

‘TRANSGRESSIVE’ SEXUALITIES: CONTESTING NATIVISM FROM WITHIN AND OVERCOMING STATUS SUBORDINATION

[T]he continent is currently replete with vibrant movements, some seeking to reinforce sexual hegemonic powers and others challenging, subverting and resisting imposed modes of identity, morality and behaviour patterns ... We speak of sexualities in the plural in recognition of the complex structures within which sexuality is constructed and in recognition of its pluralist articulations. The notion of a homogeneous, unchanging sexuality for all Africans is out of touch not only with the reality of lives, experiences, identities and relationships but also with current activism and scholarship.¹

1 Introduction

Regardless of geographical location, the struggle to gain recognition for different sexualities ultimately is a struggle to overcome ‘status subordination’ of culturally and juridically stigmatised sexualities.² Sexuality is situated in a highly contested domain of cultural, religious and political life. A claim in favour of the equal recognition of non-heteronormative sexualities invites the strongest political reaction. In Foucauldian terms, such a claim threatens to upset the ‘order of things’: ³ it is perceived as defying an extant social order and disrupting power relations between social categories, especially in politically conservative communities closely tied to patriarchy. When sexuality is formulated to include a claim for diversity in sexual practices and identity, it poses an iconoclastic demand, notwithstanding the presence of agency and consent. The demand for parity in sexuality status cannot be met without first fundamentally revising the heterosexual contract: the heteronormative premise upon which sexuality historically has been framed as unquestionably natural and gendered, and which is duly reflected in

1 S Tamale ‘Introduction’ in S Tamale (ed) *African sexualities: A reader* (2011) 1 at 2.

2 N Fraser ‘Rethinking recognition’ (2000) 3 *New Left Review* 107.

3 M Foucault *The order of things: An archaeology of the human sciences* (1970).

dominant sexuality ideologies, the law and institutional arrangements, not least in contemporary African polities.⁴ In recent years this hegemonic status has come under attack: increasingly, the heteronormative premise is being openly challenged. On a daily basis, in various parts of the continent, the heterosexual contract is indicted as exclusionary and as unrepresentative of sexual minorities. This is the situation Sylvia Tamale describes in the epigraph.⁵ How then might we frame an inclusive approach to representing African sexualities?

In the modern state sexuality belongs, ultimately, in the realm of politics, and any attempt to develop an inclusive approach to African sexualities must reckon with the partiality of dominant political and cultural narratives on sexuality. It must contest the absence of plurality in order to lay bare the practice of political power which uses ‘natural’ categories to legitimise the misrecognition of non-heteronormative sexualities in the same way that political power organised around race and gender does in its rationalisation of racism and sexism. As I shall elaborate in this chapter, it is possible to develop a cultural and juridical framework with the conceptual resources to analyse heteronormative sexuality as a meta-language of the body, which, like race, can be deconstructed.⁶ In the final analysis, achieving recognition of diverse sexualities requires us to revise the heterosexual contract so as to render it porous to a transformative approach that de-naturalises sexuality. Then we can prise open naturalised and institutionally privileged sexualities and respond to the imperatives of an inclusive hermeneutics of Africanness in the domain of sexuality.

My concern in this chapter is with constructing a conceptual framework for overcoming the status subordination of non-heterosexual sexualities. I seek to develop a hermeneutics of Africanness that is inclusive of sexualities that are excluded or marginalised by dominant narratives solely on account of their alignment with non-heteronormative sexuality.⁷ My point of departure, when representing African sexualities,

4 I have adapted the idea of a ‘heterosexual contract’ from Mills: CW Mills *The racial contract* (1997); see ch 1, especially. Like its racial counterpart, the notion of a heterosexual contract is intended to be descriptive as well as normative and, above all, to capture the hegemonic epistemological status of heterosexuality not just in sexuality practices but in the broader social, political and moral life of communities.

5 See n 1 above.

6 This argument is appropriated from Higginbotham: EB Higginbotham ‘African American women’s history and the metalanguage of race’ (1992) 17 *Signs: Journal of Women in Culture and Society* 251 at 252.

7 Unless qualified, this chapter uses ‘homosexuality’ generically to denote same-sex sexualities whether they are gay or lesbian.

is that what matters is not just deconstructing nativising colonial discourses and their enduring legacy. Decolonising knowledge and contesting orientalising discourses is important, but so is contesting hegemonic discourses that essentialise African sexualities from within. To say that African peoples share a heteronormative sexuality is tenable, but only as a generalised starting point taking cognisance of typologies of existential sexualities on the continent. But to proceed without qualification, saying that African peoples subscribe to a homogeneous heterosexuality is a totalising claim. It is a claim which cannot be vindicated without first invoking a *theocratic* vision to bring everything into alignment with a heterosexual *habitus* as the natural sexual dwelling place of African peoples.⁸ In a normative sense the effect of a *theocratic* heteronormative sexuality optic on non-aligning sexualities is a double act: the invisibilisation of non-heteronormative sexualities in the day-to-day socio-economic arrangements of the nation and, in addition, their production as deviant sexualities outside the African moral economy.

From time to time, heterosexuality, with its congruent gender binaries, is publicly proclaimed and sanctioned by political, cultural and religious authorities as the sole sexuality of African peoples. In the same breath same-sex relationships and homosexual practices, in particular, are castigated: a look at Zimbabwean official sexuality politics demonstrates such a proclamation and castigation in its fullest form.

1.1 Proclaiming heterosexuality and castigating homosexuality

On 1 August 1995, at the Zimbabwe International Book Fair, the country's then president, Robert Mugabe, said:

I find it extremely outrageous and repugnant to my human conscience that such immoral and repulsive organisations, like those of homosexuals who offend both against the law of nature and the morals of religious beliefs

8 I am using *habitus* in a phenomenological sense to capture, as Sara Ahmed does, not just a refusal to align with heterosexuality as a sexual orientation or sexual practice but also a refusal to align with the larger heterosexual cultural matrix – the way of life – with its ‘sedimented histories’ and systems: ‘systems of durable, transposable dispositions’: S Ahmed ‘Orientations: Toward a queer phenomenology’ (2006) 12 *A Journal of Gay and Lesbian Studies* 543 at 552-553. Ahmed is drawing in part on the work of Edmund Husserl and Maurice Merleau-Ponty as interpreted by Anthony Steinbock in A Steinbock *Home and beyond: Generative philosophy after Husserl* (1995) 36. In part she is also drawing on the work of Pierre Bourdieu: P Bourdieu *Outline of a theory of practice* trans R Nice (1972) 72. In ch 6 sec 5 I elaborate on the phenomenological concept of *habitus* in the construction of whiteness.

espoused by our society, should have any advocates in our midst and even elsewhere in the world. If we accept homosexuality as a right, as is being argued by the association of sodomists and sexual perverts [Gays and Lesbians of Zimbabwe], what moral fibre shall our society ever have to deny organised drug addicts, or even those given to bestiality, the rights they might claim and allege they possess under the rubrics of individual freedom and human rights?⁹

Mugabe made his remarks at a public event – the official opening of an international book fair. The remarks quickly became part of larger drama which was unfolding, gradually assuming national proportions. The Gays and Lesbians of Zimbabwe (GALZ), a civil society organisation, had sought permission to exhibit literature on the constitutional and human rights of gay persons at the book fair.¹⁰ Earlier in the year GALZ had applied to be registered as a non-governmental organisation (NGO). The application had been declined by then Minister of Home Affairs, Dumiso Dabengwa, on the grounds that homosexuality was ‘abnormal’ and thus not part of the country’s culture.¹¹

Initially, the trustees of the book fair had acceded to GALZ’s request to display its literature. In the interim, the Zimbabwean government intervened, intimating in a letter that it was ‘dismayed and shocked’ by the trustees’ decision and that the president ‘strongly objects’ to the presence of GALZ at the book fair. Furthermore, it said, a public display of homosexual literature at the book fair would be tantamount to forcing the values of gays and lesbians on Zimbabwean culture.¹² In the end the trustees gave in. Permission was withdrawn by the trustees, albeit, ‘with great reluctance acting under severe constraint’.¹³

Though Mugabe’s anti-homosexual voice has been the most widely reported and is the most strident, it is not a lone voice among the continent’s political leaders.¹⁴ Its caustic tone aside, Mugabe’s voice

⁹ Quoted in C Dunton & M Palmberg *Human rights and homosexuality in Southern Africa* (1996) 14.

¹⁰ Dunton & Palmberg (n 9 above) 13.

¹¹ As above.

¹² This was conveyed to the trustees in a letter of 24 July 1995 written by the Zimbabwe Director of Information, Bornwell Chakaodza. An extract from the letter is quoted in Dunton & Palmberg (n 9 above) 13.

¹³ A public statement made by the trustees of the Zimbabwe International Book Fair on 28 July 1995: Dunton & Palmberg (n 9 above) 13-14.

