

Culture, Abstinence, and Human rights: Zulu Use of Virginity Testing in South Africa's
Battle against AIDS

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Abstract

Virginity Testing, a traditional Zulu pre-nuptial custom that determines the worth of a bride, has been resurrected in communities in KwaZulu-Natal in South Africa as a response to the HIV/AIDS epidemic. The practice takes place during large community festivals when young girls have their genitals physically examined to determine whether they are virgins and results are made public. Supporters of the tradition claim that in fostering a value of chastity among its youth, it encourages abstinence from sexual intercourse which leads to a lower HIV infection rate and prevents the disease from spreading. Human rights activists disagree; Rather than slowing the spread of a disease, they argue, the practice instead endangers girls. Those who fail are often shunned and turn to prostitution, while those who pass may be exposed as potential targets for rape (due to a myth that says intercourse with a virgin cures HIV/AIDS). Despite a ban on the practice in 2005, the testing festivals continue, and are described by supporters as an important part of the preservation of Zulu culture. This thesis examines the ways in which human rights may be re-negotiated for young girls in Zulu communities while maintaining a respect for local culture. It moves beyond the traditional debate between relativism and universalism in order to propose solutions to rights violations in culturally diverse contexts by exploring ideas of inclusive human rights and capabilities theories.

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Introduction

AIDS, born out of poverty, has become infamous as Africa's disease; however, the country in which it is the most prevalent is one of Africa's wealthiest: South Africa. Despite the fact that the country is one of the fastest developing in the Third World, one in ten South Africans and one in three of those living in rural areas of the country are infected with HIV/AIDS, and it is home to the largest epidemic of the disease in the world (Singer, 2000: 1). What is even more alarming is that fifty-six percent of those infected are women, and females are four times more vulnerable to infection than are their male counterparts (George, 2008: 1448).

Zulu tribes in the province of KwaZulu-Natal have used this frightening statistic to justify the reappearance of the indigenous practice of *ukuhlolwa kwezintombe* ("virginity testing") in many South African townships. Hundreds of unmarried women and girls as young as six years of age are subjected to invasive inspections of their genitals in order to determine if they have had sex or not, and leaders then publicize the girls' sexual "statuses" within the community. The practice is praised among Zulus as a return to African cultural roots: the ritual is based on a prenuptial tradition that fosters the value of chastity before marriage. Tribal leaders and those involved insist that Virginity Testing (from here on referred to as VT) serves as a successful preventative measure for the spread of AIDS (as well as strengthening the moral and cultural fabric of the community), in encouraging girls to abstain from sex and remain virginal.

Those who do not pass the virginity test are often ostracized within their communities and in some cases are even forced into prostitution because they are no longer fit to be married. However, those who pass the tests (and become known as "untouched")

face even more danger, due a myth that exists in many countries impacted by AIDS in Africa (George, 2008: 1462). The myth has convinced many people that sexual intercourse with a virgin will cure a man with HIV/AIDS. Many researchers have suggested that this has increased instances of rape and assault among girls known to have passed their virginity tests (George, 2008:1461), thus exacerbating the problem of the spread of the disease and defeating the whole purpose of the testing.

How can the international community interfere in cases such as these without accusations of neo-imperialism, eliminating cultural practices in the name of human rights? Is there a “middle path” between fighting for universal human rights and maintaining respect for cultural values? This research is relevant not only to the importance of studying gender issues in developing countries, but also to International Development and Globalization studies as a whole. In a globalized world, fighting against injustices in other parts of the globe is a difficult thing when met with cultural particularities. Development workers in the West (or developed countries in general) are often accused (and sometimes with reason) of having hidden agendas behind their objectives of benefiting others. This becomes a problem when practices that endanger human rights are justified by a people as being a part of their indigenous culture. It is essential to International Development studies to find a way of eliminating human rights violations in the world without also eliminating cultural differences and practices.

A study of the opposition of the bodies of literature concerning universalism and relativism and the possibilities of combining ideas of human rights (including documents such as the United Nations Declaration of Human rights and the Convention of the Elimination of all Discrimination Against Women) with local customs and discourses will be

applied to the practical and illustrative case of South African tribal Virginity Testing. A theory of universal human rights based on inclusiveness as well as Martha Nussbaum's Capability Approach will be proposed for the analysis of VT. The case of VT will also be compared to Female Genital Cutting (FGC), another human rights violation that will serve here as a parallel case in which similar conflicts have arisen. The use of a discussion on FGC can be beneficial due to the fact that attempts to prohibit it while simultaneously maintaining respect for cultural ceremonies have been successful in many countries in Africa (such as in the case of the Senegalese NGO Tostan). Furthermore, the problems arising from VT have not been as widely debated as FGC, so this analogy will serve to support the analysis of potential solutions for this case.

The thesis begins with a contextual analysis of HIV/AIDS, Zulu culture, and the practice of VT in South Africa. The first chapter will situate the debate within its political, social, and cultural context before moving on to explore the problems that arise as a product of the practice itself. This will include an examination of the ways in which the custom of VT violates human rights as laid out in the UDHR, CEDAW, and the South African Bill of Rights. It will also investigate such pertinent issues as autonomy, privacy, human security, and bodily integrity.

The second chapter serves as a theoretical foundation for the analysis of the case of VT; it provides a background of the theoretical debate between universalism and relativism that has dominated discussions on harmful cultural practices for many years. The exploration of this debate and the key philosophers found within it uncovers the weaknesses of the debate itself and the dichotomization of the views that it represents. The latter part of the chapter proposes an alternative: an inclusive theory of universal human rights that accounts

for the importance of cultural values. This theory includes the idea of capabilities as put forward by Martha Nussbaum's Capability Approach, as well as the important idea of inclusivity as outlined by Brooke Ackerly.

Finally, the third chapter of this thesis returns to the practical considerations of VT. It applies the Capability Approach to VT, asking, "which of the ten capabilities are restricted for young girls in Zulu communities?" The discussion then turns to a case in which a Senegalese NGO was successful in working with communities to abandon the practice of FGC; the examination of this case will serve as a comparison for the case of VT. From this comparison, an analysis of the possible outcomes for the elimination of VT (or at the minimum, the elimination of the harm to participants that is involved in VT) will be explored.

Methodology

The following research employs a qualitative approach, based on a conceptual analysis of Brooke Ackerley's inclusive theory of human rights as well as Martha Nussbaum's Capabilities Approach in the context of Virginity Testing in South Africa.

The literature I chose to contribute to this research is divided into three categories: literature detailing the practice and contextual issues of VT, literature to form a theoretical analysis (including material on human rights, women's rights and minority rights) and literature concerning the possibilities for social change in situations where cultural practices have the potential to harm those involved. I also analyze the Universal Declaration of Human rights and the South African Bill of Rights in order to develop my discussion on how Virginity Testing violates human rights as guaranteed in those legal documents.

The second chapter of my thesis focuses on a discussion of the debate between universalism and relativism. It involves an evaluation of the history of both schools of thought and sets out how they have often been at opposite sides in debate. I then move into a dialogue between two scholars of political theory that refocuses this debate. A dialogue takes place between Will Kymlicka and Susan Moller Okin in Okin's collection of writings, *Is Multiculturalism Bad for Women?* I choose to include this dialogue because it shows that, when thinking about women's rights and cultural sensitivity, the universalism versus relativism debate has progressed since it first began. Okin's primary concern is that the tensions that exist between feminism and multiculturalism are too often overlooked. She argues that multiculturalism can indeed be detrimental to the lives of women. Kymlicka, a strong supporter of minority group rights, on the other hand, claims that allowing groups to

maintain certain practices and traditions is actually beneficial to all of society. He strives to establish a liberal theory for minority rights, and shows that such a theory is indeed possible. Though he supports the preservation of minority rights, he also acknowledges that rights can be misused and cause harm. The discussion of these two scholars in my thesis shows the development that has taken place in the traditionally polar universalism versus relativism debate, especially with regards to issues affecting women.

I continue my theoretical chapter with a proposal of a framework to better analyze issues concerning harmful cultural practices such as VT. I first introduce Brooke Ackerley's theory of universal human rights since it contains concepts essential to working towards ending harmful cultural practices: inclusivity, discussion, and the importance of embracing dissent and disagreement. I echo Ackerley's self-critique, however, in that her theory is adequate in laying the appropriate foundations but that it must be complimented by a concrete way of carrying these concepts out in reality. I propose Martha Nussbaum's Capabilities Approach for this role; though attuned to the values of universal human rights, capabilities are a measure of how real individuals are actually able to *use* these rights. This approach also supports the argument of this thesis that with issues regarding human rights violations it is crucial to focus on the context of the particular situation; capabilities enable us to analyze the relationship between a person and their environment (including social, political, and cultural factors) and to determine what is preventing them from having their rights fulfilled.

The theoretical analysis of Virginity Testing is accompanied by a comparison to another cultural practice found to violate women's rights: Female Genital Cutting. I explore the success of Tostan, a Senegalese NGO, in eliminating the harmful practice of FGC. This

approach is used not to compare cultural values (since the contexts of VT in South Africa and FGC in Senegal are very different) but to provide an example of local based efforts that have been successful in bringing about social change, particularly with respect to practices that are culturally entrenched in a society.

CHAPTER I: “STANDING ON THE FRONT LINES”: WOMEN AND VIRGINITY IN SOUTH AFRICA’S BATTLE AGAINST AIDS

1.1 HIV/AIDS in South Africa

AIDS has come to be known as a disease of the Third World- associated with poverty, lack of education and inadequate healthcare facilities. Nonetheless, the disease has spread worldwide and is found in even the most developed and economically successful countries- even though infection can be easily prevented with the right knowledge and precautionary measures. This is evident in South Africa- a country whose citizens have a much higher quality of life than most citizens in Sub-Saharan Africa, but is still plagued by many social issues stemming from its tumultuous political past. To contextualize the practice of Virginity Testing (VT) in South Africa, this chapter will provide a geographical, historical and cultural background as well as a preliminary analysis of the practice as a departure point for a discussion on human rights and cultural practices. It will also discuss the ways in which VT violates human rights.

Despite steady economic growth, high literacy rates, a large number of citizens with access to proper drinking water and an overall “Medium Human Development” classification for the country¹, present day South Africa continues to face many obstacles that threaten its newfound democratic status on a daily basis. Apartheid, a social policy of racial segregation that governed the country for over thirty years, caused racial and economic discrimination against all non-white populations in South Africa (“Apartheid”). The effects of gross inequality, racism, and social setbacks caused by Apartheid are still felt in the country even today, over a decade after the unraveling of the regime that held it in place.

¹ According to the United Nations Development Program (UNDP)’s Human Development Reports website, South Africa ranks at number 112 out of 169 countries listed. South Africa is thus classified under “Medium Human Development”: <http://hdr.undp.org/en/statistics/>

Arguably the largest and most severe of the problems facing the country is that it has the world's largest HIV/AIDS epidemic: an estimated 5.7 million people living with HIV are in South Africa (United Nations Programme on HIV/AIDS, South Africa Country Situation, 1). Even more alarmingly, fifty-six percent of those infected are women, and females are four times more likely to become infected than are their male counterparts (George, 2008: 1448). This reflects the fact that gender inequality is driving the epidemic in South Africa with many women in the country lacking socio-economic independence, education, and access to health services (*Initiative for Vaccine Research: Sexually Transmitted Diseases*, World Health Organization).

When HIV/AIDS began to surface in South Africa, it did not cause a lot of concern among its politicians or its people. It appeared, for a long period of time, as if the government of South Africa was unwilling or unable to deal with the challenges of the disease (George, 2008: 1452). It was thought at the time that the country was in a position to prevent an epidemic; other countries had already been battling AIDS for years and South Africa could learn by following examples leading to success. Thabo Mbeki, president of the country at the time, was openly skeptical about the connection between HIV and AIDS, and even publicly criticized Anti-Retroviral Treatments (ARVs) (George, 2008: 1453). The dismantling of Apartheid in 1994 corresponded with increasing rates of HIV infection- the country was focused on its optimistic future and the many matters that needed addressing. The early post-apartheid era saw a steady stream of claims about the right to assert one's "belonging to a particular 'culture' [...] in the general upsurge of identity construction dominating cultural politics" in South Africa (Scourgie, 2002: 62). The issue of the impending epidemic did not receive the attention required to stop the spread of the disease.

The end of Apartheid, though a triumphant moment for South Africans, brought with it many uncertainties with regards to identity and cultural belonging, and resolving these issues became the central focus; leaving the growing problem of HIV/AIDS little attention (Scorgie, 2002: 63).

South Africans continue to battle the AIDS epidemic today. KwaZulu-Natal, the province occupying the southeastern portion of the country and home of the Zulu people (who occupy four fifths of the territory), is the area with the highest infection rate of HIV/AIDS in the country: 39.1 per cent of the population is infected with HIV, compared to 15.1 per cent in the Western Cape (United Nations Programme on HIV/AIDS, South Africa Country Situation, 1). The astonishing difference between the infection rates in the various regions makes KwaZulu-Natal an interesting case study on HIV/AIDS in South Africa. The research of this thesis will thus be focusing on this region, due to the extremely high rate of HIV/AIDS infection that occurs there in comparison to the rest of the country². Even more importantly, I will be focusing on the way in which the people of KwaZulu-Natal (the Zulu tribe) respond to this epidemic, which is primarily a cultural response: the resurgence of the traditional practice of VT.

KwaZulu-Natal is both rural and urban; Durban is the province's economic and industrial centre ("KwaZulu-Natal"). The urban Zulu live mainly in townships on the outskirts of cities like Durban, built in the 1950s and 1960s by the government to enforce racial segregation ("Zulu"). The Zulu people are known for their strong sense of identity and

² Despite the large role that HIV/AIDS plays in the resurgence of the practice of Virginitiy Testing in South Africa, the focus of this thesis is the practice of Virginitiy Testing itself and the problems it causes concerning human rights and respect for culture. The thesis will not explore HIV/AIDS in South Africa and its relationship with Virginitiy Testing in depth. I do, however, acknowledge that this kind of research must be incorporated into any work done towards ending the harm that VT causes, and that more research exploring the implications of AIDS is essential.

the cultivation and maintenance of their cultural practices (“Zulu”). Polygamy, a traditional feature of the culture, is still practiced (especially in rural areas); men are the principal carriers of identity (children belong to their father’s lineage and mothers are often seen as only the channels through which children come into the world) and a traditional division of labor between the genders still exists with women managing the household and men in charge of economic and outside relations (Ngubane, 1976: 275). Women in the Zulu tradition are often seen as “the other” since they never truly join the lineage of their husbands and remain outsiders as part of their father’s lineage. This is both an advantage and a disadvantage in the power relations between women and men; Zulu women can turn to their connections outside of their husband’s family to protect them from the power their husbands could exercise over them (Hanretta, 1998: 391). Women are a central part of the major economic transactions in Zulu culture- passed between male heads of households as wives and daughters along with cattle as bridewealth (Hanretta, 1998: 391). This traditional practice continues today, as do many other cultural practices. Though the majority of the Zulu people have incorporated some Christian elements into their traditional religious belief system, they have kept a defiant attitude toward Western standards and mannerisms (Hanretta, 1998: 391). This is evident in the resurgence and continuation of traditional cultural practices such as VT.

The study of HIV/AIDS in the context of VT in KwaZulu-Natal can be conceptualized along the following questions: how are the Zulus, a people full of passion for their culture and respect for tradition, dealing with the disease that has killed so many of their members? What have their responses been as a people, and have these responses been effective? Which members of the community are taking part in attempts to start change, and

what elements of life and culture in KwaZulu-Natal are integrated in them? Zulus, like most South Africans, are fearful of the facts regarding HIV/AIDS in their country, and have taken steps to make their own contributions toward reversing the epidemic. These fears have become the driving force behind the resurgence of one traditional Zulu practice in particular which is taking place in communities in the country (the majority of which are in KwaZulu Natal): Virginitly Testing. The above questions are crucial to the study of VT in South Africa as they help us discover the contextual background for the resurgence of the practice. I will address the above questions in this chapter, which will be followed by a theoretical discussion of human rights and cultural practices in the second chapter.

1.2 Virginitly Testing

VT, a traditionally prenuptial custom, is the practice of examining a girl or young woman to determine whether or not she has been sexually active; most testers look primarily for the presence or absence of the hymen, but claim that there are other indications of virginitly that exist (George, 2008: 1449). Like many traditional customs, VT varies depending on the political, cultural, and social context. It is important to realize that how the custom is practiced in one country does not equal how it is practiced in another. This thesis focuses on the importance of context in securing human rights when they are in conflict with cultural values; therefore, it is important to assert that VT in South Africa may not be rooted in the same histories and societal values that it is elsewhere, and so a one-size-fits-all solution for eliminating the harm that is caused will not be effective.

VT is not unique to South Africa; it has been conducted in many other countries in Africa, the Middle East and Asia. In Zimbabwe, the resurgence of the traditional practice has

been explained as a response to a growing HIV infection rate, a similarity it shares with South Africa. Fostering sexual abstinence among young girls has been used as a measure to eradicate the epidemic. In Zimbabwe, much of the ceremony and techniques are similar to those in South Africa. Women in respectful positions in the community use their hands, wooden tools and even eggs to determine the virginity of a girl- if an egg inserted into the vagina breaks, the girl is considered sexually pure (Berthiaume 2004: 18).

VT is also present in many Muslim countries, but in the majority of these areas, promoters of the practice do not list the battle against HIV/AIDS as one of their motivations. In Turkey, for instance, the practice is entangled in ideas of honor- the tests are conducted by registered doctors for many different purposes: to ensure the honor and reputation of a family before a marriage, to determine the severity of punishment for female prisoners (usually arrested for political activism or behaving immodestly) and even for girls applying to government jobs or specialized schools such as nursing school (Lasco 2002). Despite the fact that Turkey has placed a ban on VT (in its bid to become a member of the European Union, Turkey has been attempting to clean up its questionable past with regards to human rights violations), familial pressure, doctors pleading ignorance, the claim that testing helps detect and prevent rape, and the fear of their virginity being questioned are all factors that push women to submit to the practice (Lasco, 2002). Furthermore, most incidences of testing are involuntary on the woman's part, and much of testing is enforced by police and the Turkish government (Lasco, 2002).

A more current occurrence of the use of VT has taken place in Egypt earlier this year during the revolution that dismantled the thirty-year rule of President Hosni Mubarak. Women protestors in Tahrir Square, Cairo (where much of the revolution took place) were

given electric shocks, strip searched, and physically tested to determine whether or not they were virgins while male soldiers took photographs (BBC News). Egypt's military had been criticized throughout the revolution for detaining and torturing protestors, and women protestors have also faced sexual abuse. Amnesty International, in a statement on the attacks, has called VT "utterly unacceptable" and said its "purpose is to degrade women because they are women" (BBC News, 2011).

Much like other cultural practices involving women's rights violations, VT is conducted in many different parts of the world- but the practice is not globally uniform and is derived from a variety of contexts both political and social.

Virginity Testing in South Africa

In many rural towns in the KwaZulu-Natal province of South Africa, thousands of girls and young unmarried women (from the age of six up to marriage status) line up at community festivals, churches, chief's *kraals* (or huts), football stadiums and schools in local townships for their *ukuhlolwa kwezintombe* (virginity testing) [Madlala, 2001: 533]³.

VT ceremonies have become community-wide celebrations, centered on the moment when each girl, or *intombi* (Scorgie, 2002: 56) is physically examined in a private area by a respected matriarch or an elderly woman from the community to determine whether or not she has become sexually active. Though observers or *abahloli* (Scorgie, 2002: 56), are mainly looking for the hymen, a layer of skin they compare to a "lacy wedding veil"

³ Accounts from several different scholarly perspectives were studied for the purpose of this thesis. Erika R. George, a professor of law in Utah, South African medical anthropologist Suzanne Leclerc-Madlala, and Fiona Scorgie with the Department of Obstetrics and Gynaecology of the University of Witwatersrand have all conducted fieldwork on Virginity Testing in the last decade by attending modern-day testing festivals in KwaZulu-Natal. However, a study of the literature reflects that Madlala's fieldwork is foundational for most other writing on Virginity Testing; since 1985 she has been researching HIV/AIDS, cultural responses, and gender in South Africa, having been a resident in the country since this time.

(Madlala, 2001: 540) that is torn during sexual intercourse, it is not the only indication of virginity upon which they rely. They say there is also a “white dot visible deep in the vaginal canal”, an innocent look in the eyes (many testers insist that a non-virgin girl’s eyes will betray her as “someone who knows men” [Madlala, 2001: 540]), firm and taut breasts and tight muscles behind the knees in a girl that has only engaged in abstinence from sex (George, 2008: 1456). Furthermore, external tests are conducted, examining “the color and texture of the labia: a very light pink color and dryness are said to be the foremost signs of virginity” (Madlala, 2001: 538). One tester claims that “the stomach of a virgin is tight and taut. Buttocks are held high, they do not shake much when walking” (Madlala, 2001: 545).

