor* S.C.36/2000: Civil Application No. 156/99.

<sup>39</sup> Per Twinomujuni, JA in the *Onyango-Obbo* judgment (note 28) at 24.

So, would Ugandan courts follow the New Zealand judiciary in disqualifying the application of the exceptional criteria on naked protests? One of the key justifications that parliament put forward for enacting the APA was that pornography offends public morality.<sup>40</sup> We have already discussed the problems surrounding the vaguely-defined term “pornography.” But what *is* “public morality”? Whose morality are we talking about here? When a society employs double standards of morality for men and women, which one counts as public morality? Does the moral wellbeing of the protesting women really matter? Who determines the moral compass of the public and to what ends? Does morality discourse work to obscure hidden interests? Does it make sense to legislate morality and should immoral conduct be criminalized?

As a feminist, the concepts *public* interest and *public* morality always transport me to the uncomfortable terrain where the rigid demarcation between the public and private spheres works as an instrument to reinforce patriarchal-capitalist interests. As we have seen, the deeply gendered distinction relegates women to the so-called “private” sphere where they gratuitously provide the necessities of productive and reproductive social life (Tamale 2014, 2004). What is dubbed “private” is in fact very much in the public or the political realm and the complex realities surrounding naked protests overlap both “spaces.” Catharine MacKinnon articulates it better: “The private is public for those for whom the personal is political. In this sense, for women there is no private, either normatively or empirically” (MacKinnon 1989: 191). Protectionist regulations that are often justified with the “public interest” veil are usually designed to protect the interests of the powerful at the expense of the oppressed and exploited. The script inscribed on the domesticated naked female body and “read” by the public as shameful and embarrassing, is only meant to stifle women’s self-determination and agency. If it was really about public morality then the commodified nude or half-nude bodies of women that are routinely displayed on billboards, in the mass media, on screens and stages for the male gaze would be banned. The artificial public/private split also has significant implications for women’s citizenship rights as “private” actors asserting themselves in the “public” realm.

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<sup>40</sup> See Official Hansard, December 19, 2013.

It is important to unpack the public/private dichotomy and reveal the power relations behind the distinction. Under patriarchy, men's bodies are constructed as the "benchmark" standard and even equated to the public "body politic" (as opposed to the "body natural" of the woman) (Fineman 2011: 114). Clustering the term "public" with the vague and ambiguous concepts of "morality" and "interest" operates to juxtapose it against the cluster, "private life" which society undervalues and views as unimportant. But the meanings associated with the terms "public" and "private" are much more complex. The classification of "public interest" signifies matters about which the public is or ought to be interested. Ruth Gavison argues that "the normative sense of public concern may be related to the fact that these matters have direct or indirect effects on the public welfare, or that these are matters which the public constructs or regulates through its norms and culture" (Gavison 1992: 7). In the case of oppressive social structures (based on gender, class, etc.), this normative claim is more likely to mean that the public should seek to change such matters via political processes, including naked protests. To put it simply, deploying the APA or any criminal code against naked demonstrators under the patronizing guise of protecting the "public interest" cannot be demonstrably justifiable in a free and democratic society.

## **V. Conclusion: A Case of Women Reclaiming their Power?**

The take-away from this lecture is that the human body is fraught with politics, influenced by complex effects of power derived from institutions such as law, culture and religion. Such institutions mark the body with meaning and power which can be used either to oppress or liberate. A discussion of naked protests entails a conceptualization of the body as an instrument of control as well as a source of disruption. The body is a site of imaging the social structuring of society; it carries the symbols of hierarchies based on gender, sexuality, class, race, ethnicity, (dis)ability, age, etc. Naked female protesting bodies are

quite different from lewd nude bodies as the former represent defiance and agency while the latter represent sexual objectification.

At the minimum, naked bodies force us to rethink our association of nakedness with shame and debasement. At the maximum, naked bodies make strong political statements that challenge structures of domination or exclusion. They have the capacity to disrupt and, in a spectacular way, turn vulnerability into empowerment. We have discussed the contradictions in portraying women's bodies in the public arena as objects of desire and sex while simultaneously labeling them deviant. The silence of the written law on naked protesting bodies is pregnant with meaning. It is a silence open to interpretation, often reading perversity and hypocrisy on its surface.

Audre Lorde invited women to reclaim their power through the self-deepening and embodied feeling inherent in the erotic (Lorde 1984). It is the connection with their erotic lifeforce, experiencing the power of the erotic that drives women to bare their nakedness in public. As I argue elsewhere, "Women will go about their 'feminine' business as usual until a core part of their self-perception is shaken to such threatening proportions as to compel them to take action challenging it; when such a time comes, there is no regression" (Tamale 1996: 19-20).

We have highlighted the political technology of the body, exposing the role of the law (statutory, customary and religious) in regulating and disciplining the body. The law is an important instrument in shaping and scripting our gendered bodies. Society "reads" women's bodies along the landmarks forged by the law. Female naked protests represent a resistance and subversion of the dominant scripts engraved on women's bodies—scripts of subordination, passivity, sexuality, subservience, vulnerability, etc. Hence through the process of naked protests, women engage in a re-scripting and reconfiguration of their bodies. African women have employed this strategy against the wielders of power for many generations. The meanings and understandings of these processes are interpreted differently; the custodians of patriarchy view it as a violation of dignity and the law, while the activists perceive it as fighting for embodied justice to preserve their very dignity. Given that at core, the law is a political institution, it may appear that there is little hope held up

for those bodies that stand in the way of those who hold state power. However, there is another type of power that inheres in the self, in solidarity, in self-determination and in disrupting the norm.

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