¹⁴ For example, during their presidency of Namibia and The Gambia, respectively, Sam Nujoma and Yahya Jammeh publicly condemned homosexuality in trenchant terms: Coalition of African Lesbians & AMSHeR (eds) *Violence based on perceived or real sexual orientation and gender identity in Africa* (2013) 6-7; Dunton & Palmberg (n 9 above) 33.

espouses a widely shared, majoritarian political and cultural voice on the continent. Religious leaders across the continent, from time to time, have lent their castigating weight, and so have their cultural counterparts.¹⁵ The point is not to deny the voices of political, religious and cultural leaders or, for that matter, of the majority of African peoples, or to suppress their right to express an opinion on sexuality and what they regard as outside the bounds of morality. In all societies there are different opinions as to a morally permissible sexuality. Rather, at issue is the democratic fairness of the terms in which we express our differences, especially the regulatory power we summon and the judgemental sanctions we invoke to discipline sexual minorities.

The central issue, then, is the injustice of a dominant cultural narrative on sexuality, which is officially privileged and denies the legitimacy of benign alternative sexualities. The narrative not only disenfranchises sexual minorities of equal citizenship but also sets them up as just targets for oppression, vilification and harm. A constant refrain in the theatrics of the Zimbabwean book-fair drama is the imagined unified and pure cultural body of the nation and the duty of the state to protect this cultural integrity from attack by transgressive sexualities. Witness, for example, the remarks made in the Zimbabwean Parliament by Aeneas Chigwedere, a member of the House of Assembly, in support of Mugabe's book-fair speech:

What is at issue in cultural terms is a conflict of interest between the whole body, which is the Zimbabwean community and part of that body represented by individuals or groups of individuals ... The whole body is far more important than any single dispensable part. When your finger starts festering and becomes a danger to the whole body you cut it off ... The homosexuals are the festering finger.¹⁶

Chigwedere's views are not merely an expression of moral disapproval of homosexuality. The views, which are packaged as defence of culture, are expressed through a somatic metaphor which serves as a trope for mobilising the nation or, at least its representatives, around bigotry. In the

15 See for example K Kaoma “I say, we must talk, talk, mama!” Introducing African voices on religion, *ubuntu* and sexual diversity’ (2016) 155 *Journal of Theology for Southern Africa* 16 at 20-22; P Awondo ‘Religious leadership and the re-politicisation of gender and sexuality in Cameroon’ (2016) 155 *Journal of Theology for Southern Africa* 105; S Tamale ‘Crossing the bright line: The abuse of religion to violate sexual and reproductive health rights in Uganda’ (2016) 155 *Journal of Theology for Southern Africa* 121; SM Wekesa ‘Decriminalisation of homosexuality in Kenya: The prospects and the challenges’ in S Namwase & A Jjuuko (eds) *Protecting the human rights of sexual minorities in contemporary Africa* (2017) 79.

16 Zimbabwe parliamentary debate, 28 September 1995, quoted in Dunton & Palmberg (n 9 above) 20.

unspoken text – the sub-text – Chigwedere situates sexuality in the cleansed body politic of the nation following independence from colonial rule.¹⁷ Ultimately, he is appealing to governmentality,¹⁸ making it clear that sexuality is not a private and personal issue, but belongs in the public realm. The public realm invokes the couplet of knowledge and power, implicating in the process the privilege of the state in regulating sexuality as part of the construction of normative citizenship. In his fulsome support for the nation's political leader, Chigwedere assumes the role of the nation's sexuality moral compass. He positions himself as speaking for Zimbabwe and not in his individual capacity. Significantly, he is not a lone parliamentary voice. He is echoing the voices of fellow parliamentarians who speak in unison to condemn homosexuality as a pathogen in the nation's body.¹⁹

Chigwedere belongs to the ruling party, ZANU-PF. However, on this occasion not a single parliamentarian expressed dissent. It is as if this were a call to a non-partisan patriotism which is crucial to the survival of the nation. Indeed, it is less of a debate and more of a parliamentary monologue. The monologue assuredly draws on the wellspring of patriarchal tradition and values. Unsurprisingly, Chigwedere allows no dwelling place – a *habitus* – for non-heteronormative sexualities in the body politic. Homosexuals simply are not among the nation's good citizens: with their un-Zimbabwean sexual practices and expressions, they are pathogens. Moreover, they cannot be ignored as they pose a danger to the health of the nation. The analogy with a festering, diseased finger about to sicken the body and the imperative of radical curative surgery leaves little to imagine about the kind of punitive normative response the parliamentarian has in mind.

17 Zimbabwe became an independent republic in 1980 following a war of liberation against white-minority rule: J Mitsi et al 'War in Rhodesia, 1965–1980' in B Raftopoulos & AS Mlambo (eds) *Becoming Zimbabwe: A history from the pre-colonial period to 2008* (2009) 141–166.

18 I am using 'governmentality' in its Foucauldian sense to mean using state regulatory power to control citizenry biopolitically and direct human behaviour: G Burchell et al (eds) *The Foucault effect: Studies in governmentality with two lectures and an interview with Michel Foucault* (1991) in an effort to produce citizens who are governable according to the state's vision of the good; M Dean *Governmentality: Power and rule in modern society* (2010).

19 For example, Pamela Tungamirai, a member of the House of Assembly, in condemning homosexuality said: '[I]t is not part of our culture. It might be the culture of the Western world but not our culture here. We would like to be proud of our identity as Zimbabweans', quoted in Dunton & Palmberg (n 9 above) 19–20.

In the Zimbabwean book-fair drama, we see a historical re-enactment of sex as 'moral panic'.²⁰ The drama is reminiscent of the political dynamics which undergirded the phantom of the black peril in Southern Rhodesia, albeit now manifesting under a different political regime of black majority rather than white minority rule, and in a different sexuality domain – homosexuality rather than heterosexuality. We see, once again, the construction of a fictive 'moral panic' which has nothing to do with protecting Zimbabweans from any objective harm.²¹ It is the construction of a 'political moment of sex' galvanising political action to serve sectional political, cultural and religious ends in the maintenance of heterosexual patriarchal dominance.²² Characteristically, as Gayle Rubin underscores, the moral panic is aimed at vulnerable constituencies who lack political power.²³

1.2 Democratising sexuality

However, I am not suggesting that Zimbabwe is exceptional in the African continent in officially condemning homosexuality. Rather, this spotlight on Zimbabwe serves to illustrate the political nature of sexuality, as well as how official politics can be appropriated to privilege heterosexuality and justify discrimination against homosexuality as well as to incite moral panic through the threat homosexuality is perceived to pose to society. When it is accompanied by an official imprimatur and is underwritten by dominant cultural, religious and legal frameworks,²⁴ the claim of a homogeneous heteronormative sexuality becomes more than simply an expression of moral difference. Its recourse is to a harsh governmentality

20 See the discussion in ch 6 sec 6.1.

21 J Weeks *Sex, politics and society: The regulation of sexuality since 1800* (1981) 14-15; GS Rubin 'Thinking sex: Notes for a radical theory of the politics of sexuality' in CS Vance (ed) *Pleasure and danger: Exploring female sexuality* (1984) 143 at 163.

22 Weeks (n 21 above) 14-15.

23 Rubin (n 21) 163.

24 The majority of African states, including Zimbabwe, regulate non-heteronormative sexualities primarily through the criminalisation of same-sex sexual practices among men. A minority of states also criminalise the same practice between women. The laws largely are a legacy of colonial jurisprudence: JO Ambani 'A triple heritage of sexuality? Regulation of sexual orientation in Africa in historical perspective' in Namwase & Jjuuko (n 15 above) 14-50. A significant minority of states – Benin, Burkina Faso, Cape Verde, Central African Republic, Chad, Republic of Congo, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Equatorial Guinea, Gabon, Madagascar, Mali, Mozambique, Niger, Rwanda, Seychelles and South Africa – do not criminalise same-sex sexual conduct: Coalition of African Lesbians & AMSHeR (n 14 above) 4-5; A Carroll *State-sponsored homophobia. A world survey of sexual orientation laws: Criminalisation, protection and recognition* (2016) 57-93.

with a silencing and oppressive hold on ‘transgressive’ sexuality-identifications.

Furthermore, when culturally hegemonic heteronormative sexuality is institutionalised at the domestic level in ways that demonise transgressive sexualities, casting them as being subversive in the body politic and un-African, it is an incitement to homophobia and hate crimes. A conducive socio-political environment for ‘precarity’ is officially created.²⁵ Precarity leaves sexual minorities acutely vulnerable to discriminatory laws, policies and social norms and practices. In its unrestrained and more tragic form, state and culturally sanctioned demonisation of transgressive sexualities can become a tool for impunity: an instrument for legitimising violence – even killing – against members of sexual minorities by private individuals and state actors, including the police.²⁶

In developing a framework for an inclusive, as well as a transformative, epistemology of African sexualities as a conceptual foundation for overcoming the status subordination of marginalised sexualities, I draw on a syncretic archive of scholarship whose confluence is that recognition of difference in how humanity experiences sexuality requires moving beyond the patriarchal imagination of the raw physicality of the body, the genitalia, the biological impulse and a capacity for language. Only then are we able to take cognisance of how sexuality is socially constructed in a historical time and a cultural place.²⁷ The archive acknowledges, in the first place, that culturally speaking, as Sylvia Tamale points out in the epigraph, there are ‘pluralistic articulations’ of sexualities rather than a single homogeneous sexuality that is peculiarly African.²⁸ It concedes that the norms and frameworks which give coherence to heterosexuality and its congruent gender binaries are but one cultural variant. However dominant, heterosexual norms and frameworks do not

25 The term ‘precarity’ is appropriated from Judith Butler as a means to capture the effects of a culturally and politically-induced condition in which certain populations are differentially and discriminatorily deprived of socio-economic support and ultimately exposed to injury, violence and death: J Butler ‘Performativity, precarity and sexual politics’ (2009) 4 *AIBR. Revista de Antropología Iberoamericana* i-xiii at ii, <http://www.aibr.org> (accessed 16 February 2015).