The testing ceremonies have become so high in demand by the parents of young girls that VT has grown as a profession; there is much rivalry, competition and jealousy among the better known testers in the province, and most have even begun to charge fees for their services (Madlala, 2001: 539). Testers have developed their own trademarks; some give certificates, some a white dot on the virgin’s forehead, while others simply tell the girls’ mothers to bring notebooks to record the date and result of the testing (Scourgie, 2002: 58). As strong supporters of virginity amongst young girls, some testers even believe it is the mother’s duty to begin testing her daughter at the age of 2 or 3: “just as you wash her body and comb her hair, you can check if she’s still ‘clean’ down there” (Madlala, 2001: 539).

The testing is performed using an evaluation system in which girls with hymens intact receive an A and the status of “virgin”, girls who appear to have had “some interference” are given a B and are examined further for signs of sexual abuse, and girls with completely torn hymens are handed a failing C (George, 2008: 1456). At many festivals the girls found to be successful in their tests are celebrated: balloons are released into the air and

mothers and daughters dance and sing together (Madlala, 2001: 540). Those who pass the test in the modern practice are given cheerfully colorful certificates congratulating them on their abstinence and chastity as well as praise from proud parents and honor and bragging rights within their communities, as the results are made public (Singer, 2000:1). Participating establishments such as churches and community centres often even keep records of the testing results, to keep track of the girls of the community (Scourgie, 2002: 59). The United Church of Wesselton Township is one such place that has taken ownership for this testing, and keeps a “virgin registry” with the names of every girl and woman that passes the test in the community (Singer, 2000: 1).

So where does VT come from? What is the practice’s link to traditional Zulu culture? What is it about this practice that has many Zulu leaders and community members alike resorting to its resurrection in order to solve the problems of modern South African society, and what is its link to HIV/AIDS? Traditionally, the VT ritual was performed in Zulu tribes before a marriage to secure the *ilobolo*, a transaction that took place before a marriage. The *ilobolo* is a sum of money given to the bride’s family from the groom’s family according to the woman’s worth (also called a ‘bride price’) (George, 2008: 1455). The amount of the sum is generally contingent on the virginity of the bride-to-be, but can also increase its value, as “the standard ten head of cattle could be supplemented by an additional head, the ‘eleventh cow’, if the girl was found to be a virgin” (Madlala, 2001: 536). Most interestingly, this eleventh cow, known as *inkomokamama* (or “mother’s cow”) was given directly to the mother of the bride, as a gift of thanks from the in-laws for providing them with a pure and chaste daughter-in-law (Madlala, 2001: 544). The eleventh cow made the bride-to-be’s virginity public, thus bestowing honor on her mother, for her superior

parenting skills in maintaining her daughter's virginity. The cow itself and the glory and status to be achieved within the community served as a strong incentive for the mother to police her daughter's sexuality. This clarifies the extent to which wide social interest was shown in a girl's developing body in the Zulu culture- not only her mother, but any family member could command that a girl lift her skirts and show the front and back of her lower abdomen to determine her "readiness for courtship and marriage" (Madlala, 2001: 545).

Justifications for Virginity Testing

According to George (2008), the traditional practice of VT before marriages in Zulu communities fell into disuse due to the eroding of family structures caused by forced migration and migrant labour (1454). The revival of VT in many Zulu communities is a particularly interesting example of a local response to the AIDS epidemic in South Africa. Many South Africans see the disease as a modern, almost foreign problem because it did not exist in the past, and so are relying on their traditional, pre-colonial customs to make things right. At a formal VT festival that she attended in a township of KwaZulu-Natal, Madlala (2001) observed that "descriptions of an ideal, problem-free past" formed the basis of speeches that were delivered by community leaders to the girls waiting to be tested (537). The speeches were given to justify the resurgence of the VT practices, a promise that this was the solution to not only bring an end to all of the new diseases occurring in South Africa, but also to rid citizens of the need to worry about using contraceptives and condoms (Madlala, 2001: 537). The reasoning behind the resurrection of the practice is that teaching young women and girls to practice abstinence from sexual activity will reach young men and boys as well; less pre-marital sexual relations are expected to slow the spread of HIV/AIDS.

Praising virginity and rewarding abstinence is hoped to encourage young people from engaging in risky behavior.

On a cultural level, VT is a concrete example of what has been dubbed the “African renaissance”: a movement to bring traditional practices and indigenous knowledge to the forefront in order to solve social problems perceived as “new” and often brought about by colonialism. Advocates of this renaissance of traditional African culture link their lost traditions with a “long history of cultural destruction caused by the concerted onslaught of Christianity, colonialism, and apartheid” (Madlala, 2001: 535). This is particularly evident in South Africa, where the government has set aside 10 million rands (the country’s currency) for the study and promotion of indigenous knowledge systems (Madlala, 2001: 538). It has even led to a rejection of modern solutions to the country’s problems in the past; the administration of Thabo Mbeki infamously questioned the link between HIV and AIDS and the effectiveness of anti-retroviral (ARV) drugs in the mid-nineties, claiming instead that they were inventions of Western pharmaceutical companies to optimize profits (“Thabo Mbeki: Born into Struggle”). Mbeki’s Health Minister, Manto Tshabalala-Msimang, blamed lack of nutrition for AIDS, recommending those infected eat beetroot, raw garlic, and lemon skin rather than seek ARVs (“Manto Tshabalala-Msimang has died”). Though Mbeki and Tshabalala-Msimang’s “denialism” is no longer the dominant way of thinking of the South African government, it is an informative illustration of how culture is valued in the country, and the return to traditional values that is still taking place.

The analysis of the context of HIV/AIDS in South Africa and the kind of public discussions that have taken place among academics, activists, and supporters on the topic help to set the stage when exploring an issue such as VT. South African women themselves

have even taken ownership of the values associated with a return to tradition, believing that lost values (such as virginity and abstinence) will “repair the frayed moral fabric of society that has led to ever increasing problems of teenage pregnancies, STDs and HIV/AIDS” (Madlala, 2001: 535). Women are known to shoulder much of the weight of poverty in developing countries. In South Africa, grandmothers absorb most of the social impact of AIDS since they are the ones left to look after their orphaned grandchildren; in most cases these grandmothers are some of the strongest supporters of traditional practices such as VT (George, 2008: 1458). This return to custom is seen as “the only way to re-instill values of chastity, modesty, self-respect and pride” (George, 2008: 1458); values that have characterized traditional Zulu culture before the mark of Western influence. Other benefits from the practice include decreasing teenage pregnancy, promoting a sense of morality, preserving virginity before marriage, and detecting cases of child abuse.

Why Virginity Testing is Problematic

One of the objectives of VT (according to its local supporters) is to decrease the spread of HIV and slow the AIDS epidemic by promoting virginity and abstinence amongst the youth of South Africa. Girls who are found to be virgins are praised and celebrated- but what is the fate of those who do not pass the test? This question is integral to any study of VT; it is easy to acknowledge the good intentions behind the practice, but attention must also be turned to its effects on all of the girls involved. Chiefs who conduct the private ceremonies inside their *kraals* (huts) often require that the fathers of non-virgin girls pay a fine for ‘tainting’ the community (George, 2008: 1462), while mothers at VT festivals are often advised to take their “failing” girls to a clinic for further advice (Madlala, 2001: 539). These girls are often beaten by their families for the shame they have inflicted, ostracized by

peers who do not want to be influenced negatively by them, kept physically separate from the successful candidates because virgins and non-virgins “should not mix” (Madlala, 2001: 539), labeled *izeqamgwaqo* (prostitutes) and are even sometimes driven into prostitution due to being deemed “unmarriageable” and contagious (George, 2008: 1462). These consequences can be said to cancel out the benefits that testers and supporters of VT claim it brings to a community, defeating the purpose of fighting a disease to keep citizens (especially young girls) safe.

The girls with negative results are not the only ones who can experience adverse effects of the VT festivals. There are concerns that children, having been exposed to this invasive process at very young and vulnerable ages, will become confused about who is permitted access to their bodies and will be unsure of their sexual boundaries and rights in the future- leading to the increased vulnerability to and probability of abuse. When a parent submits their child to testing by an observer who is oftentimes a stranger and not a registered health professional, children can become confused about their own rights with regards to their bodies. Says Futhi Zikalala of the Gender Commission in KwaZulu-Natal, “We are trying to teach our children, ‘your body is your body,’ and then we send them to a woman who invades it” (South African Human rights Commission, 2005: 4).

Feminists and child activists argue that VT can put those flaunted and celebrated as virgins in danger. A less obvious consequence befalls girls and young women who are found to be virgins- particularly those who live in communities which make the results available for public knowledge. Anti- virginity testing activists fear for the girls that pass the tests and become commonly known as “untouched” throughout their communities. The diffusion of these girls’ sexual statuses may be dangerous to their own well-being; many people living in

countries impacted by AIDS in Africa believe there is truth to a myth⁴ claiming that sexual intercourse with a virgin will cure a man who is infected with HIV/AIDS (George, 2008: 1462). This has contributed to the very high incidence of rape and assault against women in South Africa, and has endangered young girls known to have passed their virginity tests, thus exacerbating the problem of the spread of the disease (and arguably, defeating the whole purpose of the testing if there ever was one since unprotected intercourse is the main vehicle of contagion for the disease). The likelihood that a young woman will be raped is also increased by the diffusion of her status as sexually inexperienced due to the fact that men will find her “clean” and “safer” to sleep with than an experienced woman from whom he may contract AIDS (George, 2008: 1462).

Opposition to the practice of VT exists not only outside of South Africa; the arguments made in this thesis against the practice are firmly supported by South Africa’s Commission for Gender Equality (CGE) and the South African Human rights Commission (SAHRC). The activism of both of these organizations led to the official ban of VT for children under the age of 16 in South Africa in 2005 (Vincent, 2006: 17). Chapter two of the Children’s Act states that “Virginity Testing of children under the age of 16 is prohibited” and testing of children older than 16 may only be performed “if the child has given consent to the testing in the prescribed manner”, “after proper counseling”, and “in the manner prescribed” (Children’s Act, South Africa 2005). Furthermore, “the results of a virginity test may not be disclosed without the consent of the child” (Childrens Act 2005). It is clear that

⁴Originating in Europe in the 1800s, the myth that virgin cleansing (intercourse with a child virgin) was a cure for venereal disease was believed by English men. Special brothels were kept in the 1820s in Liverpool by people pretending to be medical doctors to provide this cure with girls that were often mentally impaired. In 1884, a man with ‘bad syphilis ulcers’ was charged with the rape of a 14-year-old girl; he claimed that he had not intended to harm her, but only to cure himself. The fact that a variation on this myth still exists in Africa points out some intriguing but very disturbing similarities between contemporary Africa and 19th century Europe. (Van Dyk, 2005: 48).

groups within the country have identified the practice as harmful and in violation of human rights.

Many highly ranked officials resisted the ban before it even came into force: the Congress of Traditional Leaders of South Africa; South African president Jacob Zuma; and Zulu King Goodwill Zwelithini who has stated, “there are changes and development in life, but that does not mean people have to change their culture” (Bruillard 2008). Nomagugu Ngobese, one of main supporters of the practice and a tester herself, continues to be vocal about VT even after it has been made illegal for children under the age of 16:

not a single person has died because of virginity testing. In the Xhosa tradition, boys die while undergoing initiation to manhood, but no law has been passed to stop this Xhosa tradition. We have been doing this for years and no one is going to stop us, and we are not begging the government to allow it. (Khumalo)

It is evident that support remains strong for the practice of VT in Zulu communities, and formal legislation has not been sufficient to stop it. It is unclear even who is responsible for enforcing the Children’s Act, and to enforce it would mean raiding VT ceremonies across the province and opening thousands of cases (Khumalo, 2008). What is clear, however, is that female “virgins stand on the front lines in South Africa’s war against HIV/AIDS” (George, 2008: 1447).

1.3 Normative Questions Raised by Virginity Testing

The above sections have explored the concept of VT among Zulu tribes in South Africa, but more importantly, how this practice is and can be harmful to those involved. It is clear that the return of VT has come as an attempt to slow the spread of HIV/AIDS in KwaZulu-Natal. Tribe leaders, mothers, fathers, and grandmothers (who bear most of the burden of the AIDS epidemic), searching for their own solutions to a global problem in a

local context, have returned to traditional African customs. Despite the fact that many supporters of the resurgence of VT claim it is to improve health, the practice is associated with many dangers and negative consequences and above all, it violates the individual rights of the girls involved. VT is also supported for its cultural history- in fostering values of abstinence and virginity in young girls in Zulu communities. For this reason, to assess its resurgence as purely a solution to the HIV/AIDS epidemic would not be adequate; the cultural importance of the practice to the Zulu people must also be taken into account. Scourgie (2002) says, “the virginity testing movement is about much more than AIDS intervention” (64).

What is culture? There are many contested definitions of the concept that relate to many different contexts. The definition most helpful to this discussion is one proposed by political theorist Anne Phillips. Culture, says Phillips (2007), is first and foremost “part of the process through which any social organization develops and reproduces itself” (15). It is the set of meanings and ways of interpreting the world that is passed on from one generation to the next, and because of this relationship with time, is forever changing itself (Phillips, 2007: 15). Culture is seen through the eyes of anthropology as *difference*; the elements that distinguish one ethnic group from another (Phillips, 2007:15). Will Kymlicka (1995) defines culture even more specifically: to him it is synonymous with the idea of “nation” or “people”, an “intergenerational community, more or less institutionally complete, occupying a given territory or homeland, sharing a distinct language and history” (18). Kymlicka (1995) argues that liberals must take an interest in culture since, in order to live the good life, we must be able to live it in accordance with our beliefs and values- however, liberalism should not be uncritical of culture (81). Instead, he says, we must have the capacity to move

around within our culture, to distance ourselves from particular cultural roles that we do not agree with, and to choose for ourselves which features of our culture are most worth developing (Kymlicka, 1995: 84). Culture then, though essential to leading a good and fulfilled life, must be called into question when it does not let members choose for themselves. This is especially true when a cultural practice violates the rights of any individual or group.

The Universal Declaration of Human rights (UDHR), a document created after the atrocities of the Second World War symbolizing equality, freedom, and rights for all, was adopted by the General Assembly of the United Nations in 1948. This was a historical turning point as well as the beginning of the debate surrounding the universality of human rights. Though the wording of the thirty articles that comprise the document themselves have not changed since then, sixty years of interpretation, discussion, and practical application of the document have passed, as well as the formation of many additional conventions based on the original. Two such conventions that followed the UDHR and are relevant to the discussion of human rights and VT are the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW, prepared in the late 1970's) and the Convention on the Rights of the Child (the UNCRC, which came into force in 1990). These United Nations' treaties on human rights are concrete documents that transform the ideas of human rights involved in global civil society into rules and regulations that member states in agreement must enforce among their citizens and abide by themselves. CEDAW was adopted by the United Nations in 1979, during the United Nations Decade for Women (1976-1985) (Jivan and Forster 2005). It officially came into force two years later, faster than any previous human rights convention (Jivan and Forster 2005). CEDAW is based on

the idea that “the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields” (United Nations, 2003, para. 1). The introduction to the document claims that it is “not only an international bill of rights for women, but also an agenda for action by countries to guarantee the enjoyment of those rights” (United Nations, 2003, para.3).

CEDAW appears to have had a positive effect on women’s rights. As of May 2005, 180 out of 192 members of the United Nations have ratified the convention, a significant change from only 20 members when it first came into force in 1981 (Jivan and Forster 2005). However, as with most treaties, there are many criticisms made against CEDAW with regards to its implementation in actual practice. The accountability of member states is questionable at best: states are required to submit progress reports to the Committee every four years. Since states are monitoring themselves, there is no true way of judging the accuracy of their own quarterly reports. Jivan and Forster (2005) do however predict that due to the large amount of states having ratified the Convention, it will eventually become established in customary international law.

The United Nations Convention on the Rights of the Child is an international recognition that children have human rights as well as adults, and furthermore, that those under the age of 18 often need even more protection than individuals of majority age. The articles laid out in the convention ensure that children are “fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality, and solidarity” (United Nations, 1990, para.8). Despite South Africa’s ban on VT for girls under the age of 16, the practice continues at local levels since monitoring is

difficult to do. Community leaders and testers have been defiant in their continuation of the practice, ignoring the ban. VT involves not only women of majority age- in fact; it especially targets young girls since it is easier to instill values of chastity and sexual abstinence in children at an early age. This makes the UNCRC particularly relevant to the case when observing VT from a human rights perspective.

For the purpose of this thesis, the debate of universal human rights will refer to the discussion primarily surrounding the UDHR, and in practical application to the case of VT, both the South African Constitution (taken into effect in 1997) and the South African Bill of Rights (chapter 2 of the South African Constitution). VT is above all a form of discrimination against girls and women as outlined in CEDAW. The practice, targeting only females in Zulu tribes, ignores the role that males in the community play in the AIDS epidemic. Due to the fact that boys and men have no involvement in the practice (except as those who encourage and facilitate community festivals where the testing takes place) girls in these communities are left to shoulder most of the burden and responsibility of AIDS through the practice of VT. This makes VT an issue involved in the battle towards achieving gender equality in South Africa. Despite the importance of the concept of gender discrimination when focusing on VT, this thesis will focus on how the cultural practice violates more specific human rights that are *substantiations* of discrimination. I argue that VT violates the following human rights laid out in the UDHR: the right to protection against attacks on privacy, honor and reputation; the right to security of person; and finally, a right guaranteed in the South African Bill of Rights: the right to bodily integrity. The violation of these rights all contribute to the fact that VT is a form of gender discrimination (a concept that envelopes the specific rights violations).

Privacy, Honor, and Reputation

Article 12 of the United Nations Declaration of human rights states that “no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks”. This particular article shows that there can be two layers of argument supporting the view that VT is harmful to those involved. Firstly, there is an immediate violation of an individual’s rights, and secondly, there is *potential* for *further* rights violation based on negative consequences associated with the practice. Though both these levels of argument are crucial to proving that VT does indeed cause harm, it is important to keep in mind that the most important is the first: VT is an outright violation of human rights, and no improvements made to ameliorate the negative consequences can change this fact.

The discussion of privacy has become an integral concept of universal human rights. Though it is not a tangible basic good necessary for survival (such as access to nutrition, healthcare, or clean drinking water), it is undoubtedly a pre-condition that must be satisfied in order for other rights to be achieved and capacities to be fulfilled (Ramsay, 2010: 293). According to many of the foundational thinkers of liberalism, such as John Stuart Mill, privacy is rooted in individuality, which is essential for human development. Furthermore, privacy protects the freedom of the individual to be “both self-determining and self-defining in spite of the biases and prejudices of the majority” (Struening, 1996: 511). Privacy is an instrumental rather than an intrinsic good, not pursued for its own sake, but necessary in order for other rights to be achieved (Ramsay, 2010: 293).

The right to privacy is the Human Right that is most relevant to the case of VT. Hayden Ramsay argues that there are five different kinds of rights to privacy, three of which apply directly to this case: *the maintenance of a sphere of inviolability around each person, freedom from interference and observation, and control over the flow of information* (Ramsay, 2010: 288,289,290). All three of these definitions of privacy are interlinked.

Firstly, the right to the maintenance of a sphere of inviolability around each person relates to the layer of argument that states that VT is, immediately and above all, a human rights violation (before the consideration of the negative consequences of the practice). Ramsay's first definition tackles the idea of privacy being violated without autonomy, (the control over one's life and decisions [Ramsay, 2010: 289]) being affected. Even when autonomy is not influenced, violating privacy can be morally problematic. Take for instance a situation in which VT is conducted privately and the sexual status of the testee is not made public by the tester. Despite the fact that the girl, whose sexual status remains unknown to the public, will not face the aforementioned negative consequences (at least not as a consequence of VT), she has nevertheless become the victim of a rights violation. The moment that a girl is observed to determine whether she is a virgin, her right to a "sphere of inviolability" has been removed. This form of privacy, unlike the previous two, is indeed a substantial moral good and not merely the means to achieve other rights. In this situation privacy is "the recognition that no one is to be treated as an object of idle curiosity, an item to be trespassed upon, a mere means to others' goals and in particular their prurience" (Ramsay, 2010: 290). The observation of a girl's genitalia that takes place during the practice of VT is not for her own benefit or the good of her health. It is quite different from the inspection that takes place between a doctor and a patient, as this kind of interaction is to

ensure good health and a long life. VT is all about the greater good of the community, the province of KwaZulu-Natal, and South Africa as a whole. It has been resurrected as a way to promote abstinence in the hope of reducing infection rates of HIV/AIDS, but is also the continuation of an ancient cultural practice promoting abstinence and purity among young women. Thus, girls and unmarried women are treated as minor means to the solution of a larger problem or small pieces of a community value, and are not seen as “selves- as centres of awareness and interests who merit such interpersonal attitudes as recognition, respect, reverence and apology in our dealing with them” (Ramsay, 2010: 290). The boundaries between each person that privacy is supposed to secure and the personal dignity that it guarantees become blurred in this context. VT is therefore an invasion of privacy and that results in a lack of respect for the value of each individual.