26 Coalition of African Lesbians & AMSHeR (n 14 above) vii. In 2014 the African Commission on Human and Peoples’ Rights adopted a resolution to condemn violence against persons with transgressive sexualities and genders: Resolution 275 Protection Against Violence and other Human Rights Violations Against Persons on the Basis of their Real or Imputed Sexual Orientation or Gender Identity, adopted by the African Commission on Human and Peoples’ Rights at its 55th session held in Luanda, Angola, from 28 April to 12 May 2014.

27 Rubin (n 21 above) 149.

28 Tamale ‘Introduction’ (n 1 above) 2.

exist unchallenged as the only articulations of sexuality and gender identities.²⁹ Rather, they are juxtaposed with diverse sexualities as well as a resistance to frameworks that countenance only certain modes of identity, morality and behaviour.³⁰

An inclusive approach to articulating African sexualities should have dialogic exchange and, ultimately, the development of pluralistic norms as its goal. It is imperative to move away from oppressive generalisations and to accept the discursive importance of integrating a democratic space for capturing the sexualities of the peoples of Africa in their diverse social groupings as well as in their individual subjectivities. If our goal is to transform paradigms of inequality and overcome status subordination, then interrogating African sexualities requires engaging with *sexualitypoint* epistemology.³¹ Normative reasoning and the development of just norms require dialogic exchange. Articulations of Africanness that are not substantively participatory or do not hear the voices of those excluded by the patriarchal authorities and by hegemonic discourse risk merely endorsing reactionary formalism.

I begin with some discursive clarifications.

2 Discursive clarifications

In this section, I deliberately steer clear of defining what sexuality is in order to remain faithful to the hermeneutics of Africanness I developed in chapter 2, which cautions against a closed normativity and finding a sexuality essence. In the main, the section clarifies my use of the term 'transgressive sexualities' and its explanatory power for the (mis)recognition of diverse sexuality identifications.

2.1 Transgressive sexualities: The terminological rationale

I use the term 'transgressive sexualities' more broadly to imply sexualities that do not conform to culturally hegemonic narratives of heterosexuality and, *for this reason alone*, are culturally and juridically stigmatised. Whether such sexualities are described as homosexuality, lesbianism, bisexuality,

29 As above.

30 As above.

31 I am using 'sexualitypoint' as a neologism to draw an analogy with dialogic feminist standpoint epistemology: A Brooks 'Feminist standpoint epistemology: Building knowledge and empowerment through women's lived experience' in SN Hesse-Biber & P Leavy (eds) *An invitation to feminist method* (2007) 53-82.

transsexuality, intersexuality, queer or in some other terms is not a primary or immediate consideration in this chapter, save where the epithet serves to exclude other non-heteronormative-conforming sexualities. If, as I argue, sexualities are historically and culturally constructed, it must follow that their naming is part of the same trajectory. It means that naming ultimately depends on the cultural and sub-cultural location on the continent. Indeed, transgressive sexualities may be communicated in silence and not carry a conventional name. What is important to the present discussion is not how transgressive sexualities are named at the locale; it is how to develop a normative framework for recognising the diversity of present and future non-conforming African sexuality identifications. The objective is to establish an archive of diverse sexualities that we can use to develop cultural and juridical frameworks for overcoming status subordination in ways that are informed by transformative understandings of sexuality and, ultimately, an inclusive Africanness.

2.2 Overcoming status subordination

To extend the reach of the hermeneutics of an inclusive Africanness in remedying inequalities arising from a culturally and legally sanctified sexual hierarchy, this chapter appropriates Nancy Fraser's critical theory of recognition.³² It integrates into inclusive equality a 'status' rather than a Hegelian 'identity' recognition model of equality.³³ This approach is discursively strategic for achieving the recognition of sexualities that defy notions of identity as complete and established. Protecting formed identity, such as lesbian, gay, bisexual, transsexual and intersex (LGBTI) identity, is as important as protecting sexual and gendered identity that is in the process of being formed, but does not or may not fall neatly into an

32 N Fraser 'Rethinking recognition' (2000) 3 *New Left Review* 107; see also N Fraser *Justice interruptus: Critical reflections on 'postsocialist' condition* (1997) 11-39.

33 As Fraser explains, the basic premise in a Hegelian model is that identity is constructed 'dialogically', through a process of mutual recognition. Where each subject sees the other as an equal and also as separate from the other there is 'recognition' and a relation constitutive of subjectivity. However, where one is not seen as an equal by the other, such as where one is seen as an inferior, there is 'misrecognition'. With misrecognition, the effects are that the relationship of the parties to each other is distorted and the identity of the party labelled inferior is injured: Fraser 'Rethinking recognition' (n 32 above) 109; GWF Hegel *Phenomenology of spirit* (1977) 104-109.

established taxonomy.³⁴ In his critique of ‘sexual orientation’ and ‘gender identity’ as categories for advocacy in prevailing human rights discourses, Matthew Waites highlights the dangers of these two categories achieving their own power of dominance and exclusivity which can, paradoxically, come to exclude other diverse sexualities and genders not falling within the categories.³⁵

The overriding recognition goal, therefore, is not so much the recognition of sexual identities as it is overcoming social subordination arising from sexual hierarchy-related exclusionary laws and practices.³⁶ Fraser summarises the status model of recognition in the following way:

[W]hat requires recognition is not group-specific identity but the status of individual group members as full partners in social interaction. Misrecognition, accordingly, does not mean the depreciation and deformation of group identity, but social subordination in the sense of being prevented from participating as a peer in social life. To redress this injustice still requires a politics of recognition, but in the ‘status model’ this is no longer reduced to a question of identity: rather, it means a politics aimed at overcoming subordination by establishing the misrecognized party as a full member of society, capable of participating on a par with the rest.³⁷

When it is transposed to sexuality, the status-subordination approach does not claim that recognising sexual identities does not have any important emancipatory or symbolic value. Rather, it is an approach which emphasises the need for reparatory cultural and juridical responses that are cognisant of the fact that the disadvantages people suffer from sexuality misrecognition are multiple and cannot be uniformly reduced to a question of identity alone as a ‘free-standing’ cultural harm.³⁸ More often than not, sexuality misrecognition takes on institutionalised forms of cultural and economic devaluations that prevent a misrecognised person from participating on an equal basis with others in society. Political marginalisation and consequent material deprivation intertwine to produce conditions of inequality and subordination. In this way a status-

34 LGBTI is used in a general sense to capture transgressive sexualities and, to a point, genders, but always in a way fully cognisant that it is a useful but not an exhaustive or always representative category, as I argue in sec 2.3 (below). Including gender is necessary in a sexuality discourse, not in order to conflate the two but because sexuality implicates gender: See sec 3.3 (below).

35 M Waites ‘Critique of “sexual orientation” and “gender identity” in human rights discourse: Global queer politics beyond Yogyakarta Principles’ (2009) 15 *Contemporary Politics* 137.

36 Fraser ‘Rethinking recognition’ (n 32 above) 113.

37 As above.

38 Fraser ‘Rethinking recognition’ (n 32 above) 110.

subordination approach builds synergy with a social-construction theory of sexuality. It is a heuristic for focusing not only on the sexuality identity in question but also, on how it intersects with culture and broader, institutionalised systems of power and domination.³⁹

The focus on status subordination is also a methodological tool for avoiding the reification of sexual identities and unwittingly scripting new sexuality hierarchies, new stereotypes and new stigmas when some diverse sexualities are affirmed but others are not. If one of the points of departure is that plurality requires recognising sexuality as complex and diverse, then a discourse on equality should guard against imposing a single, totalising genus of alternative sexualities or oversimplified group identities that ignore particularities and assume, for example, a conformity of interests among all LGBTI persons. Failure to see a multiplicity of identities and affiliations or to accommodate intersectionalities and even struggles within the social group seeking equality affirmation paradoxically renders equality an oppressive hegemonic blunderbuss.⁴⁰ Fraser warns about the easy susceptibility of the identity model to ‘repressive forms of communitarianism, promoting conformism, intolerance and patriarchalism’.⁴¹ To this end, it is not required, for example, that the recognition of sexualities other than heterosexuality should be contingent upon the claimant first fitting into an LGBTI sexual orientation and gender identity taxonomy.

Inclusive Africanness, therefore, should seek constantly to disrupt the discourse of sexual essentialism in order to secure a heterogeneous sexual domain of non-exhaustive benign variations. Sexuality should be understood not for its sameness, but for its relational and non-hierarchical difference and capacity to evolve and assume newer forms. Accepting this argument first requires accepting a democratic understanding of equality, which cannot be achieved without a concern for plurality in which claimants at the equality table are able to articulate different needs without being required to assimilate to a normatised paradigm, precisely because normatisation without equal participation lacks democratic legitimacy as it speaks only to hegemonic or structural power.⁴² It side-steps the ‘human condition’.⁴³

39 S Corrêa et al *Sexuality, health and human rights* (2008) 128.

40 Fraser ‘Rethinking recognition’ (n 32 above) 112.

41 Fraser ‘Rethinking recognition’ (n 32 above) 122.

42 H Botha ‘Equality, plurality and structural power’ (2009) 25 *South African Journal on Human Rights* 1 at 4-5.

43 H Arendt *The human condition* (1998) originally published in 1958.

Actualising the human condition in a plural democracy, as Hannah Arendt argued, should anticipate creating room for distinctiveness, for human beings to reveal themselves in new and unexpected ways, because each human being is a 'distinct and unique being among equals'.⁴⁴ Gayle Rubin underscores the theoretical impossibility in developing a pluralistic sexual ethics without the concept of a porous category of 'benign sexual variation'.⁴⁵ The analytical objective is not to banish the existential reality of sexual identities or the legitimacy of claims for sexual identity recognition, but to erase the normative dominance of any particular identity so that it is relativised, so that it stands in an egalitarian relationship with other sexual identities in a heterogeneous sexual sphere.

A status-subordination approach opens a discursive space for analysing the processes through which the domain of sexuality is given social and cultural meaning at given historical times in given societies. It opens the door to situating sexuality in the broader systems of power as well as implicating political and cultural sites of power that serve to validate some sexualities but misrecognise others. In order not to replicate the production of master dichotomies, a status-subordination approach should be open to a conception of human rights that accepts that the substantively culturally specific content of human rights as found in conventions and discourses is always open to debate and revision at the locale with a view to enlarging human freedoms.

2.3 Avoiding LGBTI essentialism

As I argued in Chapter 2,⁴⁶ we are best served by African sexuality *identifications* as enunciations which are always in the making, rather than a laundry list of African sexual identities. In similar vein, as I argued against the logic of identity in the domain of race, so I do here, in the domain of sexuality.⁴⁷ A category such as LGBTI should not become a unified whole, the obverse of heterosexuality, in ways that require the assimilation of all non-heteronormative sexualities into the category. So that it, too, does not become a generative and autonomous source for the construction of sexual hierarchy among non-heterosexual sexualities, it should eschew *theocracy*.

To express reservations about the LGBTI category is not to be oblivious to the reality that non-heteronormative sexuality enunciations

⁴⁴ Arendt (n 43 above) 178; see discussion in ch 8 sec 5 of this book.

⁴⁵ Rubin (n 21 above) 153.

⁴⁶ Ch 2 sec 4.2.2.

⁴⁷ Ch 4 sec 3.1.

may acquire the materiality of sexuality identities as, indeed, LGBTI identities have done. Equally, I am not saying that sexual identities are not important for self-affirmation, civil society mobilisation or building national and international alliances and advocacy. The LBGTI taxonomy has been socially and politically effective in affirming identities, organising politically and advocating equality, and therefore it should not be abandoned. Rather, the argument is that if our goal is to overcome status subordination of diverse sexualities in all their manifestations, at a theoretical level we should not accept the LBGTI taxonomy uncritically, oblivious to the fact that it is inevitably exclusionary. To the extent that this taxonomy privileges the recognition of particular non-heterosexual sexualities and genders, it gestures towards its own normativity. Because sexuality is historically and culturally constructed, our sexuality-recognition framework should not be anchored in hermetically sealed sexuality identities. Instead, it should remain porous to a notion of sexuality identifications as being and becoming. In short, I am arguing against LGBTI essentialism.

In his critique of the Yogyakarta Principles, which use ‘sexual orientation’ and ‘gender identity’ as the associational human categories for developing a framework for the protection of the human rights of sexual minorities,⁴⁸ Waites draws in part on Stuart Hall’s cultural theory.⁴⁹ The essence of Waites’ critique is that the two categories – sexual orientation and gender identity – are useful but incomplete identity categories for constructing a more inclusive protective framework.⁵⁰ Hall’s contribution to the development of an inclusive framework for recognising African sexualities lies in the importance it places on not making the conferral of recognition contingent upon the establishment of a complete identity. It may be recalled that Hall does *not* treat identities as phantasms. Hall’s thesis is that however real, identities are always constructed within rather than outside discourse: they are always conditional and lodged in

48 International Commission of Jurists *Yogyakarta Principles: Principles on the application of international human rights law in relation to sexual orientation and gender identity* (2007), www.refworld.org/docid/48244e602.html (accessed 4 June 2017). The Principles were developed by a group of human rights experts: M O’Flaherty & J Fisher ‘Sexual orientation, gender identity and international human rights law: Contextualising the Yogyakarta Principles’ (2008) 8 *Human Rights Law Review* 207.

49 Waites (n 35 above) 147.

50 In fairness to the drafters of the Yogyakarta Principles, it should be noted that the use of ‘sexual orientation’ and ‘gender identity’ was intended to serve ‘the moment’ as a pragmatic way of constructing a broad rather than an exhaustive and, much less, exclusionary category for recognising the associational categories for human rights protection: O’Flaherty & Fisher (n 48 above) 246-248.

historical and cultural contingency.⁵¹ As something discursively constructed, identity is always *in process*, contingent and never complete.⁵² Therefore, in order to reconcile with the incomplete process of relating subjectivity to social identity, precisely for the reason that identity formation is never complete, it is preferable to base recognition on the processes of 'identification' – the 'articulation' of identity – rather than on the event of 'identity'.⁵³ Equally, it is preferable to treat identity, however real, as a 'temporary attachment' to mark the moment of 'suture', as the point at which a subject is tied to a discourse which is always in motion.⁵⁴

Hall's cultural theory is instructive for constructing an epistemology of sexual diversity that is constantly evolving. It allows us to comprehend processes of sexual identification that articulate not so much an identity with a singular, completely constituted unity anchored in naturalism but, instead, the real possibility of unfinished or even fragmented, multiple identifications anchored in positionality, difference and exclusion from a naturalistic all-inclusive sameness.⁵⁵ Such identification may gesture towards naturalism but only as a broad anchor. The point to stress is that even the categories we choose or appropriate to contest the dominance of culturally privileged sexualities, and which offer alternatives ensconced in difference, need to be imagined in their de-totalised forms so that they remain open to inclusiveness, grounded in an approach that is always in process, cognisant of changing historical and cultural forces. Thus 'transgressive sexualities' are better understood as transgressive sexuality identifications. Like their non-transgressive counterparts, they are not fixed sexual identities but are subject to radical historicisation and transformation.

Over and above seeking to avoid contradicting Hall's cultural theory as my principal analytic framework, I use 'transgressive sexualities' to draw upon lessons learnt from feminism and critical race theory about the importance of not inappropriately conflating sexualities and genders across and within cultures. An initial conceptual error in feminist theory, as I alluded to in Chapter 1 as well as in Chapter 2, was to assume that the meaning of gender and the experience of sexism were the same for all women.⁵⁶ At the beginning, in its construction of 'generic woman',

51 S Hall 'Who needs "identity"?' in P du Gay, J Evans & P Redman (eds) *Identity: A reader* (2000) 15 at 17; S Hall 'Cultural identity and diaspora' in J Rutherford (ed) *Identity: Community, culture, difference* (1990) 222.

52 Hall 'Who needs "identity"?' (n 51 above) 16-17.

53 As above.

54 Hall (n 51 above 19), citing S Heath *Questions of cinema* (1981) 106.

55 Hall (n 51 above) 17-18.

56 Ch 1 sec 1 and ch 2 sec 2.

feminist theory confused the condition of one group of women with the condition of all women.⁵⁷ The concerns of white middle-class women were what initially implicitly preoccupied feminism, despite its claim to universality. The outcome was an abstracted discourse and ‘false universalism’ for some women.⁵⁸ In Adrienne Rich’s words, feminism reflected ‘white solipsism’, its tendency to ‘think, imagine and speak as if whiteness described the world’.⁵⁹ Thus, when using the category LGBTI to name excluded sexualities as well as to call for remedial action it is important to avoid repeating the solipsism Rich implicates.

In order to check essentialist excess in anti-discrimination discourses, critical race theory⁶⁰ has sought to enrich equality through taking intersectionalities seriously. It has argued that any anti-discrimination approach that is built on a single axis of subordination and disadvantage is apt to generate a patriarchy of its own through marginalising individuals and social groups who suffer from subordination and disadvantages that cannot be addressed by a tightly drawn axis.⁶¹ Kimberlé Crenshaw argues that both anti-racist politics and feminist theory have exhibited essentialist orientations,⁶² because they have been organised, respectively, around the equation of racism with what happens to the black middle class or to black men, and the equation of sexism with what happens to white women.⁶³ What is needed, by way of a remedial approach, is developing an equality and anti-discrimination theory and praxis that embrace the ‘complexities of compoundedness’.⁶⁴ Theory and praxis must be sufficiently responsive to ‘intersectionalities’.

Feminism and critical race studies aside, critical sexuality discourses, as I highlight in the next section, have developed their own critiques of emancipatory discourses to check essentialism. The goal has been to

57 EV Spelman *Inessential woman: The problems of exclusion in feminist thought* (1988) 2-4.

58 F Williams *Social policy: A critical introduction* (1989) 118; R Lister ‘Citizenship: Towards a feminist synthesis’ (1997) 57 *Feminist Review* 28 at 38.