VT leads to the public knowledge of a girl’s sexual status, which in turn can encourage sexual abuse. Therefore, VT has the potential to threaten the safety of the girls who participate in it, in failing to assure that they are not exposed to danger. The possible consequences that await participants of VT, both those found to have practiced abstinence and those deemed non-virgins, have the potential to violate the Human Right of privacy, especially with regards to individual honor and reputation. The diffusion of such private information is unquestionably a violation of Human rights, based on Article 12. In this case, an arbitrary interference with privacy is concerned, leading in many cases to potential attacks on young Zulu girls’ honor and reputations.

Oftentimes, the right to freedom from interference and observation (which is Ramsay’s second definition of privacy) can be violated without a serious moral harm, and this is usually if it does not affect individual autonomy. VT, however, does not fall into this

category. When a girl is tested to find out whether or not she is a virgin, she is subjected to an interference with her body over which she has no control. Autonomy is, in fact, control over one's life and decisions (Ramsay, 2010: 289) and freedom from coercion: this is something that is undoubtedly taken away from a girl once she has participated in VT. After being tested and having her results publicly released into the community, her fate is no longer in her own hands and she is left to the judgment and reactions of the members of that community.

Ramsay's third definition of privacy is connected to each individual's right to control what kind of information about themselves is available to others, such as their lives, histories, relationships, interests, and commitments (Ramsay, 2010: 288). In this sense, information about ourselves, though not a tangible possession, is our property, and must not be diffused without our permission by any other party (mostly concerning government, media, police, corporations, etc). Without this control over information about ourselves, we are not able to guarantee and preserve our individuality and freedom. Furthermore, without some kind of legislation providing us this control, we can be subject to "unwanted and unjustified scrutiny and intrusion", hindering our ability to lead a good life (Ramsay, 2010: 289). With regards to VT, the girls who participate do not simply do so in order for testers to find out the percentage of abstinent girls in the community. The point of VT is to foster abstinence in the whole *community*, thus rendering the practice a very public one. In order to diffuse a positive notion of virginity, those found to be virgins are celebrated and praised, usually taking part in a musical ceremony of song and dance, with floating balloons and colored certificates of merit. The girls who participate do so with no control over the use of the information that the testers collect in their practice; it is collected in order to be

circulated. This puts girls at the risk of being scrutinized and judged (mostly those found not to be virgins) based on the private information made public to members of the community. For those found to be virgins, the divulgence of this information leads to other possible consequences previously discussed at the beginning of this chapter. These facts are particularly troubling when considering the fact that a large number of girls that are tested are minors- they are dependent on their parents, guardians, and the elders of their community to provide a safe and fulfilling life for them until they are old enough to make their own decisions. The right to privacy for children is echoed and emphasized in Article 16 of the UNCRC: “no child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honor and reputation” (United Nations, 1990). The practice of VT, then, not only violates this right as it is set out in the UDHR, but also violates South Africa’s commitment to the same right in the UNCRC.

Security of Person/Human Security

Despite the fact that the practice of VT on young girls and unmarried women is in itself an outright violation of human rights, it is often the negative potential consequences that attract the attention of outsiders, which are consequences that may lead to further rights violations. The part of VT that is arguably the most provocative and disturbing for feminists and human rights activists is that there are concerns that it is linked to the increased potential for rape of young girls and women who participate⁵. As described previously, young girls and unmarried women in Zulu communities who are publicly recognized as virgins and

⁵ However, no official research has been conducted to determine whether there is a correlation between Virginity Testing practices and increased sexual abuse or assault of young virgin girls.

praised for it become possible targets for sexual abuse by men who are both infected with HIV and fearful of becoming infected.

Article 3 of the UDHR legitimizes the right that everyone has to “life, liberty, and security of person” (United Nations, 1948, article 3). Traditionally thought of as the protection of a state against the military strength of another, the concept of security has since expanded to include other elements. The United Nations Development Programme’s (UNDP) Human Development Report of 1994 first introduced a new way of viewing the idea of security: from the defense of the nation against the aggression of other nations, to the concerns of the individual security of the citizen on a daily basis. The report outlines the new importance of focusing on issues threatening the healthy development of the individual; this includes economic, food, health, environmental, personal, community and political security (United Nations 1994). Human security, according to this report, is defined as “a child who did not die, a disease that did not spread, a job that was not cut, an ethnic tension that did not explode in violence, a dissident who was not silenced. Human security is not a concern with weapons- it is a concern with human life and dignity” (United Nations, 1994: 22) The concept of security is now viewed as multi-faceted: it is not only protection from physical threat, but the state of well-being of a person in every sense of their lives.

Human security is the guarantee of two kinds of freedoms: *freedom from fear* and *freedom from want*. Personal security, especially that of women (who may fear insecurity due to their gender), is primarily concerned with guaranteeing individuals *freedom from fear*. This particular form of security is vital; in order to be able to function properly in all other domains of one’s life, one must first and foremost be free from violence and fear. Though this right guarantees peace of mind for every citizen, for women in particular it is important

in that it ensures that they do not have to worry about becoming a victim of violence due to their gender, in other words- rape and other forms of sexual assault. In the same vein, this guarantee must also protect children from threats directed at them due to their vulnerability and dependence on adult parents or guardians. South Africa's Bill of Rights, found in the second chapter of its Constitution, understands security in the same way, as it guarantees the right to freedom and security of the person, including the right to be "free from all forms of violence from either public or private sources".

VT is a violation of the right to personal security based on these definitions. One of the most alarming and dangerous potential consequences of VT is the increased vulnerability of the girl who has been tested to rape and sexual abuse, based on the public revelation of the girl's sexual status. Intercourse with virgins is desirable in South Africa (as in many other parts of the world) and commonly seen as a cure to HIV/AIDS infection as well as a safe alternative to intercourse with a sexually experienced woman who may already be infected. The personal security of a girl or unmarried young woman who has been tested and found to be a virgin is severely compromised once this status has been made public. Since the participants of VT are not free from the fear of being attacked after their sexual status is disclosed during a community festival, the practice of VT is infringing upon their right to human security.

Bodily Integrity

The idea of personal security is most applicable to women's rights issues when it is concerned with the individual's control over her own body. The South African Bill of

Rights, in Article 12, ensures the right to *freedom and security of the person*. This also guarantees the right to “bodily and psychological integrity, which includes the right

- a) To make decisions concerning reproduction
- b) To security in and control over the body; and
- c) Not to be subjected to medical or scientific experiments without their informed consent.”

Due to the fact that VT encourages abstinence from intercourse, it leaves the young girls and unmarried women who participate in it very little choice with regards to reproduction and sexual activity. It is therefore implied that reproduction outside of marriage (despite the fact that marital intercourse is not a guarantee against the transmission of HIV/AIDS) is not desirable. Though not *physically* forced to abstain, the consequences that come with being sexually active are such that strongly discourage young Zulu girls from losing their virginity. Therefore, it can be said that the practice of VT, with the pressure of the community on girls to remain abstinent, removes these girls’ rights to make decisions concerning reproduction. A participant in the testing commits herself to abstinence in front of her community, and therefore relinquishes any decision-making she previously held with regards to her sexual and reproductive life to that community. Zulu girls are taught that there is but one choice: abstinence.

Once a girl enters a VT ceremony, she is signing the control of her body over to other actors. She no longer has the power or autonomy to control what happens to herself or to her body. In participating in this invasive testing, control is instead placed in the hands of the virginity tester as well as the authorities and other members of the community, who are

given the power of knowledge of the sexual status of the testees. Indeed, it is arguable that for those girls who are considered adults (18 years of age), as long as they have given proper consent, they have maintained control over their own bodily integrity. Since a large majority of girls tested are minors (some Zulu communities test girls as young as six years old), many human rights activists argue that VT can even be seen as maltreatment or even child abuse, and at the very least constitutes degradation and is not in the best interest of the child (South African Human Rights Commission, 2005: 10). Legally, parents of children under the age of eighteen must make decisions that are in their child's best interest. It is very difficult then to determine how a young girl feels about participating in VT- an issue raised above in the discussion of VT and the UNCRC.

This first chapter of my thesis has served the purpose of contextualizing the cultural practice of VT in South Africa and how it violates human rights. I have described the situation of HIV/AIDS in the country and both modern and traditional ceremonies of the testing itself. More importantly, I have specified how VT is in violation of human rights as outlined in the Declaration of Human Rights (UDHR) as well as the negative consequences associated with the practice, insofar as it has the potential to cause harm to participants. In the following chapter I will review the traditionally opposing bodies of literature of universalism and relativism, to situate the case of VT within the conflict that takes place between individual and cultural rights, and to show why continuing this debate is ineffective in the search for implementing human rights. Through further analysis of VT within a framework of women's rights, capabilities, and respect for culture, I will begin to build a theoretical framework to work towards "middle path" solutions to the problems caused by VT.

CHAPTER II: UNIVERSAL HUMAN RIGHTS VS CULTURAL RELATIVISM: THE THEORETICAL BATTLE GROUND

2.1 Universalism and Relativism

In the debate on human rights, there are two distinctive and very different perspectives. The first (supported by the UDHR) is that human rights are based on universal values, not subjective to local context. On the other hand, there is an alternative view that human rights are culturally specific and mean different things to different people, depending on their cultural values, morals, and ways of living. In other words, “universalists support the equal application of a set of ‘core’ human rights norms, whilst relativists maintain the view that those ‘core’ human rights should not supersede cultural, religious and traditional differences” (Jivan and Forster 2005, 110). The conflict that takes place between these two concepts of rights is one that comes into play continuously in international political debates. Cultural practices such as Female Genital Cutting, wife inheritance, wife seclusion (or *pardah*), arranged marriages, child marriages, female infanticide, and many others have been known to violate human rights as they are outlined in the UDHR. However, it is difficult to solve the problem of a rights violation since the actors involved often cite cultural importance as a justification for the continuation of the practice, regardless of how harmful it may be to individuals involved. The negative effects of historical imperialism and colonization have led to hesitation in the West to criticize any element of traditional culture found in formally colonized states, for fear of being labelled ethnocentric. However, is it ethical to overlook potentially harmful practices in the name of respect for multiculturalism? This issue in itself serves as the main research question of this thesis: how do we begin to eliminate harmful practices, with the intention of bettering lives and securing individual human rights, without being accused of cultural imperialism? This chapter will review the

literature in the debate between universalism (the perspective that human rights are the same the world over) and relativism (the opposite view- that rights are culturally determined) and identify the problems that exist in applying the debate to practice. An alternative framework will be built upon to work towards easing the tension between human rights and cultural practices.

Alison Dundes Renteln (2010) defines Cultural Relativism as “a theory in anthropology that calls attention to the moral code each society possesses. According to relativism, morality is socially constructed within a given cultural community” (256). The principle message of relativism, however, is of difference; it is important to be cognizant that differences exist and should be respected (Prasad, 2007: 590). Before the great wave of de-colonization that took place in the mid-1950s, the majority of arguments for Cultural Relativism were made by anthropologists or indigenous populations with the goal of resisting European colonization and hegemony (Prasad, 2007: 589). The birth of the relativist school of thought came about in 1911 with the publication of Franz Boas’ *The Mind of the Primitive Man* (“Franz Boas”). The German-American anthropologist used his book to argue against racial supremacy, claiming instead that the ways of thinking of the primitive and civilized man have no fundamental differences (“Franz Boas”). Not only did he discredit theories of racial superiority and ideas that racial factors determine the value of a society, but he concluded his study by advocating for understanding cultures through a critical engagement with their history (Prasad, 2007: 591).

Cultural Relativism, like many schools of thought that have been in existence for more than a couple of decades, has evolved since Boas first explored the ideas of the value of culture. Relativism has become a central part of many debates, often pitted against

theories of Universal human rights, and utilized and manipulated by stakeholders from many different positions. In its original conception, towards the latter part of the colonial period, it was used primarily to embody resistance to Western cultural hegemony (Prasad, 2007: 590). Its main agents were anthropologists, who concerned themselves with the rights of indigenous and colonized peoples, and served as mediums through which minority voices could be heard across cultures (Prasad, 2007: 590). Relativism was a fresh perspective in the period of decolonization, with the main aim of dismantling unequal power relations and remedying the negative effects of imperialism. It was an introduction to the world through the eyes of the minority population- the colonized, the indigenous, and the silenced subaltern.

Relativism, Ajnesh Prasad (2007) argues, can still be used today to reassess and dismantle harmful power relations in the socioeconomic divide between the North and South and East and West. Today, with travel, immigration, and the increase in communications between and among countries, very few cultures remain homogenous or completely disconnected from the rest of the world- which requires different cultures to interact with one another. According to Prasad (2007), relativism can give us an avenue to engage effectively in cross-cultural dialogue (595). This may be possible, but we must be able to be critical about how relativism has evolved and been manipulated since Boas (Prasad, 2007: 595). Though it was initially invoked to deconstruct theories of racial and cultural superiority (Prasad, 2007: 591), it has taken on new values and meanings over the course of the twentieth century, particularly set against the idea of universalism, or the search for universal human values.

Historically, tensions have existed between relativism and universalism. Relativists like Melville Herskovits⁶ argue that cultural norms cannot exist in the pluralistic societies that now dominate the world. With families that practice different religions and come from a divergence of background experiences, it is irrational, according to relativism, to conceive of a system of norms that dictate one universal standard of conduct (Renteln, 2010: 273). This, many relativists believe, is due to the fact that how the idea of “reasonableness”, or morality in general, is defined is culturally dependent (Renteln, 2010: 273).

We each interpret the world in our own way- based on what we believe, what we have been taught by our families and our societies, our faiths, and our past experiences. Due to this very fact, relativism has come to be associated with the rejection of universal norms. Human nature is diverse and dependent on context, “all truths are subject to the norms and expectations of a specific culture”, and there are no fundamentally inherent liberties or value claims (Prasad, 2007: 590).

This point of view becomes problematic when cultural practices with the potential to cause harm are taken into consideration. Though the more radical relativist may advise that a culture be left to its own devices, regardless of how its members are treated, the majority of those who argue for cultural particularity do not necessarily condone elements of culture that have the ability to cause harm. In fact, they claim that due to the fact that cultures are forever changing and do not remain static, members within a particular culture can come to the eventual realization that it is in their best interest to reject a particular custom (Renteln, 2010: 256). Cultures do not maintain steadfast loyalty to ancient traditions, rather, they

⁶ Herskovits submitted the paper entitled “Statement on Human rights” to the United Nations in 1947, rejecting the idea of Human rights and arguing that it is inapplicable to all of the societies and cultures in the world. It was also published in the journal *American Anthropologist* that year.

continuously re-evaluate their customs and practices, and the rejection of a harmful practice is not out of the realm of possibility, but in fact “entirely consistent with the tenets of cultural relativism” (Renteln, 2010: 256). Furthermore, the assumption that a culture is too fragile to be able to engage in changes is patronizing (Barry, 2001: 256).

However, Cultural Relativism has nonetheless been matched with controversial ideas of tolerance: tolerance to the extent in which one believes one should turn a blind eye to cultural traditions that have negative effects on participants. Renteln (2010) provides an interesting quasi-defense of relativism in this sense, in proposing that perhaps we should not seek to cast relativism as a prescriptive theory, but merely a descriptive one (256). The fact that there are an infinite number of moral systems in the world does not necessarily mean that we are required to be tolerant of them all (Renteln, 2010: 256). Instead, Renteln (2010) proposes that to simply be aware and to assert that there are indeed many divergent ways of thinking and living, and to keep this consciousness, may be enough (256).

Like with most political theories or concepts, it is important to be critical of Cultural Relativism. This is particularly true in the present post-colonial age, when relativism has been manipulated by a set of actors with objectives quite different from those of anthropologists like Boas. The most important thing to consider is that claims in the name of culture are not always legitimate, and are not always made with the interests of the people in mind. Claims such as these must always be questioned: who is making the claim? What is their motivation? After having investigated the history of Cultural Relativism, it is easy to see that its original intents were quite in line with human rights principles instead of against them- believing in equality, Boas sought to disprove those who believed to be culturally and racially superior to others in the world. However, relativism, like many things, has evolved

and been transformed along with global contexts. The idea of Cultural Relativism, in a mainstream concept, has become linked with issues such as female genital mutilation, honour killings, and polygamy. In this sense, relativism serves as a “laissez vivre” idea that enables harmful and illegal practices to continue in the name of culture: as long as a group can claim cultural importance and relevance, we must not interfere with what their culture dictates they do. According to Brian Barry (2001), citing culture or tradition alone as justification for an action is unacceptable, despite how much it has been done in the past (253). From this perspective, “if there are sound reasons against doing something, these cannot be trumped by saying- even if it is true- that doing it is a part of your culture. The fact that you (or your ancestors) have been doing something for a long time does nothing in itself to justify your continuing to do it” (Barry, 2001: 258). The use of culture in itself as the justification of a practice, argues Prasad (2007), is not consistent with the original purpose of relativism as Boas and his students saw it, but instead is a tactic used by “bourgeois nationalist-elites as a means to sustain their privileged social positions” (590). Though relativism was born to challenge and conquer oppression, it now is used by the elite class in many developing and under-developed countries to justify the same kind of oppression (Prasad, 2007: 591). This class was created through race hierarchies and divisions imposed on the colonies during imperialism: in order to secure the labor force and prevent revolts, colonials established “chiefs” and leaders from the colonized group to control the masses and persuade them to enter the labor force (Loomba, 2005: 110). These elite classes constructed during colonization have maintained their status and have strategically exploited the ideals of Cultural Relativism, transforming it into a weapon, used to “suspend productive cross-cultural dialogue and curtail humanitarian intervention” (Prasad, 2007: 594). They are

able to maintain power over the masses in third world countries by using essentialist, totalizing narratives that condemn colonizers and Western ways, yet that are not at all consistent with the values held by these societies pre-colonization (Prasad, 2007: 594). This enables elites to not only hold control over the population in general, but furthermore, to persecute those who fall outside of these totalizing narratives (such as homosexuals) and to limit the rights of women and girls (Prasad, 2007: 589). Prasad (2007) instead advises a careful consideration of relativism- we must be critical of who is using it as support and why they are motivated to do so. In order for relativism to become a tool to promote positive cross-cultural dialogue (its initial purpose), it must “transcend its current enabling relationship with oppression” (589).

In order to fully investigate the legitimacy of Cultural Relativism, it is important to explore the tensions that exist between it and universal values of rights. Are they really as starkly oppositional as some would lead us to believe, or do they have any commonalities? Many argue, as I do, that the *values* at the core of relativism and universalism are not in fact contradictory but complementary. Boas, for example, known as the father of relativism, has shown in his writings that though culture and history are important, they should not encroach upon individual freedoms and rights, of which he was also an activist (Lewis, 2001: 447). He is quoted in one of his writings as taking ownership for his own personal values, the

two matters to which I am devoted: absolute intellectual and spiritual freedom, and the subordination of the state to the interests of the individual; expressed in other forms, the furthering of conditions in which the individual can develop to the best of his own ability- as far as it is possible with a full understanding of the fetters imposed upon us by tradition; and the fight against all forms of power policy of states or private organizations (Lewis, 2001: 451).

It is undeniable, then, that Boas had no intentions of disregarding universal principles such as individual rights in favor of culture, but instead supported and believed in them fervently. Ultimately, his support for culture was not in condoning all practices due to cultural importance, but rather in emphasizing the importance of respecting other ways of life and not assuming the superiority of one culture, race or ethnicity over another (Lewis, 2001: 451). Yvonne Donders (2010) further develops this idea, affirming that, just because relativism draws attention to cultural difference and importance does not automatically disprove that norms have universal value (15). Instead, the real problem with human rights comes in their implementation, which has nothing to do with the value of the concepts as universal (Donders, 2010: 15). Though the idea of granting every individual a set of indisputable rights is legitimate and its value priceless, we cannot expect that human rights will be perfectly implemented on the ground, given the spectrum of different countries, cultures, and ways of life in the world. What is important is that difficulties in practical implementation do not cause us to concede to those who criticize human rights. Just because there are areas where human rights violations occur in the name of culture does not mean that universal human rights values are ineffective or impossible to implement; it just means that it is not a simple process, and requires much investigation and dedication. Donders concludes that though the values of universal human rights should be held by all, it is important to also be conscious that “the specific level and scope of implementation of human rights may vary, depending upon specific circumstances” (2010: 16). In fact, international courts must adapt a case-by-case approach in dealing with human rights violations in specific areas, though all the while remaining committed to universal rights principles (Renteln, 2010: 278). What is crucial is that, though cultural rights must be respected, they

must not be enjoyed without limit. They cannot be appealed while ignoring or violating any other fundamental freedom or right, for this has no validity in international law (Donders, 2010: 31). Even if a particular custom or tradition enjoys widespread support in a community, it must be reconsidered and even discarded if it is found to cause “irreparable harm, either physical or psychological” (Renteln, 2010: 271).