59 A Rich *On lies, secrets, and silence* (1979) 147.

60 R Delgado & J Stefani *Critical race theory: An introduction* (2001).

61 K Crenshaw ‘Demarginalizing the intersection of race and sex: A black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics’ (1989) 1 *University of Chicago Legal Forum* 139; B Hooks *Feminist theory from margin to centre* (1984) 17-65; DL Rhode ‘The “woman’s point of view”’ (1988) 38 *Journal of Legal Education* 39; Spelman (n 57 above); A Rich ‘Compulsory heterosexuality and lesbian existence’ (1980) 5 *Signs: Journal of Women in Culture and Society* 631.

62 Crenshaw (n 61 above) 152; see also K Crenshaw ‘Mapping the margins: Intersectionality, identity politics and violence against women of colour’ (1991) 43 *Stanford Law Review* 1241.

63 Crenshaw (n 61 above) 152.

64 Crenshaw (n 61 above) 166.

ensure that the normativisation of sexualities and genders does not paradoxically also legitimise an institutionalisation of dominant frameworks that hinder the development of theory and praxis that recognise intersectionalities. Queer theory, especially, has been at the forefront of critiquing an essentialisation of sexual expressions and identities that is built around the normativisation of gay, lesbian and bisexual cultures.⁶⁵ Steven Seidman highlights that the ultimate objective of the project of queer theory is to achieve a radical plural democracy of sexualities and identities.⁶⁶

Ultimately, I am cautioning against comprehending transgressive African sexualities through an approach inflexibly tied to a universalising discourse of 'sexual orientation' and 'gender identity'. In part I am taking my cue from arguments that have already been advanced by other commentators, of which Judith Butler perhaps is the most eloquent.⁶⁷ Butler says:

As much as it is necessary to assert political demands through recourse to identity categories, and to lay claim to the power to name oneself and determine the conditions under which that name is used, it is also impossible to sustain that kind of mastery over the trajectory of the categories within discourse. This is not an argument *against* using identity categories, but it is a reminder of the risk that attends every such use. The expectation of self-determination that self-naming arouses is paradoxically contested by the historicity of the name itself; by the history of the usages one never controlled, but that constrain the very usage that now emblematises autonomy; by the very future efforts to deploy the term against the grain of the current ones, efforts that will exceed the control of those who seek to set the course of the terms in the present.⁶⁸

The argument is that if we are thinking of developing a transformative normative framework for recognising the diversity of sexualities, then, from the outset, we need to concede that recourse to categories, including sexuality identity categories, does not signal the end of categories and their normative implication.⁶⁹ On the contrary, it constitutes the

⁶⁵ See discussion on queer theory in sec 3.3.4 (below).

⁶⁶ S Seidman 'Deconstructing queer theory or the under-theorization of the social and the ethical' in L Nicholson & S Seidman (eds) *Social postmodernism: Beyond identity politics* (1995) 116 at 118.

⁶⁷ J Butler 'Critically queer' (1993) 1 *GLQ: A Journal of Lesbian and Gay Studies* 17. See also: W Morgan 'Queering international human rights law' in C Stychin & D Herman (eds) *Sexuality in the legal arena* (2000) 208–225; S Ahmed *Queer phenomenology, orientation, objects and others* (2006); Waites (n 35 above) 137.

⁶⁸ Butler (n 67 above) 19 (emphasis in original).

⁶⁹ Waites (n 35 above) 138.

'reconfiguration' of the heterosexual matrix which once again becomes, in a Foucauldian sense, another additional cultural grid of intelligibility for naturalising sexualities.⁷⁰ Like its heteronormative counterpart, such a grid once again will be tied to binaries lacking in conceptual capacity to recognise sexualities which fall outside the grid.

This is not just an argument for raising our consciousness with regard to LGBTI essentialism. It is an argument for guarding against Western cultural imperialism and homo-normativity – but in ways that recognise, rather than shut out, the existential reality of sexuality identifications, as identifications can be the outcome of inculcation and hybridisation, a transmogrification in which Africans appropriate sexuality identities whose origins lie outside their locale.⁷¹ The success of LGBTI as an advocacy category in an African context depends on its capacity to include historically marginalised and excluded sexualities. As part of the construction of *sexualitypoint* epistemology, the onus is on the peoples of the continent, especially sexual minorities but also activists and scholars, to develop an archive of knowledges about transgressive sexualities. The peoples of the continent need to tell their own story, so to speak, in ways that are historically and materially conscious of African time and location.⁷²

Thus, the LGBTI category should not mean sameness and singularity, which ignores intersecting African social cleavages of difference, including varied histories and cultures and varied disadvantages, marginalisations and imbalances of power. To claim non-hierarchical representativeness and avoid becoming a patriarchal shibboleth, the category of LGBTI should not serve to privilege only some excluded sexualities and yet

70 Waites (n 35 above) 138.

71 Here I am registering my difference with the emphasis in Joseph Massad's following argument: 'The categories gay and lesbian are not universal at all and can only be universalized by the epistemic, ethical, and political violence unleashed on the rest of the world by the very international human rights advocates whose aim is to defend the very people their intervention is creating': JA Massad *Desiring Arabs* (2007) 41. What this argument sorely misses is nuance and space for inculcation. Indeed, the gay and lesbian category is not universal and, yes, from time to time, it has been imposed, such as when it is tied to economic assistance. At the same time it is also a category that many in 'non-Western' locales, including African locales, use daily to assert their own sexuality identifications and to organise resistance against oppressive cultures and laws.

72 In many ways such an archive is already in the making, as is evidenced by publications such as Tamale's *African sexualities* (n 1 above); Coalition of African Lesbians & AMSHeR *Violence based on perceived or real sexual orientation and gender identity in Africa* (n 14 above); Namwase & Jjuuko *Protecting the human rights of sexual minorities in contemporary Africa* (n 15 above).

disadvantage others that equally have been historically silenced and have experienced social exclusion.⁷³ Rather, it must remain porous to the multiplicity of African voices and demographic groups, including their different classes, ethnicities, races, age cohorts, genders and non-genders so as not to miss out on a crucial dimension to existential sexuality identifications.⁷⁴

2.4 Avoiding unproductive LGBTI anti-essentialism

In underlining the discursive necessity for anti-essentialism, I add an important caveat. On the one hand it is important to recognise the dangers of essentialism in the form of an indiscriminate trans-historical and trans-cultural discourse of sexuality; on the other, we should not throw the baby out with the bath water. Yes, it is vitally important to recognise the different histories and cultures among the social groups seeking to vindicate their claim to equality through human rights. Certainly, in seeking to overcome status subordination and to fulfil a recognition claim, in the sense intended by Fraser,⁷⁵ it is important not to treat all sexuality-equality claims as seeking a uniform response and to recognise that different social groups may experience different forms of inequality, marginalisation and oppression.⁷⁶ Totalities that elide and elude difference and heterogeneity deny individuality and specificity to the point of distorting different histories in a bid to construct a grand narrative or epistemology.⁷⁷ At the same time, however, as Helen Irving argues in the context of feminism, there is also the danger of adopting counter-productive anti-essentialist approaches which reject commonalities and which essentialise difference among social groups that experience similar, albeit different, degrees of disadvantage and exclusion. Irving's point is that we should not confuse 'historical cause' with effect as this deprives us of the advantage of acknowledging shared patterns of experience which are often linked to similar structural modes of oppression.⁷⁸

73 Spelman (n 57 above) 162.

74 Spelman (n 57 above) 163.

75 Fraser *Justice interruptus* (n 32 above); Fraser 'Rethinking recognition' (n 32 above).

76 C Albertyn 'Substantive equality and transformation in South Africa' (2007) 23 *South African Journal on Human Rights* 253 at 255-256.

77 C West *The Cornell West reader* (1999) 279.

78 H Irving *Gender and the constitution: Equity and agency in comparative constitutional design* (2008) 35.

It would be missing the point to deny that systemic oppression is an independent and determinate reality in the lived experiences of historically marginalised sexualities as a social group.⁷⁹ However incomplete, political generalisations that explain power, oppression and socio-economic domination across societies, economies and polities are indispensable to understanding structural inequality and to constructing normative responses.⁸⁰ To reject commonality through overly essentialising differences would be to miss out on acknowledging shared patterns in the experience of socio-economic exclusion.⁸¹ What should be avoided, as Cornel West cautions in critiquing criticisms of Marxism by poststructuralists, are ‘crude totalities’ so that a measure of synecdochical thinking is retained to make it possible, dialectically, to relate the parts to a greater whole.⁸² Categories that crystallise power in a given polity – in this instance heterosexual patriarchal power – will often prove indispensable in analysing socio-economic exclusion, whether one is addressing a social group in the global North or in the global South.⁸³ Being anti-essentialist should not mean dismissing a stable category of difference and its systematic link with oppression. Rather, it should mean acknowledging differences between individuals and social groups comprising the category, being context-sensitive and, ultimately, avoiding reifying categories.