What is to be concluded, then, about group rights, in the name of cultural⁷ preservation? Even if individual human rights are guaranteed, should certain minority groups be granted specific rights, and under what circumstances? According to Donders (2010), it is not necessary for everyone to be treated the *same* in order for everyone to be treated *equally*- in fact, difference in treatment is at times essential (20). Differentiation is not the same as discrimination: differentiation is the lawful difference in treatment, which, as some would argue, is essential to be granted to certain groups (especially those who have encountered discrimination and exclusion in the past) in order to *ensure* equality among a population overall. However, the granting of specific group rights may threaten the rights of other individuals within a culture- most commonly, women and girls. This idea, most pertinent to the issue of VT, is explored further in the next section, through a debate between two of the most prominent scholars in the field- Susan Moller Okin and Will Kymlicka.

Is multiculturalism bad for women?

This provocative question serves as the title for Susan Moller Okin’s collection of essays, a piece which begins with her own essay followed by responses from various scholars engaged in political thought. Okin concerns herself not only with the question of

⁷ In the context of the Virginity Testing debate, the practice has resurfaced as a response to the HIV/AIDS epidemic in South Africa, however, it is still a *cultural* response to the disease. Virginity Testing has roots in the Zulu traditional past and, combined with a celebratory reed dance and songs sung by the participants and parents, is used to promote values of abstinence and chastity.

human rights, but more particularly, how *women's* rights are endangered by cultural rights. She firstly states that she does not see feminist studies and multicultural studies as allies searching for the same means to end oppression, but rather as opposing forces that are not easily reconciled. She believes that those of us who wish to be seen as politically progressive and tolerant of other cultures are too quick to assume that multicultural rights are positive- and that there is no tension between multiculturalism and feminism. In opposition to scholars like Will Kymlicka, one of today's foremost defenders of group rights, Okin criticizes the claim that minority groups deserve to be granted special rights because their existence is not sufficiently protected by individual human rights. The practice of granting special rights to minority groups, which Okin claims is on the rise, automatically puts the rights of women in danger, due mostly to the fact that "the sphere of personal, sexual, and reproductive life functions as a central focus of most cultures, a dominant theme in cultural practices and rules"(1999: 13). It will be women and girls, not men and boys, who will feel the greatest impact of the defence of cultural practices, since they are the ones most involved in the personal, familial, and reproductive side of life.

Okin makes some valid arguments about the tensions that can be found between multiculturalism and feminism, shedding light on the fact that the two are not necessarily always on the same page. Despite the fact that both schools of thought were traditionally born out of resistance to Western colonization and patriarchy, there are certainly instances where allowances made for minority rights can be of harm to women. However, Okin falls into the trap identified by many third world feminists like Chandra Mohanty (2003): criminalizing culture and multiculturalism, and presenting too sharp a dichotomy between the West and "the rest". Though Okin acknowledges that women still have a long way to go

to become equal with men in many Western liberalized states, she tends to categorize all non-Western cultures as oppressive to women; replicating what Uma Narayan (1997) calls the “colonialist stance” (43). This often results in a representation of third-world cultures and traditions that is quite different from reality (Narayan, 1997: 43). Okin continues, arguing that one of the most important connections between women and culture is that most cultures in the world have the principle aim of the control of women by men (Okin, 1999: 13). To elaborate, she claims that the majority of this type of control takes place in formerly colonized states such as those found in Africa, South America, and Asia, which continue to be “distinctly patriarchal” (Okin, 1999: 14). In these countries, she continues, most elements of cultural life are attempts to remove women’s agency and bring them under men’s control, in turn limiting their decisions about their sexual orientation and reproductive health as well as their ability to live independent of husbands, brothers and fathers (Okin, 1999: 14). What follows is a long list of crimes committed against women in these cultures (none of which are properly cited): kidnap and rape as part of the cultural practice of “marriage by capture”, wife-murder as punishment for infidelity, mother-child suicide due to the shame of a husband’s infidelity, and clitoridectomy. This is an example of one of Mohanty’s (2003) main criticisms of the writing of Western feminist scholars. A typical “third world woman” is constructed, one who embodies oppression, requires saving, leads

an essentially truncated life based on her feminine gender (read: sexually constrained) and being ‘third world’ (read: ignorant, poor, uneducated, tradition-bound, religious, domesticated, family-oriented, victimized, etc.) [...] In contrast to the (implicit) self-representation of western women as educated, modern, as having control over their own bodies and sexualities, and the ‘freedom’ to make their own decisions. (65)

Injustices like the ones Okin lists have and do certainly occur at one point or another over the course of history, and it is probable that even more human rights violations that are

invisible to the public eye occur every day all over the world. However, the way in which Okin breezes through this list without a concern for providing more specific details implies that these kinds of violations are just a part of life all over the three previously mentioned continents.

Okin accords no value whatsoever to culture- and even criticizes those who do. She states that in some cases, what is understood as “culture” or “tradition” is so tied to control over the women and girls in a society that “they are virtually equated”(1999: 16). Furthermore, unlike in the West, the majority of families in the rest of the world teach their daughters from a very young age that they are of less value than boys, their education is of less importance, their sexuality is to be used only for reproductive ends and the pleasure of their husbands, and they are to dedicate their lives to the servitude of the males in their lives (Okin, 1999: 17). This is surely not an accurate depiction of every society lying outside of Western boundaries, and is a very ethnocentric point of view on the part of Okin.

The most conflictual part of Okin’s writing is what she prescribes as a solution to the tensions between women’s rights and multiculturalism. She believes that many women of minority cultures would be much better off if their culture were to become “extinct (so that its members would become integrated into the less sexist surrounding culture)” (Okin, 1999: 23). She does, however, acknowledge that the best outcome would be for the minority culture to make adjustments to reinforce equality of women- but seems doubtful that this could ever happen. Okin’s recommendations for assimilation attest to the fact that she does not see culture as something worth preserving. To her, it is principally the agent that poses the largest threat to the well-being of its female members, and not much more.

Despite the problems caused by Okin's "colonialist stance", her writing is nonetheless essential to any discussion of harmful cultural practices with regards to human rights. The most important point in her argument is that multiculturalism and feminism do not always go hand in hand- and that multiculturalism can pose a threat to women's rights in any context, if it is granted too much power. This is a view that is not often expressed so explicitly due to many writers' and thinkers' desire to be seen as progressive and tolerant, as explained previously. Notwithstanding her disregard for culture, Okin reminds us that multiculturalism is not always good for women.

"Good" group rights versus "bad" group rights: Will Kymlicka

Will Kymlicka sees culture in a very different light than Susan Moller Okin. His work, *Multicultural Citizenship*, is an attempt to build a liberal theory of minority rights that does not endanger the basic principles of individual freedom and liberty. Firstly, despite the value he places on liberalism, the most important aspect of Kymlicka's work is his acknowledgement of the value of culture, something that is absent from Okin's writing.

When referring to culture as a whole, Kymlicka means *societal culture*, which he defines as

A culture which provides its members with meaningful ways of life across
The full range of human activities, including social, educational, religious,
recreational, and economic life, encompassing both public and private spheres.
These cultures tend to be territorially concentrated, and based on a shared
language. (76)

According to Kymlicka, culture is undeniably important, something to which many individuals have a strong attachment, and therefore must not be dismissed as insignificant in the human rights debate. Moreover, he argues, cultural membership is crucial to the success of liberalism. In order for a liberal society to be truly liberal, its citizens must be able to live

their lives according to their own principles, morals and beliefs. What is also important is the ability to question those beliefs, and to be aware of other perspectives and the alternatives that are available. This is where the liberal principles of education and freedom of expression and association come in. Citizens should be allowed to live the life they choose, but also be able to learn about other ways of life (Kymlicka, 1995: 82). This in itself assumes many different ways of living socially, religiously, recreationally, and economically, which is why, Kymlicka explains, liberalism and multiculturalism actually go hand-in-hand. Furthermore, he says, denying the importance of culture in a liberal society can actually be *illiberal*: “to inhibit people from questioning their inherited social roles can condemn them to unsatisfying, even oppressive, lives” (Kymlicka, 1995: 92). These liberal needs necessitate access to societal culture (Kymlicka, 1995: 84). Essentially, culture is important as a background for members to exert their autonomy and make their own choices and decisions. However, he is cautious to emphasize that freedom remains essential: the freedom to move around within one’s own culture, to distance oneself from particular cultural roles, and to choose which features of culture are most worth developing (Kymlicka, 1995: 84).

Minority and cultural rights, though guaranteed by human rights (officially in the UDHR in Articles 18 and 27) often need even more protection, says Kymlicka. Religious minorities can even be protected indirectly, but this is not always enough. As liberals, we should be concerned with minority rights not only because they are in accordance with liberal principles, but also because they can promote equality and individual freedom, for everyone (Kymlicka, 1995: 75). In fact, some minority rights, such as the idea of affirmative action, eliminate, rather than create, inequalities (Kymlicka, 1995: 109). They can foster and

encourage equality by leveling out historical inequalities and bringing all citizens to equal footing.

The problem with the assumption that human rights will take care of cultural rights is that it ignores the fact that minorities face disadvantages that majorities do not (Kymlicka, 1995: 110). This is the principle importance behind advocating for minority rights. However, despite this importance and Kymlicka's belief in the legitimacy and importance of minority rights, he does acknowledge that there is a danger in endorsing culture uncritically. He recognizes that some cultures are more illiberal than others, and that granting minority rights to those cultures can have potentially negative effects. Specific rights can indeed be sought by group leaders not necessarily for the common good, but to increase power over those within the group and impose restrictions on individual members that can limit their rights—these kinds of rights should not be granted. It is for this reason that Kymlicka proposes two different kinds of group rights. The first, called “external protections” are most in line with his visions of minority rights in a liberal framework. External protections consist of claims made against the rest of society, and have the purpose of protecting the group from the influence of external decisions (Kymlicka, 1995: 35). For Kymlicka, this is an example of a “good” group right; such as those that are accorded to indigenous groups in North America with regards to their property rights, language rights, and rights to self-governance within the larger state. These protections can be very positive, and should be encouraged where they promote fairness (Kymlicka, 1995: 37).

The second kind of minority right, called “internal restrictions” is the kind to be avoided, according to Kymlicka. These restrictions are generally used to control opposition *within* a group and can lead to the violation of individual rights (Kymlicka, 1995: 35). If

there is a possibility of this kind of restriction leading to a rights violation, says Kymlicka, it should be rejected (1995: 37).

Though the definitions of the two kinds of rights in Kymlicka's theory provide a "good" versus "bad" dichotomy, Kymlicka acknowledges that it is important to be cautious when dealing with questions of external protections, as well as internal restrictions. External protections can also be claims to rights that have the potential for abuse, as was seen in the case of Apartheid in South Africa. There sometimes comes a point where claims to rights are not made to protect a group, but to secure rights denied to *other* groups. In South Africa, the small white population exploited their rights as a minority, leading to a grossly uneven distribution of resources and political power, disadvantaging the African and Indian populations. Whites constituting 20 per cent of the population in South Africa came to control 87 per cent of the country's resources, resulting in one of the strongest examples of inequality and discrimination that the world has ever seen (Kymlicka, 1995: 110).

It is easy to see then, with this distinction between the two kinds of minority rights, how cultural rights are not necessarily in opposition to universal human rights. In Kymlicka's opinion, the two coincide quite simply, so long as cultural rights that infringe on individual rights are not entertained or tolerated. In fact, Kymlicka is in agreement with the idea that the very labels of "collective" and "individual" rights sets up a "false dichotomy" (1995: 46). The word "collective", when referring to minority rights, ignores the fact that many minority rights are exercised by individuals (Kymlicka, 1995: 6) and, he argues, whether the rights in question are utilized by an individual or by a group is not what is important. What actually is crucial is the reason *why* the members of certain groups should have certain rights. This yet again emphasizes the importance of investigating the context of

each case. The group rights that matter in this discussion, that is, those that promote and create equality, are generally granted because the group has experienced discrimination and exclusion in the past which has restricted it in some way.

Kymlicka is very specific about which group rights are of value- such as land rights and language rights, and is careful to point out that those that create inequalities are not. The main idea within his text is that liberals should be open to accepting a wide range of group-differentiated rights for minorities without compromising the core commitments of liberalism (Kymlicka, 1995: 126). Individual freedom and social equality, he says, are paramount and should under no circumstances be undermined.

So what, then, is to be done about those societies that partake in the use minority rights claims for internal restrictions that limit the rights of individuals? What are we to do about those societies and cultures that contain more illiberal elements than liberal ones, which keep them from fitting into Kymlicka's framework? Liberalization is the answer, according to Kymlicka. Dissolving non-liberal nations is not a proper solution, and to assume that a culture or state is incapable of becoming liberal is "ethnocentric and ahistorical", since even today's most liberal states have illiberal pasts (Kymlicka, 1995: 94). To depart even more from Okin's perspective, Kymlicka does not see any culture or state as being completely liberal or completely illiberal; rather, it is a matter of degree. A better way to comprehend this issue is that every culture has illiberal strands, no matter how liberal it is considered, "just as few cultures are entirely repressive of individual liberty" (1995: 94). Most importantly, to assume that any culture is incapable of reform is to disregard history as a whole.

Both Okin and Kymlicka recognize this as a contentious issue, and do not believe that it is irresolvable. Neither believes that a culture engaging in harmful internal restrictions that limit the individual rights of its members should have the right to be left alone. What is more, neither believes in the type of minority rights that have the potential to violate individual rights, and in Okin's case more specifically, women's rights. So, despite the fact that Okin is arguing against cultural rights and Kymlicka is pointing out certain cultural rights that deserve attention, they do have the same core values and beliefs.

Despite her bluntness when referring to illiberal cultures and their effects on women, and though quite contradicting of her previous views, Okin acknowledges (to an extent) that cultures are not purely patriarchal, non-patriarchal, liberal, or illiberal. When judging the legitimacy of group rights, she points out, we must take into account "the degree to which each culture is patriarchal and its willingness to become less so" (Okin, 199: 21). This change of heart is closely in line with Kymlicka's opinion that every society and culture in the world has strands of both liberalism and illiberalism. The emphases in both writers' work here is the idea of "degree"; the important concept to draw from this is the danger that lies in labelling a culture "illiberal" and, even more importantly, the idea that any culture, when given the chance, is incapable of change.

Despite the fact that Okin's text is full of harsh judgments and could stand more careful and detailed consideration, she makes some important criticisms of Kymlicka's liberal theory for multiculturalism. Most defenders of cultural rights, she says, do not adequately address the issue of what effect these rights have on the women within a culture, and Kymlicka is no different. Though he is careful to underline the fact that the only minority rights that should be supported are those that do not practice sex discrimination, his

discussion on gender ends there. The problem, says Okin, is that discrimination against women, in many cultures, is not always evident in the public sphere, but is “far less overt” (1999: 21). Women’s rights are formally guaranteed in many societies but not actually practiced behind closed doors. So, though Kymlicka’s theory of minority rights indeed fits a liberal framework *on paper*, in practice “no culture in the world today, minority or majority, could pass his ‘no sex discrimination’ test if it were applied in the private sphere” (Okin, 1999: 22). Her point is that the majority of cases of sexual discrimination remain hidden, unexposed to the public sphere, and liberals must become much more aware of this if they wish to find a way for human rights to truly coexist with cultural rights.

So, is multiculturalism bad for women? Okin’s response is yes, even in cultures that appear to be liberal from the outside. Kymlicka, however, is more careful in his reply. He does not see feminists and multiculturalists as in opposition, but rather “as allies engaged in related struggles for a more inclusive conception of justice” (Kymlicka, 1999: 34). He acknowledges that, in some cases, “fashionable attention to multiculturalism” can in fact threaten the struggle for women’s rights, as Okin fears. However, he points out, there are also feminists who tend to ignore issues concerning cultural differences. The challenge here, he continues, is to be aware of all of this and work together to create a form of liberalism in which no rights, individual or collective, are excluded.

2.2 Universal Human Rights in a World of Difference?

Issues like VT have traditionally been framed by a debate between human rights universalism and Cultural Relativism. Though it is important to explore the histories of these schools of thought, there are many difficulties attached to thinking this way. Most importantly, this debate creates a dichotomy wherein one either agrees with the universal and

inalienable rights of the individual, or on the other hand, the absolute rights of culture and community. The debate leaves no room for perspectives drawing from both schools of thought, as if they cannot exist. Furthermore, as we have seen specifically in the debate between Okin and Kymlicka, this is not even an accurate picture of how the debate exists today- many scholars do not definitively choose one side or the other. Cultural Relativism often springs from the desire to be seen as culturally accepting and tolerant of diversity. Arguments against universalizing principles are also frequently derived from this desire. However, as Nussbaum (2000) points out, this is a dangerous stance to take. In refusing to look closer at customary practices and the potential they yield to be harmful to individuals, we “deprive ourselves of any more general norm of toleration or respect that could help us limit the intolerance of cultures” (49).

Similarly, moving to the other side of the divide can be equally as problematic. Created with a one-size-fits-all approach, universal human rights, though legitimate in theory, are not always effective in practice. The principle flaw in universal human rights as defined by the UDHR and other United Nations conventions is that they are constructed at the international level and are not always able to trickle down easily to the local level, as intended. Furthermore, since the language and concepts used to define human rights are often foreign to local areas where human rights violations may actually be taking place, it can be difficult to find citizens willing to listen. If the approach taken is *too* uniform (in other words, with no allowance for the importance of local culture), it becomes less likely to achieve success in implementation. As seen above with Okin, for instance, taking a universal approach to rights (as she does in stating that most cultures outside of the Western world are patriarchal and harmful to women’s rights) may risk alienating those different from

ourselves, by overlooking the importance of culture. This kind of approach has a tendency to lean towards the “colonialist stance” and may often lead to what Mohanty fears: the construction of a fictitious “other” which is not truly representative of reality. This has the disadvantage of not fulfilling the purpose of human rights on the ground, where it matters. If universal human rights cannot keep Senegalese girls from being circumcised or Zulu girls from being tested for their virginity, then what is its use?

Unpacking the debate between universal human rights and Cultural Relativism leaves a question: is there a way out? Must these issues be relinquished to the dichotomizing debate that will likely reach a stalemate? Do clashes between human rights and the preservation of culture necessarily have to be framed in such a way? Can the individual’s best interests still be the main goal of development workers while maintaining a respect for and a commitment to the preservation of culture?

Brooke Ackerly approaches these issues with the cautious optimism that it is indeed possible to construct *Universal Human Rights in a World of Difference*, as the title of her book suggests. Largely in favour of the concept of universal human rights, Ackerly acknowledges its previous lack of efficacy in real-world situations. For a theory to be translated to practice, she calls for a theory *based* on practice- more specifically, the practice of women’s rights activists. Her vision of a universal human rights theory that is effective in a world of difference is one that is in constant evolution; based on continual conversations and debates including every interested voice. Ackerly welcomes disagreement; in fact, she emphasizes its necessity, arguing that a theory to protect every human being without being negligent of culture requires that every interested party be included. Ackerly states that we as human beings find so much value in our cultural contexts and ways of life that we must

learn to simultaneously protect them and ourselves: in viewing human rights not as a threat but as the “protective layer” that shields us from any possible harm that may come our way (Ackerly, 2008: 28).

A practical theory of human rights

Ackerly’s book explores the ways in which a universal theory of human rights must divert from its traditional form in order to make changes in the world. Firstly, human rights can no longer be viewed as a concrete system of values or institutions; it must instead be a system of knowledge, action, values and institutions, equally and continuously in a stage of incomplete development. In other words, a human rights approach must always be willing to acknowledge other viewpoints and flaws in its own theories, as well as commit to working towards improving the theory itself. Ackerly criticizes the obsession with reaching a consensus on the issue of human rights; as long as they are continually debated and reformulated, she says, a consensus is not necessary, and not even desirable.

To begin, an effective theory of universal human rights must be *immanent*; it must be derived from contextually specific human rights activism and social criticism- it must come from within. Those working within this framework must also be aware of all human rights violations- not only those that can be seen in the public sphere. Not all human rights violations are visible; in fact, this is one of the reasons why the traditional model of universal human rights has not worked in the past. Human rights, implemented only at the international and state level (through legal enforcement), has ignored violations that take place in the private sphere, behind closed doors.

Next, Ackerly places great importance on the idea that a human rights theory must be *non-ideal*: instead of simply describing an objective or how things should be (an *ideal*

theory), the theory should indicate *how* this must be done. More specifically, a close examination of “past exercises of power, both oppression and resistance [...] needs to be informed by the injustices that got things wrong” (Ackerly, 2008: 45) in the first place. It is dangerous and ineffective to assume that the conditions are adequate for change to take place in any given situation; there must be, from the beginning, disagreement and political pluralism (many opposing voices). The conditions of a setting in which a human rights violation takes place is crucial to solving that violation and preventing others from happening. The blame for a violation of rights must not only be placed on specific actors, but also on the past and background of the place and situation in which that violation occurs, for they are all equally at fault.