2.5 Remaining conscious of colonising sexuality knowledge

Sylvia Tamale cautions us against an oversimplified African sexuality discourse which uncritically relies on knowledge grounded in Western cultural assumptions but is not responsive to the concrete ways in which sexuality is experienced in African cultural spaces.⁸⁴ Tamale should not be understood to be advocating African separatism, or repudiating the universality of the quest for freedom from oppression, or claiming that knowledge developed in the Global North has no value for Africans. Indeed, as Tamale concedes, Western knowledge about sexuality not only has great analytical value in critiquing African systems, but is also knowledge African scholarship cannot ignore.⁸⁵ Tamale’s point is to

79 KT Bartlett ‘Feminist legal methods’ (1990) 103 *Harvard Law Review* 829 at 879.

80 West (n 77 above) 279.

81 Irving (n 78 above) 35.

82 West (n 77 above) 279.

83 JC Williams ‘Dissolving the sameness/difference debate: A post-modern path beyond essentialism in feminist and critical race theory’ (1991) 40 *Duke Law Journal* 296 at 322.

84 S Tamale ‘Researching and theorising sexualities in Africa’ in Tamale (n 1 above) 11-12 20.

85 Tamale (n 84 above) 26.

sound an 'essentialist' warning to African sexuality discourses, as did critiques of Western essentialist feminist discourses, so that African scholarship does not engage in unproductive mimicry.⁸⁶ To represent African peoples it is necessary that discourses on African sexualities aspire to develop knowledge and methods that are historically grounded and facilitate a close analysis of local contexts, not least their cultural and material dimensions.⁸⁷

Chandra Mohanty argues that even progressive critical theory is not immune to fostering counterfactual abstraction. In a seminal article, 'Under Western eyes', she warns about the risks of dehistoricised transcultural appropriation of knowledges by implicating latent colonialism even in a humanist discourse and critical social theory and praxis such as feminism.⁸⁸ In implicating discernible colonial undercurrents in feminism, Mohanty's argument is not that feminism is a monolithic and homogeneous discourse. Much less is she claiming that feminism has the conscious goal of colonising women in the South. Mohanty's cardinal argument is that, notwithstanding feminism's emancipatory project, when its theory and praxis are transposed to the South without engaging with particularity at the locale, they constitute a hegemonic discourse. This is so to the extent that it is possible to find within feminism a 'coherence of effects' that inherently stem from feminism's assumption of the West as the epistemological, cultural and historical seat – more precisely, the 'primary referent'.⁸⁹

The call to circumspection about transcultural knowledge serves to highlight the inherent dangers of cultural imperialism when culturally specific knowledge is relocated to a different cultural setting without sufficient contextualisation. In attempting to use a 'universal grammar' whose origins lie in Western modernity to understand Africa and Africans, we can end up paradoxically reinscribing a centre-periphery relationship. As a former colonial enclave, we can easily end up using dominant paradigms, including conceptual structures and fictional representations that are interimbricated with othering discourses and that deny African societies any history or Africans any political subjectivities. Even where the universal grammar is not consciously intended to achieve othering, epistemologies produced in a specific cultural and historical zone can serve as binaries which are discursively and inherently colonising. When

86 Spelman (n 57 above).

87 A Mama et al 'Editorial: Sexual cultures' (2005) 5 *Feminist Africa* 1 at 3-4.

88 CT Mohanty 'Under Western eyes: Feminist scholarship and colonial discourses' (1986) 30 *Feminist Review* 61.

89 Mohanty (n 88 above) 61-62.

transposed to another zone which does not share the same culture and history, the grammar can have the discursive effect of compelling Africans to abandon their own histories and subjectivities in order to fit into a ready-made paradigm. Indeed, given Africa's colonial heritage and its tendency to persist in dominating and re-organising African epistemologies into fundamentally European epistemologies, part of the task of African scholarship is to foster the development of knowledge that is inclusive and responsive to African needs and aspirations but without descending into parsimonious discourses of nativism that diminish rather than enhance African humanity.

In *The invention of Africa*, VY Mudimbe highlights the dangers of uncritical African dependence on a Western episteme and its effects in perpetuating colonialism.⁹⁰ Mudimbe underscores that colonisation was much more than 'colonists' settling in Africa and 'colonialists' dominating African physical and spiritual space and exploiting the colonial territory.⁹¹ It was also about organising and transforming African spaces into fundamentally European constructs.⁹² Collectively, these processes produced a colonising experience and an imperialistic discourse in which African cultures were marginalised and African histories 'integrated' into Western histories and epistemologies. The route to integration was anything but dialogic. Integration was in fact a discursive 'redesigning' of African cultures and histories through a homogenising and subordinating discourse of power and an economy of ideological knowledge about Africans.

Achille Mbembe echoes Mudimbe on the neo-colonial risks inherent in using a Western episteme to address Africa and respond to its contemporary social, political and economic challenges.⁹³ In *On the postcolony*, he argues that the use of 'universal grammars' in critical social theoretical discourses is a methodological question that must be addressed by any account of the social and political imagination of Africa which seeks to be intelligible and relevant to Africa and Africans.⁹⁴ Mbembe's methodological concern is the 'incommensurability' of using conceptual structures and representations that deny African societies any historical depth and are predicated on a template primarily designed to understand Western cultures and, more precisely, Western rationalism and modernity.

90 VY Mudimbe *The invention of Africa: Gnosis, philosophy and the order of knowledge* (1988) x.

91 Mudimbe (n 90 above) 1.

92 Mudimbe (n 90 above) 1-5.

93 JA Mbembe *On the postcolony* (2001).

94 Mbembe (n 93 above) 11.

When deconstructed, what purports to be a universal grammar might reveal a materiality of its own, including its particular history and location. Critiques of the white, middle-class and Eurocentric biases in Western feminism have made this point.

However, this is not an argument for dispensing with transcultural knowledge on the basis that it is 'Western' knowledge or for drawing a neat line between African knowledge and Western knowledge. In an age where there is cultural hybridity and alliances are constantly made across national and regional borders, Western culture, and perforce its knowledge systems, no longer are confined to a geographical enclave. Therefore, being mindful of the limits of transcultural knowledge should not mean subscribing to a reductionist and monolithic view of culture as static, unitary, geographically bound and ethnically owned. Even if an essentialist and exclusivist view of culture sat well with cultural thought at the high noon of imperialism, to insist upon it today diminishes rather than enhances our humanity. It compels us to deny our pluralities in favour of a de-historicised, decontextualised view of culture as a unique biometric or corporate identity of a nation in which individuals are so extraordinarily homogeneous as always to register the same cultural data and subjectivity.

The answer to the dangers of submitting to yet another colonising gesture therefore requires a nuanced response. The answer cannot lie in excluding epistemologies on the ground that they were first moulded in the West. What is at stake is for African sexuality praxis, research and scholarship to free themselves from the shackles of a cultural imperialism that diminishes the humanity of Africans. The task of African scholarship is not to produce a Stalinist grid that fences off Western knowledge in search of an African authenticity. Rather, it is simply the constructive task of maintaining a critical intellectual gaze on Eurocentric canons that ignore other epistemic traditions and are inherently recolonising. Western knowledges that profess to be objective and assume their utterance as universal but without ever engaging with the particularity of an African context are inherently hegemonic. They are apt to silence rather than acknowledge a different perspective.

In seeking to check the Eurocentric canon, Mbembe makes two points which serve as important caveats.⁹⁵ In the first place, the effort to decentre Eurocentricism should not be a case of indiscriminately treating the

95 JA Mbembe 'Decolonising knowledge and the question of the archive' <http://wiser.wits.ac.za/content/achille-mbembe-decolonizing-knowledge-and-question-archive-12-388> (accessed 5 June 2017). This is a published 'spoken' text which appears without pagination.

Western archive as if it is invariably monolithic and immune to self-appraisal.⁹⁶ Decolonising the sexuality archive is essential but in ways that do not become a form of heuristic self-immobilisation which denies us building on existing knowledge.