Most importantly, the three words that echo continuously throughout Ackerly’s book are what she deems crucial to succeeding in implementing universal human rights: “diversity, dissent, and epistemology”. These are the points in her theory most relevant to this thesis: the importance of engaging all voices, especially those with converse or opposing views, in debates on cultural practices in order to inspire social change and implement a respect for human rights. Ackerly describes how the theory accomplishes this with one simple verb: listening. With this action as the primary basis for the entire theory, the very *purpose* of human rights is being changed: it is no longer a determinate or a settled set of beliefs, but a process in itself. Listening to diverse and wide-ranging opinions, opinions that differ greatly, and most importantly basing theories and arguments on knowledge itself (seeking out details and contexts of human rights violations), draws participants together and encourages them to consider perspectives other than their own. Without this willingness to listen, solutions will never be achieved. The only universalizable human practice that

Ackerly accepts for her theory of human rights is the practice of continuous self-reflection. Given the question, “how can we engage in a dialogue with those which whom we disagree?” Ackerly responds, “how can we not” if we wish to establish an inclusive theory to guarantee universal rights, without disrespecting the valuable elements of culture? Though the concept of listening is an important one for social change (as illustrated later in the thesis with the example of Tostan’s work with FGC), it is not sufficient for a theory that intends to implement human rights. Ackerly’s refusal to engage with any universal activity or element outside of self-reflection is not in line with the foundation of her argument: the idea of the universality of human beings. This necessitates much more reflection and a marriage of Ackerly’s Immanent Universal human rights with another measure of how they can be implemented.

A world of cultural difference

How is Ackerly’s Immanent Theory of Human Rights more useful and more effective than the traditional conception of universal human rights? What does her theory offer to us that is unachievable in the debate between universalism and relativism? First and foremost, Ackerly offers a priceless tool to be used in the discussion of such problems as VT: indivisibility. Through constant engagement and discussion, the Immanent Universal human rights theory presented by Ackerly avoids the main pitfall of the debate between universalism and relativism: its dichotomous nature. The political adage “divide and conquer” illustrates the idea that division is ultimately a weakening principle; the more divided a people (geographically, socially, and politically), the more susceptible it is to being dominated and controlled. Divisibility, most obvious in the dichotomous debate between universalism and relativism, is an “anti-rights strategy” and a device that can be used to

“create complicity with the use of political, economic, and social structures to constrain rights recognition” (Ackerly, 2008: 242). Rather than avoiding difference, diversity, and dissent (which would create division), opposing viewpoints must come together in order to strengthen the mutual commitment to the well-being of every man, woman, and child. Ackerly’s most surprising revelation about an immanent theory of human rights is that the embracing of dissent uncovers that there is actually a very large ground of theoretical agreement amongst the opposing voices. Creating spaces for discussion and debate is essential; this is illustrated in the case study of FGC in Chapter Three. The first step to eliminating FGC in small Senegalese villages began with discussion about the practice- this is particularly meaningful in a setting where certain topics are considered taboo or not usually discussed publicly, or between men and women. Opening a subject up for public discussion in a forum in which all voices are welcome is the beginning to a more successful approach to human rights implementation.

The invisibility of most human rights violations is connected to culture. Practices that may constitute rights violations are often seen as culturally important and socially appropriate within the culture, and often accepted by external forces as a form of relativism (Ackerly, 2008: 11). Ackerly (2008) defines this particularly negative element of relativism (though not included in all relativists’ work) as ‘dysconsciousness’, “an uncritical habit of mind that justifies inequity and exploitation by accepting the existing order of things as given” (12). This term is a good replacement for the use of the word “tolerance” as the action becomes less about respect for other cultures and more about complacency, apathy, and inactivity. It is not a cultural sensitivity that is being displayed here, but rather a lack of consciousness toward the particular issue.

What does Ackerly's Immanent theory of Universal Human Rights bring to our discussion that is not addressed in the debate between human rights and Cultural Relativism? What Ackerly does *not* do is see these two schools of thought as distinctive and oppositional. Rather, Ackerly pairs the two together, as inseparable entities. She acknowledges that ignoring "our cultural contexts, our ways of life in which we find so much value" (Ackerly, 2008: 28) is not an option, but affirms that members of a cultural group must be careful to shield themselves from the ways in which their cultures *can* be harmful: human rights is "that protective layer" (Ackerly, 2008: 28). Ackerly sees no reason why appreciation of culture and respect for human rights cannot coexist. This protective layer is universal, as is the need to change some of the habits and practices of our cultures in order to secure women's rights and human rights in general (Ackerly, 2008: 28).

The real test of Ackerly's theory is in how it addresses the core arguments of relativism in its traditional conflictual relationship with universal rights. Though adamant about her respect for cultural diversity and the importance of cultural membership to individuals, Ackerly dismisses the idea of ignoring rights violations in the name of relativistic tolerance: "to 'leave' some 'to do' is to leave others to *struggle*" (Ackerly, 2008: 28). To assume that all of the members of a group are in agreement with a potentially harmful practice is to leave those who are not (for there are *always* dissident voices) to suffer and struggle without assistance. Furthermore, Ackerly strengthens her argument against this particular type of relativism by echoing Prasad's words of caution: political elites often disguise their power as cultural authority in order to maintain the allegiance of the masses. It is important to question whether the claim for cultural rights is even a legitimate claim on behalf of a cultural group, or the manipulation of power by a leader. When a political elite

engages in this kind of behavior, those voices within the group who “would transform local norms are inaudible or treated as corrupted by outsiders” (Ackerly, 2008: 63). Human rights activists and scholars alike, when faced with questions of culture, must be critical about who is making the cultural claim, how legitimate and important the practice is to its members (compared to the harm that it may cause), and why the authority is making the claim in the first place.

Ackerly moves on to dismantle the principle argument of relativism: that there is no universal human essence to support something like universal human rights. In arguing that human essence is, in itself, culturally determined, relativists are in fact making their own kind of universalizing assumption, according to Ackerly. The relativist argument that in every context, social and political values emerge from traditional culture and not out of “responses to changing material conditions, intercultural interaction, or major events” (Ackerly, 2008: 86) is in itself universalizing, and also implies that culture itself is “static, isolated, and internally homogenous” (Ackerly, 2008: 86). This argument, then, lacks solidity in opposition to human rights.

Issues concerning cultural arguments against human rights, Ackerly continues, are erroneously seen as theoretical, which is what sets up a false criticism of the universality of rights. According to Ackerly, there are no grounds to dispute the legitimacy of the idea of human rights: that every man, woman, and child, being born human, are accorded a certain set of rights that should be adhered to by other human beings and ensured by local and national governments. The problem is that these rights are not always successfully achieved in practice; a political rather than theoretical problem, though it is often seen as the main threat to the legitimacy of the idea of human rights as a whole. Rather, because there are

such sharp political, social, and economic differences between each country in the world, and even between regions within countries (Evans, Hood, and Moir 2007; 120) human rights principles often run into conflict in their implementation in local contexts. Theories and ideas at the international level (such as universal human rights), however legitimate, can be very abstract principles- and more work must be done to make them transfer more easily from the international level to application at the national and local levels. Take, for example, the case of the Muslim headscarf in France- a case that is perhaps one of the best known to use a cultural defense. It is important to realize, according to Ackerly, that the tension between the French nation and Muslim immigrants who wish to continue wearing the veil in public, though undoubtedly representing a genuine conflict, does not prove that human rights are not universal. Culture is *political*, not theoretical, and other issues that question the universality of rights, such as the education of Amish children, rights of indigenous women, FGC, the *kirpan* dagger carried by orthodox Sikhs, child marriage, and countless other examples are not theoretical questions about rights, but political, context-driven questions about rights. Theoretically, we should all be capable of living fulfilled lives with a full range of respected rights, without infringing on the rights of others or distinguishing between our individual and group rights. However, these conflicts do emerge out of a variety of different contexts. We must remember that these conflicts do not put the existence of universal human rights into question, despite the challenges they pose to its adequate implementation in particular contexts.

Ackerly deals with challenges to universal human rights not by disputing the problems they present, but by acknowledging them as challenges and placing them in what she calls “the terrain of difficulty”. This confirms that although such issues as competing

rights, sexuality, and “big” versus “little” rights are problematic, they do not threaten the essence and legitimacy of universal human rights. For feminists and human rights activists, this is a way of highlighting the major obstacles that they face and making a commitment to tackle these issues and work through them (Ackerly, 2008: 252). This terrain also enables activists to separate contested rights from uncontested rights- those found within the terrain of difficulty must be studied so as to “reveal the ways in which social, political, and economic structures are being masked by being characterized as theoretical, not political, obstacles to the respect for universal human rights” (Ackerly, 2008: 265). Rather than treating specific problems as challenges to the theory of human rights as a whole, the Immanent Theory of Universal Human Rights allows us to entrust them to the terrain of difficulty, strengthening and empowering the theory itself (Ackerly, 2008: 273). The terrain of difficulty also helps in eliminating the dichotomous structure of the debate between human rights and Cultural Relativism, reducing the opposition between the two and showing how they are more similar than previously seen.

The construction of opposition between “individual” and “collective” rights does not sit well with Ackerly. She does not see human rights as divisible into these categories and instead offers an effective alternative: to view the subject or unit of study in human rights as “an individual in a community in a state in an international system” (Ackerly, 2008: 104). human rights concerns every man, woman, and child, who are indeed individuals but are also members of larger communities, groups, and organizations. The framing of these issues in such a dichotomous tension is counterproductive, according to Ackerly (2008): it serves only to “weaken arguments for both social recognition and material redistribution” (Ackerly, 2008).

Most important in the issue of human rights in a world full of cultural difference, according to Ackerly, is that the opinions that are heard from a group are not always those most widely held, even if they appear to be the most dominant and most audible. Attention must not only be paid to the most visible or popular views, but also the power relations that may enable the silencing and rendering invisible of quieter, dissident voices (Ackerly, 2008: 124). Moreover, these dissident voices, especially women's voices, may be kept silent and invisible due to the value they see within their cultures. Violations of women's rights often come from the same sources that provide them with "personal, spiritual, economic, and political support" (Ackerly, 2008: 223), which is often what keeps them from resisting these forces, no matter how instable the support. The Immanent Theory of Universal Human Rights demands a commitment, above all, to attentiveness and awareness of marginalization of *any kind* (Ackerly, 2008: 188).

Ackerly's theory is particularly unique in that it is closely tied with, and indeed based on, practice. One of the main disadvantages of traditional human rights discourse is that its legitimacy is guaranteed only in theory. Many real-world situations have proven how difficult it is to implement human rights values globally and cross-contextually. Ackerly exposes the disjunction of human rights academia (theory) and activism (practice) and attempts to build a bridge between the two to foster communication and unity. Her central criticism of academia and theory is that scholars tend to frame their ways of thinking- they think within a box or outside the box- but there is always a box. Getting rid of this box involves interaction with others- particularly with those who have been most affected by human rights violations. A quote from a participant in Ackerly's discussion focus groups

best summarizes what is to be done to fill the gap between theory and practice: “what we need is more activism in the halls and more analysis in the streets” (Ackerly, 2008: 190).

Ackerly suggests that communication and interaction are the best ways of achieving a greater, more effective solidarity between academia and activism, theory and practice. Her proposition for this is the use of a feminism based primarily on inclusivity, what she calls a “curb-cut feminism”. This way of thinking “requires the theorist to be especially attentive to oppression and to the possibility of exclusion, exploitation, powerlessness, value imperialism, marginalization, invisibility, violence, ignorance, silencing, domination, and hegemony” (Ackerly, 2008: 35). The notion of “curb-cut feminism” comes from an idea implemented by a municipality to better accommodate those within the city with physical disabilities. Cutting down the curbs of sidewalks makes mobility much simpler not only for citizens in wheelchairs, but also parents with baby strollers, the elderly with walkers, people with shopping carts, and even those on bicycles. In targeting one part of the population in need of assistance, the town was able to make the lives of a multitude of others easier. This is the main principle of Ackerly’s curb-cut feminism: an inclusivity and attention to rights that benefits every member of society, not only those targeted. Most importantly, it is attention to one group’s rights that do not infringe upon the rights of any other group; the mantra of an inclusive feminism that would satisfy women’s rights without excluding those who identify with genders other than female. If academics and activists alike address a full range of issues pertaining to women and social justice, they will “not marginalize men, but rather work toward solutions that achieve the human rights of all” (Ackerly, 2008: 177). Feminism, despite many misconceptions, is not exclusive but *based* on the idea of inclusivity, if it is practiced properly. Concentrating on women’s rights leads to commitment

towards *all* rights, the well-being of humanity. This inclusivity is why feminism and human rights (in Ackerly's estimation) complement one another so completely. Feminist theory, like most critical perspectives, is attentive to both the *patterns* and the *particulars* of oppression. It exposes the particulars of each case of marginalization, which helps us distinguish the patterns of this marginalization (Ackerly, 2008: 57) which again ties theory and practices together. Ackerly's "curb-cut feminism" also enables the assertion that vulnerability to hierarchy comes from a combination of a variety of different sources and elements; it is maintained through neither the public nor private sphere alone, and is not only a function of any one element alone (Ackerly, 2008: 138). It is important to unpack the context of marginalization piece by piece, and to be aware of how each piece relates to the next in order *to* marginalize.

Human Rights in a World of Difference is Ackerly's attempt to bridge theory and practice in human rights. Though the theory she presents gives a starting point for how this can be accomplished, there are some weaknesses in her process. Ackerly's proposal for creating forums and public discussions on human rights matters provide a starting point for working on them, but she does not go any further than this. She rallies behind democratic discussion, knowledge-seeking and understanding local contexts, but does not show how to proceed from these discussions. What is even more problematic, she does not believe in the existence of a concrete set or list of rights; this kind of list is essential in order to begin to work towards ending violations against rights. She provides no method of recognizing a rights violation or defining it as such, but simply states that human rights themselves are a *process*, a means rather than an end, cannot be embodied as a system of concrete values, and must be constantly subjected to review and alteration. Admittedly, it is true that in order to

be effective in the fight for human rights, we must always question and challenge our conception of them, and these conceptions must always be subject to change. However, Ackerly's main objective in building her framework in the first place is to create a theory that can easily be applied practically, thus rectifying one of the main weaknesses of traditional human rights theory. Though there are undoubtedly many difficulties in the implementation of the list of rights outlined in the UDHR, altogether removing the existence of a list hardly seems an adequate solution. Ackerly's reliance on the perpetual discussion of human rights among activists, academics, and all stakeholders, regardless of their viewpoints, provides no universal definition of what these rights entail, thus causing further problems in the implementation of practical rights.

One of the reasons why Ackerly does not provide a list is because she does not believe in emphasizing one transcendental human quality, except "self-reflection". Basing rights theories on "universal" elements such as human dignity, individual morality, membership, or citizenship only further excludes those who do not conform to such norms (Ackerly, 2008: 79). This is problematic for a theory that claims to engage in a close marriage with practice, for how can a rights violation be identified with such an abstract framework, let alone rectified? Ackerly is correct to raise such concerns- human rights theories based on such transcendental human elements are indeed restricted from being effective in practice due to the possibility of exclusion and marginalization. However, in order for Ackerly's theory to ring true in practice, it must be accompanied by a detailed list or definitive body of rights that defines what does and does not constitute a violation.

2.3 The Capabilities Approach

Martha Nussbaum's Capabilities Approach is, this thesis proposes, an effective response to the shortcomings of Ackerly's writing on how human rights should be implemented, particularly with regards to a case like VT. Built on Amartya Sen's original economic conception of capabilities, it is a list of ten central "substantial freedoms" or "interrelated opportunities to choose and to act" (Nussbaum 2011: 18) that should be accorded to each individual by government. These are the capabilities judged most valuable for human beings to develop; the types of capabilities that "minimally just societie[s] will endeavour to nurture and support" (Nussbaum 2011: 28). We can only achieve true equality, according to the Capabilities Approach, when we recognize and compensate "for people's differing capabilities to convert primary goods into functionings" (Martinez, 2005: 39). The approach as outlined by Nussbaum is not based on one essentializing element like the other human rights theories Ackerly observes. Rather, the Capabilities Approach looks at what a person is actually able to do or to be; instead of their level of satisfaction or the amount of resources they are able to acquire (Nussbaum, 2000: 12). This approach is a set of ten capabilities⁸ (lacking in Ackerly's work) that is not paternalistic, for its universal element is choice. Capabilities endorse only one specific value: "having the opportunity to think and choose for oneself" (Nussbaum, 2000: 51). Used in the practice of International Development, particularly in assessing progress of countries; it is a better measure of quality of life (especially for comparative analyses) than GNP per capita or utility (Nussbaum, 2000: 6) and indeed has been accepted by much of development literature and some of those

⁸ See Appendix B for Nussbaum's full list of Capabilities: (Life; Bodily Health; Bodily Integrity; Senses, Imagination and Thought; Emotions; Practical Reason; Affiliation; Other Species; Play; and Control over One's Environment.)

writing in the field of security studies (Glasius, 2008: 35). It has even been incorporated, as a comparative measure, into the United Nations' Human Development Reports- Amartya Sen played a central role in framing them (Nussbaum 2011: 17).

Though the list is a detailed account of ten individual kinds of freedoms, Nussbaum continually emphasizes the fact that they cannot be taken separately- they are plural and interrelated, representing the idea that aspects of individual lives cannot be “reduced to a single metric without distortion” (Nussbaum 2011: 18). In other words, one capability cannot be fulfilled at the expense of or without another- this would ultimately lead to serious shortcomings in the capabilities of citizens of a country as a whole. Furthermore, as Sen and Nussbaum (2011) both point out, capabilities do not equal functioning. To illustrate, Sen in Nussbaum (2011) compares a man who decides to fast to a man who is starving: both men have the same functioning with regards to nutrition (they are both physically able to consume and digest food). However, they do not have the same capabilities: the faster has *chosen* not to eat, while the man who is starving has no choice in the matter (25). Thus, capabilities can be said to be “alternative *combinations* of functionings *that are feasible for one to achieve*” (Nussbaum 2011: 20, my emphases). Another advantage of the approach is that it is based on choice: as long as the necessary elements are *available* in order for a person to live a healthy and fulfilled life, then whether he or she decides to actually do so is their own decision. Capabilities thus provide individuals with freedom of choice- and governments that provide these opportunities show commitment to their citizens' powers of self-definition (Nussbaum 2011: 18). The only time that the power should be given to government to decide on our behalf (thus taking away the element of choice) is in that it

“should not give people an option to be treated with respect and nonhumiliation” (Nussbaum 2011:26). Governments must ensure that respect is not a choice.

The approach is concerned with the opportunities available to each person and focuses mainly on the individual rather than the family unit or society as a whole (Nussbaum 2011: 18). Capabilities do extend derivatively to groups from individuals, (by reasoning of the individuals being a part of larger groups), but do not use individuals as the means to fulfill capabilities for others, or for any group as a whole. (Nussbaum 2011: 35). For example, a perspective of VT based on the Capability Approach would look at each individual Zulu girl and her capabilities within the community. The use of the testing practice in itself to restore cultural values of abstinence and chastity, leading to the decrease of HIV/AIDS, is not in compliance with assuring full capabilities to individuals in the community- rather, it uses them as the means to achieving a larger goal. Immediately, then, the practice of VT limits young Zulu girls’ capabilities to live healthy, fulfilled lives, because their worth as individuals is not considered.

Ensuring that each person is capable of living a fulfilled life, Nussbaum (2011) says, leads in turn to overall well-being, due to the fact that the approach is “concerned with entrenched social injustice and inequality, especially capability failures that are the result of discrimination or marginalization” (19). This is one of the reasons why the Capability Approach is an effective way of viewing VT- it not only asks what rights are accorded to Zulu girls in South Africa, but also how their surroundings restrict their capabilities. In fact, the social, political, and economic surroundings of individuals constitute a form of capability in themselves, according to Nussbaum (2011): *combined capabilities* (21). This refers to the freedoms and opportunities provided to an individual by his or her surroundings; paying

attention to this kind of capability supports Ackerly's call for increasing knowledge about the context of a human rights violation (or as she puts it, "epistemology"). Combined capabilities, in essence, are the social, political, and economic conditions in which functioning can actually be chosen, compounded with *internal capabilities* (or the abilities residing within a person, such as "personality traits, intellectual and emotional capacities, states of bodily fitness and health, internalized learning, skills of perception and movement" [Nussbaum 2011, 21]). In many cases, internal capabilities can be present without the proper conditions for them to be exercised. Societies may commit to developing internal capabilities in their citizens by providing education, health resources, and family care, but fail to provide (or even restrict) the necessary combined capabilities to put internal capabilities to use (Nussbaum, 2011: 21). For instance, citizens in a country may be educated and taught to think for themselves, but be restricted in practice (like public forums) from exercising free speech. This example illustrates that internal capabilities and combined capabilities do not always go hand in hand as they should. The Capability Approach outlines the need for these combined capabilities (internal and combined) to work together to ensure that individuals can live with human dignity, a central concept to the approach.

Human dignity

Nussbaum(2011) defines human dignity as the idea that everyone deserves respect from laws, institutions, and society in general; and that this respect should be equal to all (31). The focus on dignity is particularly important to the approach with regards to the concept of choice- citizens should not only feel that their rights are protected, but also that they are able to act in the way they choose without persecution. Policy must reflect protection and support for *agency* as well as for the rights (and capabilities) themselves,

rather than choices that “infantilize people and treat them as passive recipients of benefit” (Nussbaum, 2011: 30). The Capability Approach proposes, as Nussbaum puts it, a *threshold* (or minimal) level of capability in ten different areas- above which individuals must be held by their laws and institutions (Nussbaum, 2011: 36). These areas are so central to the fulfillment of human dignity that “their removal makes a life not worthy of human dignity” (Nussbaum, 2011: 31). Providing this level of capability, choice, and substantial freedom to act in all areas listed is what it means to treat people with equal respect (Nussbaum, 2011: 24).

Though closely aligned with the principles of human rights (and the distinct rights outlined in the UDHR), the Capability Approach is a much more effective than the UDHR when it comes to implementation. It stands strong against many of the criticisms of the idea of human rights; for example, it is not strongly linked to any particular cultural or historical tradition, which is one of the main critiques of traditional human rights- it is accused of being derivative of and tied to Western thought (Nussbaum, 2000: 76). Capabilities also fulfill Ackerly’s requirement of involving cross-cultural and cross-perspective discussion. The approach itself already represents a type of overlapping consensus of a wide variety of people who would otherwise have very different views (Nussbaum, 2000: 76). Says Nussbaum,

since the intuitive conception of human functioning and capability demands continued reflection and testing against our intuitions, we should view any given version of the list as a proposal put forward in a Socratic fashion, to be tested against the most secure of our institutions as we attempt to arrive at a type of reflective equilibrium for political purposes (Nussbaum, 2000: 77).

Nussbaum also tackles the challenge of universality and defends the idea of capabilities against cultural arguments. Firstly, despite being universally applicable, the Capabilities

approach does not imperialistically ignore cultural differences. Instead, each capability may be realized in a number of different ways in accordance with local context. Furthermore, what is being ensured is that *choice* is available. Citizens are able to pursue these capabilities; however, it is their own decision whether or not they actually do (Nussbaum, 2000: 77).

Ackerly, both in *Universal Human Rights in a World of Difference* and *Political Theory an Feminist Social Criticism*, engages with Nussbaum's approach. She acknowledges that the Capability Approach is an important tool and an effective "list of guiding criteria" (Ackerly, 2000: 94). However, she criticizes it as being inadequate because "it does not enable critics to hear all of the offstage voices of a society" (Ackerly, 2000: 94). Ackerly accuses Nussbaum of neglecting to state the importance of including every unfamiliar view, thus calling her biased. Yet, this accusation is revealed to have no basis since Nussbaum herself affirms that any solution to the dilemma posed by the universality of human rights must "understand and respect the plurality and diversity of voices in each religious tradition, both traditional and critical, both female and male. This entails being sceptical from the start of any account that fails to recognize the complexity both of religion and of women's interests" (Nussbaum, 2000: 188). Since Ackerly herself states this importance far too often in her book- as if questioning the intelligence of her readers, it is difficult to know what she is expecting as an adequate treatment of the issue on Nussbaum's part. Later, however, Ackerly concedes that even her own method of "sceptical scrutiny" is not sufficient as social criticism and must be combined with some kind of guiding criteria.

This thesis proposes that, especially with regards to cultural practices like Virginity Testing, Nussbaum's Capabilities Approach can act effectively as this guiding criteria.

Though Nussbaum herself admits that her approach does not necessarily guarantee a solution to all human rights problems, it does “specify a rather ample social minimum. Justice may well require more” (Nussbaum, 2011: 40). Though this may be true, a perspective based on Ackerly’s encouragement of open discussion, the pursuit of knowledge and “curb-cut feminism” coupled with Nussbaum’s Capability Approach is a good starting point for a new perspective on human rights and cultural practices. The following chapter will first look at Female Genital Cutting in Senegal and how it was eradicated by a local NGO using methods akin to Ackerly and Nussbaum’s theories. It then will apply the tools of this new perspective to the case of Virginity Testing in South Africa to explore possible outcomes for social change in Zulu communities, in accordance with the principles of human rights.

CHAPTER III: A MIDDLE PATH FOR VIRGINITY TESTING?

3.1 Theory to Practice: An Immanent Theory of Human Capabilities

The conflict that arises between human rights and Cultural Relativism, explored in Chapter Two, is one that presents many problems to academics and activists alike. While some have proposed that secularity is the solution to this dilemma (in turn removing religion and cultural considerations from human rights enforcement altogether), Abdullahi An Na'im (2005) argues that the two are actually inextricably intertwined. In fact, the "entire separation of religion and state is not possible, nor in my view desirable, because religion is not separable from politics. How can citizens be prevented from acting politically according to their most basic beliefs?"(63). Our culture provides us with meaningful ways of living, thinking and feeling. We must begin to observe culture and human rights as partners rather than as opposites. Cultural Relativism must work to keep accountability and morals part of human rights discourse, increase its effectiveness in each particular case by making it compatible with local standards and customs, and prevent it from falling prey to masking Western hegemonic agendas. The universal ideals of human rights, on the other hand, can keep elites and governments from manipulating culture for their own purposes and

guarantee cultural practices that are compatible with principles such as human dignity, autonomy, fairness, etc. [...] Culture is considered an important human right as well as a useful factor in the determination of the scope of other rights (Addo, 2010: 622).

A marriage of the core universal human rights principles with an emphasis placed on local contexts and cultural relativism is the only solution to the proper implementation of human rights ideas in every context around the globe. Feminist legal theory and movements for women's human rights present methods to bridge the gap between the two sides to create a middle path of compromise (Jivan and Forster, 2005: 112). Feminism firmly opposes any

cultural practices that harm or oppress women in any way, but in spite of this, it is appreciative and conscious of the importance of cultural diversity. Jivan and Forster (2005) even state that “ignoring the voices of women who advocate for the abolition of cultural practices would amount to a failure to respect cultural diversity” (113). For the world to ignore the voices of those women protesting the use of Cultural Relativism to perpetuate human rights abuses is in itself a condescending disrespect of cultural diversity, showing that other cultures are not held up to the same standard as our own.

The third and final chapter of this thesis will explore the possibilities of respecting cultural values while implementing human rights, with regards to VT. It will first begin to examine the theoretical foundations previously proposed, establishing a link between Ackerly’s theory, human rights as we presently know them, and the Capability Approach. In particular, the capabilities that are limited in the practice of VT in South Africa will be explored. Next, the use of a comparative example will begin the discussion on translating theory into practice: the community effort to eliminate the practice of Female Genital Cutting in rural Senegal. In observing how open discussion, consideration of women’s capabilities and rights, and collective action led to social change in this case, we will proceed to look at how VT may be affected in the same way.

A new theory based on Ackerly’s ideals for universalism and the Capability Approach are appropriate tools for the analysis of a situation in which human rights and cultural values come into conflict, like in the case of VT. These tools will help in answering the following questions: what means do women in communities practicing VT have in order to bring about social change? Do they have power to influence whether a cultural practice is continued or abandoned? Is there a culturally acceptable alternative to VT that will eliminate

harm and rights violations? If not, what sort of abandoning the practice itself would be satisfying in the eyes of human rights and Mill's harm principle?

To begin working towards the reconciliation of respect for both human rights and cultural values, we must reaffirm the most important concept of Ackerly's (2008) Immanent Theory of human rights: that "differences can be adjudicated, revealed to be politically motivated, not manifestations of essential uncrossable human difference" (269). It is possible to change even the most entrenched traditional practices, which will be illustrated later in this chapter with the use of the eradication of FGC in Sénégal. Firstly, in order to encourage these changes, acknowledgement of local customs, traditions, belief, culture and religion is crucial. Secondly, we must commit ourselves to learning more about the social, political, and cultural context of a rights violation. If we are not educated about a place or culture, how can we expect to truly discuss practices that are taking place within it? Finally, implementing human rights principles in a traditional society necessitates creating spaces: spaces for a multitude of voices to be heard- feminist voices, local voices, and even the diversity of religious voices. Inclusivity is crucial for the proper implementation of human rights (and is the most important element of Ackerly's Immanent Human Rights theory).

No social change can ever take place if we do not first accept the context of the place we are studying. More importantly, we must shed the common assumption (as Western scholars, academics, and International Development professionals) that religion in the Third World, especially for women, is something to be destroyed and shunned. It is important to acknowledge that religious beliefs are not always sources of oppression for women, but can also be sources of "inspiration, comfort, and even, in some cases, authority for women" (Evans, Hood and Moir, 2007: 122). Though many women living in developed countries

have availed of international concepts and laws to change their local contexts, many also find that they can inspire more change *within* their culture; by “reinterpreting and revitalizing their own religious sources” (Evans, Hood and Moir, 2007: 123). Feminists, particularly Western activists working in the South, need to be cautious not to create a binary divide between “free, equal, and secular us versus oppressed, unequal, religious them” (Evans, Hood and Moir, 2007: 123) as this kind of separation can alienate local women who may wish to stop harmful practices that take place within their culture, but not abandon it altogether. This is a trap into which Susan Moller Okin falls, as we explored in Chapter Two. Identifying elements of culture that can be harmful to women is crucial, but we must also be aware of the importance of that same culture in the daily lives of women. Simply put, “no theoretical approach, no matter how excellent, is a replacement for good fieldwork” (Martinez, 2005: 40).

Human Capabilities, Human Rights, and Virginity Testing

We have established the legitimacy and value of human rights as the ideal treatment of each individual that we would like to realize in practice. The UDHR serves as a flag post for the ideas of human rights but alone is not enough to ensure their implementation. Both the UDHR and Nussbaum’s Capability Approach have as their central preoccupation the idea that individuals must be able to live long, healthy, creative lives, free of disrespect or humiliation of any kind. Focusing on capabilities (the ten basic needs and interests that humans share in a minimally just society, according to Nussbaum), gives us a way of measuring or evaluating how well people do in a society. In this sense, the two (human rights ideals and the Capability Approach) go hand in hand- Nussbaum herself states that her Capability Approach is a “species of human rights approach” (Nussbaum, 2007: 21). Its

distinction from human rights ideals (as outlined in the UDHR and other conventions) is that its goal is to make individuals *able to function* in a variety of areas of central importance (Nussbaum, 2007: 21). Rights, therefore, can be understood as *entitlements* to capabilities (Nussbaum, 2007: 21) - or what individuals *deserve* to be able to be or to do. These entitlements, says Nussbaum (2007), have material and social preconditions that must be provided by governments; the Capability Approach pushes forward the analysis of women's human rights and the rights of the poor to incite governments to do so (21). In supplying a starting point of minimum capabilities that each world citizen should have, the approach proposes that we then work back from this list to determine the responsibilities of nations, international organizations and agreements, multinational corporations, NGOs, and individuals in securing these capabilities (Nussbaum, 2007: 21). In short, once capabilities are restored to individuals, we can be sure that their human rights will not be violated.

The Capabilities Approach eliminates the often unproductive debate between human rights universalism and Cultural Relativism that so often consumes those who are preoccupied with harmful cultural practices. The lens of the Capabilities Approach leads us not to ask whether VT or FGC actually are human rights abuses or not. Though this thesis argues that both practices *are*, without doubt, violations of human rights, the question in itself leads to a controversial debate that sets up universalism and relativism as two binary, opposing camps. A focus on capabilities brings us closer to practical implementation from theoretical discussion, as we begin to concentrate less on the debate surrounding the violation of rights and more on "the social processes whereby rights may be claimed and effectively realized" (Martinez, 2005: 40).

How do we examine the case of VT through the perspective of Nussbaum's list of capabilities necessary to fulfill a life of human dignity? In Chapter One we focused on the human rights violated by the practice of VT. A capabilities-focused approach on the practice highlights the various constraints placed on Zulu girls in KwaZulu-Natal, South Africa, based on their subjection to and participation in VT festivals.

The capability defined by Nussbaum that is the most pertinent to the issue of VT is number three: Bodily Integrity. According to Nussbaum, this is the human capability to “move freely from place to place; having one's bodily boundaries treated as sovereign, ie. being able to be secure against assault, including sexual assault, child sexual abuse, and domestic violence” (Nussbaum, 2000: 78). Young Zulu girls and unmarried women belonging to communities in KwaZulu-Natal that participate in the practice of VT are not capable of maintaining bodily integrity, in the sense that their bodies do not belong to themselves. In other words, girls that are subjected to VT do not have control over who holds access to them physically. VT removes the sovereignty that each girl holds over her own body, due to community and familial pressure; girls and young women are compelled to relinquish this sovereignty in order to serve the larger goal of fostering values of abstinence and chastity in the community. Furthermore, the lack of this capability can lead to the girls' vulnerability to sexual assault, as described earlier in the assessment of the human rights violated by VT. This is an even greater indication that the capability for bodily integrity is not being met for girls in communities that practice VT.

VT also uncovers the limited emotional capability of girls in participating communities. Another important capability (especially with regards to women's rights) in Nussbaum's list is to “not have one's emotional development blighted by overwhelming fear

and anxiety or by traumatic events of abuse or neglect” (Nussbaum, 2000: 78). This can be easily compromised in this context; the public diffusion of the results of VT ceremonies can lead to anxieties, fears, and even abuse for the girls involved, whether they are virgins or not. Those who pass the test cannot live fully without the fear of being raped (since, as virgins they are seen as cures by HIV/AIDS infected men). On the other hand, girls who fail the testing can never live completely without anxiety- for fear of being labeled a prostitute, socially excluded from the virgin girls, or even becoming ostracized by their families and communities. The minute the results of VT festivals are made public, participants lose their capabilities of pursuing emotionally sound lives free from overwhelming fear, anxiety, and even sometimes, abuse. This is reminiscent of the right to self-determination: that

everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing the recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order, and the general welfare in a democratic society” (United Nations, 1948: Article 29[2]).

The only limitations on an individual’s life and freedom of choice should be that they are not to harm another or act against the law in any way. The capability for emotions partially illustrates one of the ways in which we can work to ensure that the right to self-determination is provided to individuals. Being free from fear and anxiety is one of the first steps to reaching a life of human dignity.

The third and last capability that most applies to the case of VT is “Affiliation”.

According to Nussbaum, an important capability within a society is to have

the social basis of self-respect and non-humiliation; being able to be treated as a dignified being whose worth is equal to that of others. This entails, at a minimum, protections against discrimination on the basis of race, sex, sexual orientation, religion, caste, ethnicity or national origin (79).

It is clear that the girls tested in VT ceremonies are not seen as dignified individuals but rather as the means to a greater ends. The testing is not conducted in order to secure the girls' own individual capabilities for life or for health (such as regular gynecological inspections with certified doctors or health professionals are for women around the world) but instead with the larger objective of strengthening the moral fabric of the community in the cultivation of the value of virginity. Girls participating in the ceremony are treated as small parts of a bigger goal; the individual worth of each girl is not considered by the community- they are concerned only with the number of girls that participate as a collective. A greater number of participants in the ceremonies leads to VT supporters getting closer to their goal.

Gender Inequality

One of the most poignant arguments raised by opponents of VT is that it is an explicit indication of gender inequality in Zulu communities. The practice itself is in direct violation of Article 5a of the CEDAW:

States Parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women (United Nations, 2003).

It can therefore be said that VT as a practice is in violation of human rights in the sense that it does not promote gender equality, but instead further entrenches inequality between men and women. The communities that engage in VT do not target boys in the same way as they do girls- boys are not subjected to the same tests and are not expected to carry on the message of sexual abstinence. In fact, Zulu communities even rely on the participants of the VT festivals to be messengers of the value of abstinence; girls are expected to pass this value

on to boys by committing to abstinence and resisting the pressure to engage in sexual activity. Boys and men have so far not been targeted in the mission to spread the message of abstinence. Thus, VT not only shows violations of human rights in the name of gender discrimination, but restrictions have also been placed on the capability of Affiliation for the girls involved as a result of discrimination based on sex. Customs like VT present how, in communities that practice it, girls and young women do not have the same capabilities as do boys and young men.

What steps should be taken in order to restore these rights and capabilities to young Zulu girls living in communities that condone and practice VT? How can we work within a culturally tolerant perspective to improve women's capabilities in traditional societies? The next section will examine a grass-roots movement in Senegal that was successful in getting communities to abandon the practice of Female Genital Cutting. The initiative began by questioning the capacity of women's capabilities in the communities engaging in FGC and opening discussions on the matter to all villagers. Emphasis was placed on the negative consequences that often befall victims of FGC, incorporating male villagers, traditional cutters and religious leaders into the discussion, and reframing ideas of human rights into local ideas that better fit the context. Starting from the bottom and progressively working their way outwards to surrounding communities and the country as a whole, Tostan's achievements show how local initiatives can have more success in ending harmful traditional practices while maintaining respect for cultural values.

3.2 Comparison by Analogy: Female Genital Cutting and *Tostan* in Senegal

Female Genital Cutting: The Practice

One culturally entrenched harmful practice that has been successfully abandoned using an approach based on the values discussed in Section 3.1 is FGC in rural Senegal. A

cultural practice that takes place in a variety of sub-Saharan and Muslim countries, it consists in the cutting of the genitalia of young girls and unmarried women. FGC is also known as “Female Genital Mutilation”, “female circumcision”, “excision”, “clitoridectomy”, and “infibulation”. The term “FGC” has been chosen specifically for this thesis for two reasons: firstly, it removes the negative connotations contained in many of the other terms (which, as we see later, contributes to a more successful approach for social change with regards to harmful practices). The use of a word like “mutilation” only puts societies who encourage the practice at fault, incriminating them and painting them in a barbaric light to the outside world. Secondly, “FGC” covers the “wide continuum of procedures that range from a symbolic nick to the removal of a great deal of tissue from the genital area” (Britannica “FGC”), depending on the country and community in which it is practiced.

Though condemned by most Western countries and widely spoken of as a human rights violation, ethnographers, activists and NGO workers have discovered that FGC has a very important cultural and societal significance in the communities that practice it. It is first and foremost a practice that determines the “marriageability” of young women and serves as a rite of passage into formal socialization and cultural values (Easton, Monkman and Miles, 2003: 445). Because of this, the custom has become “an important connection to family, community, and earlier generations” and has even come to be seen as an act of love from mothers to their daughters, showing concern for their future and quality of life, since marriage is the key to a successful future in many of the societies that practice FGC (Easton, Monkman and Miles 2003: 445).

Like VT, FGC constitutes a violation of human rights as laid out in the UDHR. The two practices consist of immediate violations of privacy: they both prevent the maintenance

of a sphere of inviolability around the individual and violate the concept of Bodily Integrity as outlined in the South African Bill of Rights.⁹ FGC also represents a form of gender inequality (also in violation of CEDAW's Article 5a), since the practice targets only female members of the community. Furthermore, since the practice of FGC involves surgically removing part of the genitalia for reasons that do not include health benefits, it is also in violation of Article 5 of the UDHR: the idea that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" (United Nations, 1948).

Not only is FGC widely considered a human rights violation (one based on sexual discrimination), but like VT, it involves potentially harmful negative consequences for girls that have been cut. Those who have undergone the surgeries often later experience a wide range of health problems – including bleeding, infection, infertility, and difficulties in childbirth that lead to death in some cases- contributing to maternal mortality rates (Ben-Ari, 2003: 1). Most surprising, however, is that because the practice is so culturally entrenched, even women who disapprove of FGC continue to submit themselves and their daughters to the practice (Easton, Monkman and Miles, 2003: 445). Strong adherence to the custom within and between inter-marrying communities keep those who oppose it from sparking any social change; if only one mother decides not to have her daughter cut, it is her daughter who suffers the consequences of rejection as a bride, a devastating blow in a society in which women rely on their male relatives (Easton, Monkman and Miles, 2003: 445).

There have been many attempts by foreign governments, NGOs, and Civil Society Organizations to eradicate the practice of FGC in African states. At the time of the African

⁹ See discussion of Ramsay(2010)'s three kinds of rights to privacy and discussion of Bodily Integrity in Chapter 1, section 3.