Engagement with discourses that have their origins in the West requires appreciating that they rarely constitute a single archive. Where there is a history of internal critique of and dissent from the dominant archive, it would be unwarranted to paint the archive with the same brush.⁹⁷ The development of feminism as an archive of knowledge about women's equality and feminism's own dialogue with itself, which has expanded the feminist canon in inclusive ways, serves to underscore that Western archives need not necessarily be treated as resting on a single perspective. Indeed, it is precisely on account of the inclusive nature of the feminist archive that African feminists, while criticising a Eurocentric bias in feminism, have concomitantly deployed feminism as a critical social theory and praxis for addressing unmet equality needs in the African locale. The capacity of feminism to serve as a universal grammar has benefitted, not just from intervention by the discourse of intersectionalities but, as well, from criticisms about the absence of women from the global South in 'Western' feminism.⁹⁸

The second caveat Mbembe enters is one that is rarely made. It is that to label knowledge as Western knowledge, itself, is problematic. Such knowledge should not be understood in a way that conflates it with Eurocentrism or treats 'Western' knowledge as the sole effort and property of the West.⁹⁹ It should not be overlooked that in many disciplines a collective and, indeed, universal effort is at play in the production of knowledge that has its origins in the West. As Mbembe argues, Africa and its diaspora have decisively contributed towards many of the archives, such that they have a claim on the archive.¹⁰⁰ To suggest otherwise would be to divest continental and diasporic Africans of any participation in modernity. Drawing on Ngũgĩ wa Thiong'o, the point Mbembe emphasises is that displacing Eurocentrism entails 'decolonising' knowledge rather than a simplistic 'de-Westernisation'.¹⁰¹ It is a project of 'recentering' Africans so that they can 'see themselves' in the archive in

96 As above.

97 As above.

98 Mohanty (n 88 above).

99 Mbembe (n 95 above).

100 As above.

101 Mbembe (n 95 above), referring to N Thiong'o *Decolonising the mind* (1981).

relation to themselves, and other selves.¹⁰²

By implication Seyla Benhabib amplifies Mbembe's second caveat in her disquisition on cultural complexity and global interdependence and the importance of formulating a global notion of justice.¹⁰³ In building her thesis, Benhabib marshals arguments against ethnocentric liberalism and the idea of cultural hermeticism and highlights that pure cultures with unsullied ethnic identities are imagined communities.¹⁰⁴ Historically, such communities have never existed but, instead, have been imagined by writers, historians, statesmen and ideologues to foster a teleological idealism of ethnic purity and a monism of culture in which there is pure oneness or homogeneity. Benhabib's more fundamental argument is that, in the historical period in which we find ourselves, interactions between cultures are real rather than notional. Consequently, we ought to move from a paradigm of 'ethnocentric liberalism' to an 'infinite community of conversation' and a 'community of global interdependence'.¹⁰⁵

Of course, it would be facile to deny the deep legacy of Western culture in which African peoples have become invested. Thus, the point is not dogmatically to deny the Western origin of knowledges, much less to jettison them, but rather to highlight existential common ownership or pragmatic appropriation. Moreover, the point is not to be oblivious to the fact that the archive of modernity has come with its own exclusions and forms of domination. Rather, it is to highlight that in a global community of conversation, even taking into account the unevenness of the conversation on account of the economic disparities between North and South, we must concede that acculturation, the appropriation of knowledges and the democratic iteration of modernity take place. Thus, regardless of whether Africa or its diaspora have been directly involved in the making of the 'Western' archive, it is no longer a case of pitting 'our norms' against 'their norms': to do so would be an inaccurate reading of the intersection between knowledge systems and regional cultures today.

Above all, the autonomy of Africans to appropriate modernity, transmogrify and modify it for their own purposes, including in the realm of sexuality knowledge and praxis, should not be denied. Such a denial diminishes the vitality of the African archive through a normative self-

102 As above.

103 S Benhabib 'Cultural complexity, moral independence, and global dialogical community' in M Nussbaum & J Glover (eds) *Women, culture and development* (1995) 235-255.

104 Benhabib (n 103 above) 241, citing B Anderson *Imagined communities: Reflections on the origins and spread of nationalism* (1983).

105 Benhabib (n 103 above) 247-252.

imposed petrification that denies Africans the freedom to make and remake their epistemological worlds using knowledges available to them irrespective of the origins of the knowledges. Legitimate African concerns with oppressive Western epistemologies still leave room for recognising solidarity and, indeed, the building of new commonalities between cultures and hemispheric communities.

3 Deconstructing sexualities

Deconstructing sexuality is analogous to deconstructing race, gender or any other human status that historically has been accorded a calibrated group essence by dominant ideologies and discourses in ways that treat the status as a category of nature – the way it always has been. Deconstruction enables the task of unmasking and interrogating the classificatory and evaluative criteria used culturally, politically and legally to justify maintaining the sexuality dominance of one social group over another.¹⁰⁶ It means being alive to the fact that, where a body is viewed via a biological taxonomy tethered to a given essential nature, powerful gender and sexuality-prescriptive norms are produced so that any perceived sexuality difference that does not fit into the normative universal category is misrecognised because it constitutes a ‘substantial variation’ from the norm.¹⁰⁷ When dominant narratives of sexuality are deconstructed, sexuality is revealed as quintessentially political and situated in broader systems of power. Culturally privileged archives of essentialist or naturalistic hierarchical axioms of sexuality are linked to political power and cultural and religious sectional interests. The archives undergird what appears to be self-evident, socially-embedded knowledge about human sexuality which is used by domestic legal systems to legitimise regulating sexuality in ways that are hegemonic.

Until the latter half of the twentieth century, naturalistic or biological determinisms were the dominant paradigms for explaining as well as normatising sexuality.¹⁰⁸ Carole Vance notes that even a discipline such as anthropology, which is particularly suited to an uninhibited inquiry about sexual customs and mores, until relatively recently stood aside from

106 Higginbotham (n 6 above) footnote 4.

107 J Price & M Shildrick ‘The openings on the body: A critical introduction’ in J Price & M Shildrick (eds) *Feminist theory and the body: A reader* (1999) 1 at 3.

108 C Vance ‘Anthropology rediscovers sexuality: A theoretical comment’ (1991) 33 *Social Science and Medicine* 875 at 877; Corrêa et al (n 39 above) 107; D Richardson ‘Patterned fluidities: (Re)imagining the relationship between gender and sexuality’ (2007) 41 *Sociology* 457 at 459.

sexuality as a legitimate area of study.¹⁰⁹ The task of understanding sexuality largely was consigned to the biomedical sciences, psychology and sexology, which intersected with sexuality mainly from a functionalist perspective in which biological determinism is the point of departure. Richard Parker explains the historical reticence towards the study of sexuality:

For the greater part of the twentieth century, human sexuality was largely ignored as a focus for social research and reflection. Perhaps because the experience of sexuality is so intimately linked to our bodies, to our biological existence, it was relatively easy to relegate the subject matter of sex to the biomedical sciences. There it could become the focus for obscure medical tomes or arcane psychiatric practices, because it seemed to have little to do with the more crucial and immediate problems of social life. Indeed, it is really only recently, during the closing decades of the twentieth century, that this marginalisation of sexuality, its submission to biomedical gaze, has begun to give way to a more far-reaching social and political analysis.¹¹⁰

Today, knowledge of sexuality allows us to question a premise which treats sexuality as wholly biologically determined. An abundance of multidisciplinary and interdisciplinary scholarship in a variety of disciplines, including anthropology, feminism, history, sexology and sociology, supports an understanding of sexuality as a socio-political category, in the same way that the categories 'woman' or 'race' are understood as expressing more than biological dimensions.¹¹¹ Feminist deconstruction of gender has put at our disposal a particularly important conceptual resource from which to draw insight into constructing a theory and praxis of inclusive sexuality on the proviso that gender and sexuality are not conflated.¹¹² Feminist approaches reveal the fallacy of the 'naturalness' of women's subordination. Radical feminism, especially, implicates engendered inequalities as oppression in ways that inform other methodologies which seek to develop an inclusive equality framework.¹¹³

Contemporary academic discourses on sexuality bring depth and complexity to understanding sexuality and its role in a cultural and political matrix. To capture this depth and complexity two main paradigms for understanding sexuality can be contrasted. One is the historically dominant construction, which emphasises the biological nature of sexuality – an 'essentialist social construction' approach. The

¹⁰⁹ Vance (n 108 above) 875.

¹¹⁰ R Parker 'Sexual rights: Concepts and action' (1997) 2 *Health and Human Rights* 31 32.

¹¹¹ Vance (n 108 above) 877.

¹¹² Sec 3.3 of this chapter addresses the relationship between sexuality and gender.

¹¹³ Vance (n 108 above) 876.

other is a construction which, though not necessarily excluding a biological dimension, sees sexuality as being ultimately socially constructed. I describe the latter as a ‘transformative social construction’ approach (as opposed to merely a ‘social construction’ approach). This description acknowledges that though both approaches are socially or culturally constructed and interplay with each other, the latter is a dynamic approach which transcends notions of biological determinism in order to situate sexuality in the broader sphere of culture and history.

3.1 Essentialist social construction

Positing sexuality as a biological or natural force is the most universally institutionalised and socially ingrained cultural understanding of sexuality. A positivist approach to sexuality not only informs but dominates the understanding of sexuality in the fields of medicine, psychiatry and psychology. It is the approach that continues to underpin the assumptions behind the legal regulation of sexuality globally, even among communities with radically different cultural beliefs and practices.¹¹⁴ Even if culture is understood to shape sexual expression and customs in a given setting, in an essentialist paradigm, as Vance emphasises, the ‘bedrock’ of sexuality is culturally assumed to be biologically determined, universal and, ultimately, above question precisely because the paradigm is assumed to be self-evident and outside radical change.¹¹⁵ Any ‘acceptable’ cultural variations in sexual practices are expected to take place within this heterosexual matrix.

Understood via biological determinism, sexuality is manifested as a powerful impulse or instinct that resides in the individual and awakens in puberty, when it takes distinctly binarised though complementary forms in males and females.¹¹⁶ The overarching core in this description is reproduction.¹¹⁷ Rubin describes this approach as ‘sexual essentialism’ to mark the idea of sexuality as an unchanging biological heteronormative force which is pre-social, outside history and without significant social determinants.¹¹⁸

The essentialist approach normatively expresses itself in how the relationship between gender and sexuality should be understood. Gender

¹¹⁴ Corrêa et al (n 39 above) 107.

¹¹⁵ Vance (n 108 above) 878.