Summit in June 2011, seventeen of the continent's countries had official legislation against the practice of FGC: Benin, Côte d'Ivoire, Djibouti, Egypt, Eritrea, Ethiopia, Ghana, Guinea, Niger, Nigeria, Kenya, Central African Republic, Senegal, Chad, Tanzania, Togo and Uganda (Boseley, 2011, the guardian). However, the practice of FGC continues in many of these countries and in the rest of Africa- a reflection of the force of cultural traditions and values: despite formal legislation against harmful practices, many of them are so deeply rooted in local societal culture that laws are not enough to abolish them. Other attempts in the pursuit of solving the issues involved with the practice have also failed: "just-say-no" campaigns, religious condemnation, efforts at health education, and even attempts to replace FGC with alternative rituals and practices that are not as dangerous (Easton, Monkman and Miles, 2003: 446). Some groups, convinced that the practice will never be abandoned, have even argued for medicalization of FGC: training health professionals to perform the surgeries in a sanitary and sterile environment to better manage the adverse effects that they can have when performed by members of the community (Easton, Monkman and Miles, 2003: 446). Though some of these attempts have found minor successes, none have had any sustainable results, due mostly to the fact that they have "failed to recognize the need for locally generated initiatives to reform such social conventions" (Easton, Monkman, and Miles, 2003: 446). This problem is echoed in criticisms of many initiatives geared at implementing human rights to put a stop to harmful cultural practices.

Tostan: a revolutionary approach to social change?

The value of locally generated initiatives aimed at social change is evident in the work of an NGO based in Senegal called *Tostan* (meaning 'breakthrough' in the language of the Wolof people of Senegal [Ben-Ari, 2003:1]), which grew its roots in the village of

Malicounda-Bambara. A rural village empowerment program that began as an organization dedicated to improving literacy especially among women, Tostan was formed as an alternative to traditional literacy programs designed for developing countries which had women struggling with ineffective reading exercises that had very little to do with their everyday lives (Easton, Monkman and Miles, 2003: 447). The organization's goal was to build a strong link between non-formal education (using participatory methodologies) and social change from the bottom-up (starting with individuals at the community level), using "a problem-solving approach based on the women's perception and prioritization of their own needs". This approach quickly began to include ideas of human rights and women's health (Easton, Monkman and Miles, 2003: 447). These ideas were implemented in reading modules and interpreted using "language and cultural forms familiar to the participants and to anchor the approach in a Senegalese version of 'women's ways of knowing'" (Easton, Monkman and Miles, 2003: 447). As the literacy program grew and graduates moved on to become instructors of future Tostan programs, participating women began to voice their desire to use the organization to address some of their own concerns and priorities- the largest of which was eradicating the practice of FGC (Easton, Monkman and Miles, 2003: 447). The participants were particularly interested in the modules they learnt on women's health and human rights- the facilitators soon discovered that this was due to a variety of oppressive experiences that women in the communities were forced to live through because of practices like FGC- many had lost daughters and friends who had succumbed to the effects of the surgery or had their health irreversibly damaged by it (Easton, Monkman and Miles, 2003: 448). These discussions among women participants uncovered problems in the community for women in general and the capabilities that they were being denied by the

continuation of the practice of FGC. The most obvious of these capabilities is of *Life*, the idea that every individual should be “able to live to the end of a human life of normal length, not dying prematurely, or before one’s life is so reduced as to be not worth living” (Nussbaum, 2007: 23). The fact that the women participants in the Tostan program had so many stories of female relatives and friends dying prematurely due to the effects of FGC reflects that women in communities that practice FGC are not always capable of living to the end of a natural human life. In many cases, girls and women die young due to complications stemming from FGC.

The practice of FGC also limits the capabilities of *Bodily Health* and *Integrity*. Women subjected to cutting of the genitals for cultural purposes are denied the capability “to have good health, including reproductive health” (Nussbaum, 2007: 23). Not only does a practice like FGC limit the woman’s ability to live a long, healthy life, it can also result in complications with regards to reproductive health and childbirth, long after the procedure has taken place. Women having participated in FGC can endure many complications like “difficulty expelling urine and menstrual blood, painful sexual intercourse, urethral scarring or closure, and long delays during childbirth that can lead to the death of the mother or the child” (Britannica, “FGC”). In the participants’ discussions of the painful details of their experiences with the custom, the idea that they were not being provided the opportunity to achieve their full health capabilities began to emerge. FGC was, in essence, serving as an obstacle to these capabilities.

After many discussions on the topic and the modules taught in the program, women began talking to their friends and neighbors, and opposition to FGC began to spread- to the point where a group of villagers collectively renounced FGC in front of 20 journalists

(Easton, Monkman, and Miles 2003: 449). Demba Diawara, a well known imam in the region, was disturbed by this opposition to tradition and sought out the group, wishing to understand their actions. He was told by the women to speak to his female relatives about their feelings on FGC; “Diawara did as he was told, and he got an earful. The elderly imam came back, persuaded that the women were right- and was ready to help” (Easton, Monkman and Miles, 2003: 449). The support of a religious official proved invaluable to the movement of women seeking to end FGC- not only because of his authority, but due to his insight. Diawara pointed out that because the surrounding villages all constituted an inter-marrying region, the movement would not be successful unless they all participated; uncircumcised women would just be deemed unmarriageable and rejected by men in other villages, and no true changes would come to fruition (Easton, Monkman and Miles 2003: 449). This also underlined the importance of involving men in the discussion- something that is often overlooked in initiatives to improve women’s rights, since men are not the direct beneficiaries of these rights. Exclusion of any kind inevitably leads to failure in cases of initiatives to encourage social change. For this reason, Tostan’s programs began to include issues involving men’s health as well, and a great number of male participants began to appear in the classes, their curiosity piqued about the broader human rights agenda (Easton, Monkman and Miles, 2003: 448). This was one of the first of a string of small successes for the organization, as the inclusion of men increases the likelihood of changes in public opinion on practices such as FGC. Fatoumata Siré Diakite of the Association for the Advancement and Rights of Women in Mali (where an approach similar to that of Tostan’s was later applied) has said that “the fact that men are now talking about FGC is a success, because the issue is related to women’s sexuality, and it is not easy for men to talk about it in

our country. To have a village chief sitting and talking about FGC with women in the same room is a big change” (Ben-Ari, 2003: 1).

Women educated in the Tostan program heeded Diawara’s advice and visited their connections and relatives in other villages to reaffirm personal relationships. They then began to teach other villagers what their group had done, opening up spaces for discussion on the experiences felt with FGC in neighboring communities (Easton, Monkman and Miles, 2003: 449). No shocking terms, explicit or implicit condemnation, scolding or demonstrations were used, and the women simply referred to FGC as ‘the custom’ (Easton, Monkman and Miles, 2003: 449). Furthermore, even practicing cutters were invited into the debate, and “no systematic inducements were offered [...] to abandon their practice and nothing was said to condemn them. The approach focused more on drying up demand than on forbidding supply” (Easton, Monkman and Miles, 2003: 449). The approach of eliminating demand for the practice simultaneously increased capabilities for women in the practicing communities to achieve better outcomes with regards to their health, their dignity, and their political and cultural participation. Ten villages were visited by the women with the company of Diawara, who, after much of his own reflection and consultation with colleagues on the matter, continued to support and teach the view that FGC is not an obligation of Islam (Abusharaf, 2011: 141). Though the practice is not mentioned in the Koran, for centuries it has been perceived as part of Islamic tradition. However, the voices that support this view are getting weaker due to progressive-thinking imams like Diawara who are speaking out against the harms involved (Ben-Ari, 2003: 3). Villagers in all ten of the communities visited opened up about their experiences with FGC, and in the end all ten of the villages decided to join the movement (Easton, Monkman and Miles, 2003: 450). The program expanded: over

700 communities in Senegal joined the initiative by June 2001 (Easton, Monkman and Miles, 2003: 450), and the program itself, having received impressive results from external reviewers, has since been replicated in eight other African countries (Diop and Askew, 2009: 316). A report published in 2003 declared that in Mali, one of the countries in which Tostan's program was implemented (and a country where FGC is traditionally very widespread) no cutting had been conducted since the initiative began in 2000 (Easton, Monkman and Miles, 2003: 451). Furthermore, representing a true bottom-up approach of initiatives moving from the local level to the global level, Tostan's program has been used "to develop the social change approach promoted by UNICEF, UNFPA, WHO, and other agencies as a promising model for encouraging abandonment of FGC" (Diop and Askew, 2009: 316). Tostan's foundation of local values also extends to the ways in which information is passed on within and between villages, an element that has contributed greatly to its success. Information was disseminated through social networks in intervention villages, and even spread to non-participating villages through word of mouth (Digests, 2010: 50). Seventy per cent of women in intervention villages initially perceived FGC as a social necessity- this proportion, surveyed after the end of the initial Tostan program, decreased to 15 per cent among participants, and 29 per cent among nonparticipants (Digests, 2010: 49). Impressively, only one per cent of women who disapproved of FGC at the end of the program said that they would still have cut their daughter, and no woman who disapproved of FGC intended to have her daughter cut in the future (Diop and Askew, 2009: 313). The inclusivity of male community members also delivered substantial results- those who had participated in the program were, out of a group of men surveyed, least likely to express a preference for a woman who had been circumcised (only 20 per cent of male

participants still expressed this desire as opposed to 63 per cent of male nonparticipants) (Diop and Askew, 2009: 313).

Lessons learned

According to the director of Tostan, Molly Melching, what made the effort to abandon the practice of FGC so successful was the fact that participants were not taught to stop the practice (Ben-Ari, 2003: 1). Instead, they were taught about human rights and the practice's health risks, and this information was provided to them through channels and concepts rooted in their own culture and traditions; the education phase of the program is aptly titled *kobi*, which means 'to turn over the soil in preparation for planting' in the Mandinka language¹⁰ (Ben-Ari, 2003: 1). This process shows how special attention was given to affect the ability that participants had to inspire social change within their community. This is also a response to Nussbaum's least obviously limited capability in the case of FGC: *control over one's environment*. In this case, the control is *political*: "being able to participate effectively in political choices that govern one's life; having the right of political participation and protections of free speech and association" (Nussbaum, 2007: 24). Before the discussions about the custom began to take place publicly, women and girls did not have the capacity to control their environment. Despite legislative bans at the national level and the fact that FGC is a cultural phenomenon, the choice of a community and its leaders to continue to endorse such a practice does have a political dimension. The continuation of this practice leaves those it affects with very little political power to change their situation. Tostan's aim was to replace this lack with a new capacity and capability for

¹⁰ The Mandinka are a West African ethnic group occupying parts of Senegal as well as other West African territories. (Britannica, "Malinke")

political change, by supporting and strengthening the voices of women within the community, beginning with education on the principles and ideals of human rights. Armed with these principles, Melching affirms, the participants usually come to the decision to abandon the harmful practice of FGC on their own (Ben-Ari, 2003: 1).

Tostan's approach to changing ideas about FGC at the local level, as we have seen, is closely aligned with the Capability Approach. It is also compatible with and echoes many of the elements outlined in section 3.1 (the approach to social change based on Ackerly's Immanent Theory of Universal Human Rights).

First and foremost, Tostan is a local Senegalese NGO. The modules concerning human rights and women's health were taught to new participants by former students who had graduated from a previous Tostan program. The successes of local ownership are becoming well-known in the world of international development; in fact, attempts at social change (particularly in the goal of eradicating harmful practices and implementing human rights at the local level) are most successful when they "arise from within the cultural community itself and are not imposed from outside" (Donders, 18). Not only is Tostan itself locally rooted in Senegal, but it also espouses local customs and values and feeds its human rights agenda through those local elements. These elements not only made the concepts of human rights more applicable to the local context, but the use of "innovative pedagogical techniques inspired by African traditions and local knowledge has contributed to making the sessions relevant, lively, and participatory" (Diop and Askew, 308). Moreover, the facilitators of Tostan workshops took every opportunity, in engaging with material on women's health, to encourage and emphasize the positive traditions within the local culture that contributed to women's improved health (Diop and Askew, 2009: 308). The concepts

taught at the sessions were released to the rest of the community and surrounding villages when participants were encouraged to choose one nonparticipant to share their new knowledge with; this tactic is based on traditional ways of sharing information by word of mouth- which led to the maximum dissemination of knowledge in the region (Diop and Askew, 2009: 309).

The support of imam Diawara was crucial to the success of Tostan's initiative, now called the Community Empowerment Program. Showing that the abandonment of FGC is actually more in line with the principles of Islam than the continuation of its practice, and that the Koran does not actually condone it, enabled the villagers to consider alternatives. Without the assurance that they would not be considered disloyal to Islam in abandoning or even questioning FGC, the villagers would most likely never have considered it. Winning the support of a highly respected local religious authority was a lynchpin in the program's success. Furthermore, the establishment of Tostan's programs on the foundational cultural values of Koranic piety and parental love also contributed to challenging the idea that FGC is a sign of love for a daughter (Easton, Monkman, and Miles, 2003: 451).

Most importantly, the programs offered by Tostan were free of criticism of local ways and even of FGC itself. Though exposing the health problems and dangers associated with the practice, Tostan instructors never spoke of 'eradicating' or 'banning' practices, but of 'abandoning' them (Easton, Monkman, and Miles, 2003: 451). Using the concept of 'abandonment' returns the power of decision and action back to the hands of the local people, rather than the idea of 'eradication' which depicts the imposition of control and regulation by authorities at higher levels of society. In the same vein, the practice of FGC was only referred to as "the custom"; removing all negative connotations from the word to

decrease feelings of blame and accusation. Blaming cultural, traditional, or religious sources for harmful practices will only make those who value them feel attacked and criticized, especially while there may be other groups that are equally to blame like members of the elite class, who often misinterpret local values and customs to maintain power (Evans, Hood and Moir, 2007: 124). When this occurs, the members of minority groups become a lot less willing to see their own shortcomings, erasing possibilities of making space for self-reflection (Evans, Hood and Moir, 2007: 124). Simply put, attacking or even criticizing the ways of those we want to help will be ineffective. This is why previous attempts to stop FGC were unsuccessful, another point raised by imam Diawara to the women of the Tostan movement:

The people who crusaded against FGC in the past had done so in front of mixed audiences and used terms and images that shocked the villagers. They had treated the practices as a disease to be eradicated and its practitioners as social pariahs. That is no way to change a culture, or to help it change itself (Easton, Monkman and Miles, 2003: 449).

Tostan's methods of grounding its human rights principles in local values is compatible with the elements of social change in the theories proposed in this thesis, particularly with regards to the acknowledgment of local contexts and the importance of becoming educated about these local contexts. The important thing to keep in mind is that "cultural practices make sense in the context of their social function" (Easton, Monkman and Miles, 2003: 453). This also supports Nussbaum's idea that the Capability Approach, though setting a minimum level of capabilities that should be provided to individuals by their governments, is malleable enough to be tailored to each country's context: in other words, "there is room for nations to elaborate capabilities differently to some extent, given their different traditions and histories" (Nussbaum, 2011: 40). It is the job of academics,

women's rights activists, international development workers and any other stakeholders to first ask, "what is the social function of this practice? Why do the citizens of this place continue to practice this custom? What is its role within the society?" Despite the fact that it may seem absurd to outsiders, when the function of FGC is uncovered, the fact that it has been practiced for so long is much easier to understand. When even parents who are aware of the physical and psychological dangers of FGC continue to practice it because it is seen as more harmful to their daughters *not* to, it is evident that the practice is considered to be "an integral part of the social expectations of appropriate parental behavior in preparing girls for adulthood" (Diop and Askew, 2009: 309). Understanding the stigmatization behind a decision to not have one's daughter cut is the first step towards proposing adequate solutions to the problem. Parents who know the consequences of FGC and even disapprove of it can still have powerful, legitimate reasons for having their daughter cut anyway, which is a difficulty that Tostan comprehends. Its primary objective was to change the social environment by providing a counter narrative of FGC that would make it possible for villagers to continue raising their daughters without having them cut. This would in turn ensure their daughters' capabilities for life, bodily health and integrity, and control over their environment would be met. This required education, community dialogue and debate, and public declaration, which eventually enabled families to begin to question the custom, weigh its benefits with its consequences, and even decline to participate (Diop and Askew, 2009: 310). Tostan's acknowledgement of the importance of the villagers' culture as well as the pursuit to further understand it led to a program tailored specifically to the local context-enabling it to flourish into a widespread movement for social change.

Understanding the context of the FGC issue in Senegal led to the realization that abandoning the custom had to be a multi-community, collective effort- due to the fact that Malicounda-Bambara engaged in inter-marrying with the villagers in surrounding areas. Organizers and participants alike became aware that ensuring capabilities to the daughters of one community necessarily involved those in other communities as well. This idea of collectivity became another element central to Tostan's success. Tostan was able not only to change the mentalities toward FGC in the participating villages, but it changed the marriage market itself. The idea of collectivity preceded the value of inclusivity- first seen in the discussions amongst the participants in Tostan: though the sessions began with only women, they eventually expanded to include interested males from the community. When the women established discussions in other villages, no villagers were excluded from them. Men, women, and girls having had experiences with FGC, religious leaders and authorities, and even the traditional cutters themselves all took part in discussions on the ramifications of FGC and the possibilities available for change. Changing the perspectives of men (with regards to ideas of desirability in brides), traditional cutters, and members of other communities (due to the inter-marriage of villages) were all essential to ensuring new capabilities to women in the villages. This notion of collectivity and the tactic of opening the issues up for public debate and discussion are consistent with Ackerly's call for the creation of spaces for inclusive discussion and *listening*. The power of creating these kinds of spaces is reflected in the involvement of Imam Diawara in the movement- a space was created in which the Imam, a wise, renowned religious authority, and the women of the community, were able to speak and listen on equal footing, and it led to astonishing results. The women

were then able to take the lessons they learned from this dialogue and create even more discussion spaces in other communities.

Finally, the creation of spaces in which no villager felt afraid to express his or her view or experience in the matter allowed a local ownership of the movement. Education on the principles found in the larger frameworks of human rights and women's health (topics affecting every community member) were provided by Tostan, but decisions were left up to the participants. The participants in the program not only voluntarily absorbed these principles but passed them on to others. This procedure displays the third element of Tostan's approach: empowerment. The women, having participated in educational modules on human rights, women's health, and problem solving, and with the support of Imam Diawara, took matters into their own hands and moved forward with their mission of abandoning the harmful custom that they had been living with for so long.

Tostan and FGC: Thinking globally, acting locally

Though Tostan is a local NGO, organizing a local initiative to make strides locally, it based its teachings and principles on global ideas, and has since become known internationally for its successes. Supported from the beginning by UNICEF, Tostan immediately began to incorporate international ideas into its local solutions. Other NGOs, government development agencies and even the United Nations have since based many programs on the principles of Tostan's Community Empowerment Program that began in Senegal. In short, Tostan is exemplary of how global ideas at the international level, though at times impossible to put into practice, can be translated and transposed, when the correct steps are taken, to be implemented and adhered to at the local level. It is clear that "the concept of human rights and the evidence of its international endorsement seem to have

struck a chord with a rural population quite aware of its disadvantage compared to urban areas and the industrial world and not far removed from a history of repression” (Easton, Monkman, and Miles, 2003: 448). Though it has often be argued that human rights cannot possibly be universal values applicable to every situation in the world, it is clear that the villagers in Malicounda-Bambara and the surrounding communities saw great value in them, and were able to envision ways in which they could be implemented at home in Senegal.

As Ackerly demonstrates, the problem with the theory of universal human rights is not a theoretical but a political one. The problem with international law is that it does not always trickle down to where it matters most: the community, the family, and the individual. Bans, laws or legislation against both VT and FGC have been passed in many areas in Africa, but this does not deter those whose lives are deeply affected by these practices at the local level. After the success of Tostan’s program become known in the rest of the world, the community and surrounding areas received a lot of national and international attention, which eventually led the Senegalese government to establish a law against the practice of FGC, proscribing severe penalties for those caught in violation of the law (Easton, Monkman and Miles, 2003: 450). This would usually be perceived as a victory, but members of Tostan became concerned and actually testified against the law, due to their belief that “official abolition and sanction are not the way to go. They believe laws should not be dictated from the top down but follow changes made at the local level” (Easton, Monkman and Miles, 2003: 450). Their fear was justified- when the law passed, one traditional cutter, in an act of rebellion against it, made 120 additional circumcisions to protest the government’s attempt to control cultural customs (Easton, Monkman and Miles, 2003: 450).

This is where international laws and global ideas are written off by some as superfluous, impractical, or even useless. The challenge is to decide how we are to manage these difficulties without disregarding the theories that have so much importance. The question is not whether local initiatives or global initiatives for positive social change are more important- they are equally important. The problem is that though most laws are established at the international and national levels, they are often very difficult to implement at the local level, because of cultural differences. This requires a deeper communication between global thought and local action.

3.3 Virginty Testing and Human Rights: Working Towards Local Solutions

Globo-localism, or Glocalism

In an increasingly connected world, the implementation of human rights principles at local levels has become an issue that is receiving a lot of attention. Globo-localism, a term that encapsulates the dynamics of local and global relations, is a way of thinking about applying global, universal concepts like theoretical ideas of human rights (contained in documents like the UDHR, CEDAW, and the South African Bill of Rights) to local contexts. In the most effective initiatives to implement human rights, transformations are made to fit local contexts due to the fact that direct translations are difficult between different languages and cultural values, and also to eliminate suspicions of human rights as political “projects” to advance Western hegemony globally. Leslie Sklair (1999) states that ideas such as hybridization and creolization, the combining of various cultures and ideas from different levels, “have been proposed in the effort to try and conceptualize what happens when people and items from different (and sometimes, but not always, dominant and subordinate) cultures interact” (152).

To expand on the concept of globo-localism, Leslie Sklair discusses particular international issues, citing environmental concerns as an example, saying “a focus on the environment encourages us to work down to the local from the universal, a necessary corrective to state-centrist conceptions which work up to the global from the nation-state” (145). The idea of globo-localism is often illustrated by the popular saying, “Think globally, act locally”. As the members of Tostan demonstrated when they opposed a law against FGC (the same practice they were working to end themselves), legislation, though needed to stop harmful practices, can prove to be ineffective and even counterproductive if introduced too early. Above all, change must begin at the bottom: at the local level with the individuals directly affected by the practice, and legislation must follow once this change has become widespread enough to be firmly bolstered by laws and penalties for violation. Essentially, “the use of international law is to be reconciled with a bottom-up approach based as much as possible on existing local norms” (Glasius, 2008: 49).

The example of VT among Zulu communities in the province of KwaZulu-Natal in South Africa illustrates the difficulties in applying international concepts of human rights to local cultural practices. As analyzed in this thesis, VT is not only a violation of human rights; it also severely constrains the capabilities of girls and young women to lead lives of human dignity. How can an approach based on Ackerly’s theory of Immanent Human Rights, the Capabilities Approach, and the Tostan model be used collectively as a template for encouraging social change in Zulu communities practicing VT? Why have the many opposing forces, including the South African government, the CGE and the SACHR, been unsuccessful in outlawing the practice? What can be learned from their mistakes?

FGC and VT: A comparison

The case of FGC in Senegal and Tostan's success in encouraging communities to abandon it is an interesting comparison for the case of VT in South Africa. Though both practices are deeply rooted in traditional and cultural histories, they both violate human rights as laid out in the UDHR, CEDAW, and UNCRC as well as restrict the capabilities of the girls and young women involved. These violations have been refuted by supporters of both practices in emphasizing the necessity of the practices to their culture and ways of life. However, those who oppose the cultural practices insist that they cause substantial harm to the women involved. The fact alone of harm being done to a person by another, says Mill (2003), is a justification for intervention by a third party- which is why the topic of ending practices like FGC and VT is important. The harm caused by FGC (a controversial topic much more widely debated and discussed than VT), is much more obvious to the outside observer than the harm caused by VT. Girls who are subjected to FGC endure physical harm that is not for health reasons, but necessary in order for them to be able to marry within their own community or surrounding villages. Some girls even die immediately after the FGC surgery. On the other hand, those who undergo VT, though both their privacy and bodily integrity (two central rights outlined in the UDHR and South African Bill of Rights, respectively) are violated when they are physically examined; do not immediately (and may not ever) experience physical harm. Though many opponents of VT are fearful of the outcome for girls and young women due to the many risks associated with their sexual status being made public, there has been no formal research showing a correlation between VT and higher incidences of rape in Zulu communities (though more rapes are committed per capita

in South Africa than in any other country in the world¹¹ [Anderson, 2000: 789]). Therefore, the main difference between the harmful practices of FGC and VT is that the violation of rights of the individuals involved is much more explicit in the case of FGC. It is much easier for proponents of VT, like Nomagugu Ngobese, the virginity tester, to insist that the practice does not cause harm to its participants.¹² This does not justify the endorsement of the practice, but is an indication of the unlikelihood that the Tostan model, if applied in the same form to VT as it was to FGC, would yield the same results.

Tostan enabled women who had experienced FGC and their friends and relatives to speak about it in a public discussion. This opportunity allowed them to think about the harm, pain, and loss caused by the practice, which motivated them to do something about it. The connection between the practice of VT and the harm that it causes (and may potentially cause) is much less explicit than the adverse effects of FGC. Furthermore, FGC is a centuries-old practice (Easton, Monkman, and Miles 2003: 445) that has been receiving much opposition and protest as a human rights violation for the past few decades (Diop and Askew, 2009: 307). In comparison to this, the battle against VT is still very young: though it is a custom rooted in the history of Zulu culture, the testing festivals and the ceremonial reed dance only began to resurface in the mid-1990s (Madlala, 2005: 852). This is an important difference between the two cases: women in Senegal and other FGC-practicing countries have experienced centuries of hardship due to the practice and decades of protest against it, while it is safe to say that the adverse effects of VT have not become quite as clear thus far.

¹¹ Though this is not a topic covered in this thesis, further research may uncover a correlation between cultural beliefs, gender inequality and the extremely high incidence of rape in South Africa. This is to say that, although at present there is no research showing a link between Virginity Testing and higher incidence of rape; the values from which the practice emerges may also be a contributing factor to the frequent incidence of rape in the country.

¹² See discussion of Zulu response to South Africa's ban on Virginity Testing in 2005 in Chapter 1, section 2..

Another important difference between the two cases is that Tostan's participants received valuable support from a religious figure within the community, the imam Diawara. This support was central in starting a movement for change- due to the fact that supporters of FGC believed it was an integral part of Islam, religion played a very large role in changing the importance of the practice in the community. The imam Diawara was able to return to the religious text upon which Islam is based- the Koran- and assure his people that FGC was not listed anywhere within the sacred book. In so doing, he was able to convince the people that giving up the ancient custom would not make them disloyal to their religion but that the practice itself was actually in opposition to many of the values contained within the Koran. VT, however, is based on Zulu culture and, thus far, most cultural and religious leaders within the Zulu community have resisted both the ban on the practice and all opposition to it. In fact, the outright condemnation of the practice of VT has led to even stronger opposition to its ban. As is seen in Chapter One in the statement of Ngobese, those who support and ensure the continuation of the practice will only respond more fervently when blamed for violating human rights.¹³ Moreover, the harm caused by VT (or the negative consequences that lead to further violation of rights) is less evident than the harm caused by FGC; this leads supporters to claim that it does not cause death or physical harm to the girls involved. This necessitates attention: just like in Tostan's efforts in Senegal, emphasis must be placed on education and discussion- spaces must be created where everyone in the community can discuss VT, without the element of blame present. The situation of FGC not only in Senegal but in many areas of Africa show that "where the practice of FGC has been abandoned or reformed, it has happened not as a result of acts of protest or legal suppression but through the quiet crafting of a new community consensus" (Easton, Monkman and Miles, 2003: 34).

Therefore it is not through protest or even in telling those who support VT what they are doing wrong that a change will come, but in fostering a new consensus and dialogue among all members of the community.

Abandonment of Virginity Testing: Next Steps

Initiatives that seek to follow in the footsteps of Tostan with regards to VT must begin with education on the main principles of human rights. The modules dealing with women's health and human rights in the Tostan education program later served as an empowering foundation with which villagers were able to identify their rights and fight for them (Martinez, 2009: 42). In the case of VT, concepts that must be especially highlighted are those of privacy and bodily integrity.

As argued in Chapter One, VT is an immediate violation of human rights: it invades the privacy and bodily integrity of girls who are submitted to the practice. However, the most amount of harm (keeping Mill's harm principle in mind) that may occur due to the practice is as a consequence of the public disclosure of the girls' sexual statuses. Despite the fact that the practice itself is a human rights violation whether these statuses are made public or not, a preliminary analysis of the harm done with regards to VT should focus primarily on the negative consequences. If we are to inspire any kind of social change in Zulu communities that conduct this testing, this is where we must begin to discuss how it limits the capabilities and rights of girls and young women.

Without ignoring the idea of VT as a human rights violation, we must consider the value of virginity to the culture of the Zulu community- and the force of its reluctance to obey the government ban on the testing. It is easy to see that the idea of abandoning the

practice is not a simple one- and that a better first consideration would be in ameliorating the outcomes of the practice. The problem in this situation is not the practice of VT itself, but is rooted more deeply in the pervasive cultural norms that foster gender inequality in Zulu communities that follow the practice (George, 2008: 1450). We must start to observe the problem with a perspective that extends beyond the idea of abolition (since at the first stages, it is an unrealistic goal) and start thinking instead about how the practice can be adapted in constructive ways (George, 2008; 1450), to eliminate harm done to participants and restore their capabilities and rights. In other words, we must ask ourselves, apart from the abandonment of the practice of VT, what would be a satisfying outcome of social change in the promotion of human rights? What would constitute an adequate step in the direction of the elimination of the harm caused by VT? In order to do this, a revision of the capabilities that are restricted by VT is necessary.

To examine how the practice of VT may be altered in a culturally respectful way while working towards restoring capabilities to the girls involved, it is crucial to examine those specific capabilities: *Bodily Integrity*, *Emotions*, and *Affiliation*. Since we have established the fact that eliminating the process from the beginning of the approach is unrealistic, it follows that it will be difficult to fully restore the capability for bodily integrity. Since this capability is restricted immediately when a girl is tested, we can say that it will not be possible, right away, to restore the right to sovereignty of the body to the testees. This is a weakness to implementation of human rights and restoration of capabilities that must be accepted in order to make further strides to lessening the harm caused by the practice. We can, however, restore part of the capability for bodily integrity to a tested girl: the part of bodily integrity that is taken away by the threat of sexual assault to the girl who

has been tested. This threat, induced by the public disclosure of the girl's sexual status (since being a virgin can incite rape) can be taken away if we take away the public disclosure. This is where we begin to observe potential approaches for eliminating the harm caused by VT through an examination of the human capabilities that are restricted by the practice; eliminating the public disclosure of the testees sexual status can serve as a first step. This step, as we will explore further, can lead to the restoration of other previously restricted capabilities and the implementation of corresponding human rights.

If VT were to continue as a practice in the Zulu community, but without the public declaration of results, other capabilities formerly restricted to girls would become restored. This includes the capability for emotions: the overwhelming fear and anxiety associated with the possibilities of sexual assault would also be removed if results of VT were concealed privately, since members of the community would not be aware of which girls were virgins. Since the participants would no longer be divided into separate groups according to whether they passed or failed the test, the non-virgins would also be free from fear and anxiety about their fate. The restoration of the capability for emotions would in turn lead to securing the right to self-determination for girls involved, as seen above in section 3.1.

Lastly, the capability for affiliation would be at least partially restored if the public declaration of VT results was removed from the practice. Though the participants would continue to be small parts of a greater goal for the community (since cultivating the value of virginity would still be a central priority in the practice), their capability for self-respect and non-humiliation would be restored. The status of a girl found to be a non-virgin, kept concealed between herself, the tester, and the girl's mother or family, though still bringing a form of shame upon herself by her family and the tester, would not be subject to ostracism or

humiliation in front of her community. It can be argued that the girl's self respect and dignity as an individual is still violated by the practice of being tested, but once again, the small strides towards elimination of harm caused by VT must be kept in mind, with the larger goal of eventually restoring full capabilities and human rights in the long run.

The example of the elimination of FGC in Senegal serves as an inspiring example for social change to be applied to other harmful cultural practices. With regards to VT in particular, the Tostan method emphasizes the importance of local ownership and involvement of individuals from the beginning. It also underlines a method of focusing on restoring capabilities; which is something that, in the case of VT, must be concentrated on before attempting to implement full human rights. Due to cultural opposition in Zulu communities, the complete and immediate abolition of VT is an unrealistic ambition, especially when it is compared to the amount of time that women in Senegal have been struggling with their own harmful cultural practice. Social change takes time and cannot happen overnight. Moreover, "whether or not the practice of VT in fact contributes to a generally harmful patriarchy is always going to be difficult to demonstrate. Many appear to hold the view that, in contrast, participation in the reed dance is empowering, fun, and affirming" (Vincent, 2006: 23). Girls who have participated in VT embrace the celebratory part of the practice- after they receive their certificates of virginity and are able to dance and sing for their parents and the Zulu king. This illustrates the fact that eliminating the practice altogether, besides being unsuccessful and fruitless, could even take away an activity that empowers young girls, something that makes them "feel special, valued, part of the life of the nation... it is great to see all girls stride with a proud step, regardless of flab or size" (Vincent, 2006: 23). What must be considered is how to eliminate the parts of that practice

that cause harm, restrict capabilities, and violate rights. As part of the suggestion this thesis proposes on the removal of the public disclosure of test results, the reed dance and celebratory performance could be an important cultural element that remains, without the public declaration of virginity that has the potential of placing girls in danger. Though this is certainly not an outcome in which full human rights and capabilities have been restored and granted to girls involved in VT, it is a preliminary step to not only reaching that goal but also educating Zulu communities on the harmful effects of VT. This first step, eliminating the public disclosure of VT results, must eventually be combined with community education and most importantly, the inclusion of HIV infected men in research on implementing human rights. Expanding our understanding of HIV/AIDS with regards to Zulu communities in South Africa to include HIV infected men and to explore the situation which has led them to believe that virgin cleansing is a cure will help us to understand the next steps that must be taken to eliminate VT.

Conclusion

I conclude my thesis with the argument that a compromise in which cultural traditions are respected but harmful practices are not tolerated is possible in real world situations such as the issue of Virginity Testing. This thesis has argued that the practice of VT in Zulu communities in KwaZulu-Natal, South Africa, is a violation of the human rights of the girls and young women who participate in it, on the grounds of autonomy, privacy, human security, and bodily integrity. The theoretical framework of this thesis has been based on a discussion of the conflict between universalism and relativism; inclusive human rights theory and the Capability Approach. As is seen in the examination of the Tostan model for social change in the abandonment of FGC in Senegal, engagement with this framework as applied to local contexts can lead to the elimination of harm caused by cultural practices. This work can be done, beginning at the community level with individuals to restore their capabilities and eventually to implement human rights.

Despite a ban placed on the practice of VT by the South African government in 2005 (for children under the age of 16), the tradition continues to take place in many townships in KwaZulu-Natal. Proponents of the practice claim that it is an important element of their culture, but it is now also being used to fight the HIV/AIDS epidemic. These arguments pose obstacles to those fighting for the human rights of the girls being tested- despite the fact that it is easy to identify which rights are violated, it is much more difficult to implement these rights in communities that strongly support the practice. This thesis proposes to move beyond the traditional debate that takes place between human rights universalism and Cultural Relativism. Though these approaches provide important background to any discussion of harmful cultural practices, they impede the possibility of finding adequate

solutions by establishing a stark dichotomy of disagreement. It is not important, I argue, whether we think universally or relatively, but rather that we respect the right that every human being has to not be harmed. Most importantly of all, a point clarified by David Little (1999) shows the legitimacy of this concept. He states that “victims of oppression and discrimination, no matter what ‘civilization’ they belong to, usually have no difficulty appreciating the relevance of human rights protections” (152). What is important is that the rest of the international community appreciates the cultural context of the victims of oppression and discrimination. In order to fully implement appreciation of human rights, the tunnel vision that often comes with it must be eliminated.

To replace the debate between universalism and relativism, this thesis proposes a “middle path” perspective- a commitment to the principles of human rights (and the harm principle) with an appreciation of the importance of culture and local contexts. In order to build such a perspective for the examination of VT in South Africa, Brooke Ackerly’s Universal Theory of Immanent Human Rights is combined with an analysis of Martha Nussbaum’s Capability Approach. Furthermore, a concrete example of the abolition of FGC, another harmful cultural practice, in Senegal, was evaluated to determine successful elements leading to social change from the bottom-up (from the local level to the national and international levels).

The first chapter of this thesis explored the context upon which VT is based in Zulu communities in KwaZulu-Natal. It further analyses the specific human rights that are violated by the cultural practice as laid out in both the UDHR and the South African Bill of Rights. This is followed by a discussion on the negative consequences that are also

associated with the practice which have the potential of causing harm to its participants and further rights violations.

The historical debate between universalism and relativism and the principal concepts of both approaches are outlined in Chapter Two as a foundation for a theoretical framework in which to explore the case of VT. Though this thesis argues that, in order to achieve progress in human rights implementation, discussions must move beyond this debate, the debate itself does play an integral part in determining ways of moving forward. An analysis of the values of inclusivity and indivisibility of Ackerly's human rights theory is later coupled with the Capability Approach as developed by Martha Nussbaum. This is proposed as an alternative theoretical framework with which to examine the case of VT in South Africa.

Finally, Chapter Three applies the Capability Approach and Ackerly's concepts of inclusivity to two real-world examples. First, the successful elimination of the practice of FGC in Senegal is outlined, a concrete illustration of how the proposed framework may function to implement women's rights with regards to harmful cultural practices. The example of Tostan's successes in Senegalese villages serves as an outline of how restoring capabilities and implementing human rights may also be possible with regards to VT in South Africa. The final section of this chapter explores these possibilities, and also answers the question, "what, short of a complete and total abandonment of VT, would be satisfying with regards to women's human rights?"

I have proposed that, in the case of VT, since the resurgence of the practice is still relatively recent, steps must be taken over time and abolition cannot happen immediately.

This is due mostly to the firm support of VT within Zulu communities, the value accorded to virginity in Zulu culture, and the resistance on behalf of testers to bans on VT. A proposed solution to the problem is to begin to look at ways in which the practice can be negotiated, compromises can be made, and the initial goal of reducing harm to participants can be put into focus, rather than the immediate goal of abolition. This would involve first restoring the previously restricted capabilities to girls and young women who have been tested. Focusing on restoring bodily integrity, emotions, and affiliation to young girls involved in VT is the first step to eliminating harm that the practice causes, leading to the implementation of human rights as a whole.

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APPENDIX A: ACRONYMS

AIDS: Acquired Immune Deficiency Syndrome

ARV: Anti-Retroviral drugs

CEDAW: The Convention on the Elimination of all Discrimination against Women

FGC: Female Genital Cutting

HIV: Human Immunodeficiency Virus

UNCRC: The United Nations Convention on the Rights of the Child

UDHR: The Universal Declaration of Human Rights

VT: Virginity Testing

APPENDIX B: MARTHA NUSSBAUM'S TEN CENTRAL HUMAN CAPABILITIES

1. **LIFE.**

Being able to live to the end of a human life of normal length; not dying prematurely, or before one's life is so reduced as to be not worth living.

2. **BODILY HEALTH.**

Being able to have good health, including reproductive health, to be adequately nourished; to have adequate shelter.

3. **BODILY INTEGRITY.**

Being able to move freely from place to place; having one's bodily boundaries treated as sovereign, i.e. being able to be secure against assault, including sexual assault, child sexual abuse, and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction

4. **SENSES, IMAGINATION, and THOUGHT.**

Being able to use the senses, to imagine, think, and reason- and to do these things in a "truly human" way, a way informed and cultivated by an adequate education, including, but by no means limited to literacy and basic mathematical and scientific training. Being able to use imagination and thought in connection with experiencing and producing self-expressive works and events of one's own choice, religious, literary, musical, and so forth. Being able to use one's mind in ways protected by guarantees of freedom of expression with respect to both political and artistic speech, and freedom of religious exercise. Being able to search for the ultimate meaning of life in one's own way. Being able to have pleasurable experiences, and to avoid non-necessary pain.

5. **EMOTIONS.**

Being able to have attachments to things and people outside ourselves; to love those who love and care for use, to grieve at their absence; in general, to love, to grieve, to experience longing, gratitude, and justified anger. Not having one's emotional development blighted by overwhelming fear and anxiety, or by traumatic events of abuse or neglect. (Supporting this capability means supporting forms of human association that can be shown to be crucial in their development.)

6. **PRACTICAL REASON.**

Being able to form a conception of the good and to engage in critical reflection about the planning of one's life. (This entails protection for the liberty of conscience.)

7. AFFILIATION.

- A) Being able to live with and toward others, to recognize and show concern for other human beings, to engage in various forms of social interaction; to be able to imagine the situation of another and to have compassion for that situation; to have the capability for both justice and friendship. (Protecting this capability means protecting institutions that constitute and nourish such forms of affiliation, and also protecting the freedom of assembly and political speech.)
- B) Having the social bases of self-respect and non-humiliation; being able to be treated as a dignified being whose worth is equal to that of others. This entails, at a minimum, protections against discrimination on the basis of race, sex, sexual orientation, religion, caste, ethnicity or national origin. In work, being able to work as a human being, exercising practical reason and entering into meaningful relationships of mutual recognition with other workers.

8. OTHER SPECIES.

Being able to live with concern for and in relation to animals, plants, and the world of nature.

9. PLAY.

Being able to laugh, to play, to enjoy recreational activities.

10. CONTROL OVER ONE'S ENVIRONMENT.

- A) **POLITICAL:** Being able to participate effectively in political choices that govern one's life; having the right of political participation, protections of free speech and association.
- B) **MATERIAL:** Being able to hold property (both land and movable goods), not just formally but in terms of real opportunity; and having property rights on an equal basis with others; having the right to seek employment on an equal basis with others; having the freedom from unwarranted search and seizure.