¹¹⁶ As above.

¹¹⁷ As above; D Richardson ‘Constructing sexual citizenship: Theorising sexual rights’ (2000) 20 *Critical Social Policy* 105 at 108-109.

¹¹⁸ Rubin (n 21 above) 149.

and sexual binaries are understood as the logical effect of a dyadic pattern in the natural order.¹¹⁹ Sexuality and gender are realised in a polarised and yet complementary manner so as to be normatively congruent.¹²⁰ Genital intercourse between male and female represents the ultimate normative consummation of sexuality. In relation to gender, biological essentialism is the source of a socio-cultural matrix which Barbara Pонсе describes as a 'principle of consistency'¹²¹ – a principle that gives rise to a dichotomised, universal natural order in which gender is 'pregiven and located in the gendered/sexed body'.¹²² The naturalised order is a paradigm built upon interchangeable and yet fixed sexual and gender heteronormative dualism.

Gender identities and sexualities that do not conform to the principle of consistency and its embeddedness are acknowledged, but only as 'improper disruptions'.¹²³ The dualistic gender system privileges only notions of gender identities that are complete, unitary and coherent. There is no room for a 'third' gender or anything that is blurred or in the making or might seek to cross over, except as pathology, because gender is fixed and complete at birth. Hence in dominant medical and psychological epistemologies, gender orientation that is not aligned with the biologically sexed body is discriminatorily diagnosed as gender dysphoria for which therapy can be rendered to assist with realignment.¹²⁴ Another implication of the principle of consistency and its embedded heteronormativity is the assumption that sexual acts have fixed and stable universal significance across cultures in terms of identity and subjective meaning.¹²⁵ For example, 'heterosexuality' and its opposite 'homosexuality' are constructed as universal categories and given more or less the same meaning across differently located dominant cultures.¹²⁶

Biological essentialism employs the semantics of the 'force of nature' to conceal its cultural construction. Sexual practices that are non-conforming are given the label 'unnatural' or 'against the order of

119 Richardson (n 108 above) 460.

120 As above; Richardson (n 117 above) 109.

121 B Ponse *Identities in the lesbian world. The social construction of self* (1978) 170.

122 Richardson (n 108 above) 460.

123 Ponse (n 121 above) 170; J Butler *Gender trouble: Feminism and the subversion of identity* (1999) xxii (first published in 1990).

124 H Zachary 'Gender identity "disorder"? A critique of the binary approach to gender' (2013) 15 *Ethical Human Psychology and Psychiatry* 135; HF Davis 'Sex-classification policies as transgender discrimination: An intersectional critique' (2014) 12 *American Political Science Association* 45.

125 Vance (n 108 above) 879.

126 As above.

nature'.¹²⁷ Biological essentialism is what historically has shaped the law's involvement in sexuality. Legal regulation of sexuality comes not just with proscriptions that are intended to protect bodily integrity and autonomy, such as laws relating to rape and the age of consent to sexual intercourse. Legal regulation also comes tethered to prescriptions about the type of sex that is permitted. These prescriptions undeniably are a crucial part of a bounded and unchanging heteronormativity. Legal proscription of 'unnatural sex' is best understood as the mechanistic formalisation of an essentialist approach to sexuality. From this perspective, as Diane Richardson highlights, law's involvement with sexuality historically has served to register not the right of individuals to exercise choice over sexual behaviour but to regulate choice within the 'natural' bounds of sexuality as recognised by the state.¹²⁸

Unmistakably, the essentialist approach is a product of universalising heteronormativity.¹²⁹ It is a studied belief in heterosexuality as our natural human condition, our universal sexual *habitus* and, therefore, the universal governing cultural norm. Heteronormativity situates sexuality in what Butler describes as a 'heterosexual matrix' to mark its status as hegemonic and its foundation as naturalistic.¹³⁰ It assumes knowledge of what the body is and what it can be used for. In this naturalist matrix, the penis and the vagina are mechanistically assumed to be congruent and a natural fit, but not a penis and an anus or a vagina and a vagina.¹³¹ Ultimately, it is a positivist approach which serves to ensure that the expression of sexual behaviour ultimately stays within the prescribed hydraulic bounds of heterosexual normativity, even if conducted in private and with the participants' free consent.

3.2 Transformative social construction

The alternative to the description of sexuality in biological determinism is an epistemology of sexuality as something culturally constructed, dynamic and historically situated. The transformative construction is not anchored in a single discipline. It is best understood as being multidisciplinary as well as interdisciplinary in its discursive interrogation of sexuality and its critique of biological essentialism. The range of disciplines involved in

127 Criminal laws, including those of African states, which criminalise homosexuality, historically have used these formulations or their equivalent to denote prohibited conduct: Ambani (n 24 above) 29-31.

128 Richardson (n 117 above) 109-110.

129 M Warner 'Fear of queer planet: Introduction' (1991) 9 *Social Text* 3.

130 J Butler *Bodies that matter: On the discursive limits of sex* (1993) xx-xiv.

131 Richardson (n 117 above) 111.

transformative sexuality constructionism is wide: it includes, as Vance notes, an assortment of social interactionism, labelling theory and deviance in sociology, social history, labour studies, women's history, Marxist history, anthropology, feminism, lesbian/gay scholarship on gender sexuality and identity, and cultural studies.¹³² Given this extraordinary range of informing disciplines, it is important to avoid conflating them.¹³³ For the purposes of this chapter, however, what is important is to tap into the composite archive of alternative knowledge about sexuality in order to construct a transformative framework for recognising diverse sexualities in ways that question the notion of a unified, originary sexuality.

The various transformative construction approaches do for sexuality what, for example, feminism has done for 'gender' and critical race studies for 'race' by founding new epistemologies. Transformative constructionism transcends the biology of sexuality and its morphological assumptions in order to problematise sexuality and discursively locate it in historical time and in cultural and political communities, recognising in the process that sexualities are diverse and porous to change. It constitutes a rejection of an epistemology of sexuality as something homogeneous, fixed, unchangeable and bereft of a specific history, culture and politics. In doing this it does not deny a place for biology, but it relativises its determinism. Rubin captures the salience of transformative constructionism in the following statement:

The new scholarship on sexual behaviour has given sex a history and created a constructivist alternative to sexual essentialism. Underlying this body of work is an assumption that sexuality is constituted in society and history, not biologically ordained. This does not mean the biological capacities are not prerequisites for human sexuality. It does mean that human sexuality is not comprehensible in purely biological terms. Human organisms with human brains are necessary for human cultures, but no examination of the body or its parts can explain the nature and variety of human social systems ... we never encounter the body unmediated by the meanings that cultures give it.¹³⁴

If the disciplines which inform transformative constructionism differ in respect of the alternative terms – for example, sexual behaviour, sexual identities, sexual communities and sexual desire – at least they agree on the existential reality of contingent and diverse sexualities. There is agreement

¹³² Vance (n 108 above) 876; Rubin 'Thinking sex' (n 21 above) 149; Corrêa et al (n 39 above) 109; Y Dreyer 'Sexuality and shifting paradigms – Setting the scene' (2005) 61 *HTS Theological Studies* 729.

¹³³ Vance (n 108 above) 878.

¹³⁴ Rubin (n 21 above) 149 (footnote omitted).

that sexuality, including sexual behaviour and sexual identities, is subject to sexual moulding and that sexual meanings are socially constituted.¹³⁵ Depending on the specific cultural setting and historical period, sexual acts that are physically identical can bear different meanings for the sexuality actors.¹³⁶ History and culture shape collective sexuality experiences such as sexual identities, definitions of sexuality, ideology and legal regulation.¹³⁷ In its historicisation of homosexuality in Western society, for example, the work of Michel Foucault was groundbreaking in deconstructing sexuality and its connection with the interstices of power. Foucault interprets the regulation of sexuality as a much more complex process that occurs not so much through the traditional sanctions that are exercised by a centralised state power but through decentralised power – biopower or self-government – and by the manner in which cultural life self-regulates, including the contradictions and resistance embedded within it.¹³⁸ Foucault's discourse is addressed to Western Europe directly; nonetheless, it holds lessons beyond its Western geography in its consciousness of the specificity of culture and of historical time as moulding sexuality.

A cardinal insight to draw from transformative social constructionism is that culture and historical time provide the lexicon and taxonomies for framing sexual and affective experiences.¹³⁹ It follows that any recognition of sexuality as a universal human characteristic should not be used as a reason to concomitantly universalise sexual expressions and identities precisely because this suppresses diversity. A distinction should be maintained between advocating the universal recognition of diversity in sexualities (which expands human freedoms) and advocating the universalisation of a particular or a seemingly closed list of sexual diversities (which is constraining). Historical and cultural work on sexuality tells us that sexual identities such as 'gay', 'lesbian' and latterly 'queer' have not always existed.¹⁴⁰ Rather, they have relatively more recent historical and cultural roots, initially anchored in the West even if

¹³⁵ Vance (n 108 above) 878. Corrêa et al particularly credit the work of sociologists working from a social interactionist perspective for this insight: Corrêa et al (n 39 above) 110-112. They cite the work of Simon and Gagnon, and Plummer as pioneering work in this regard: W Simon & JH Gagnon 'Sexual scripts' (1984) 23 *Society* 53; K Plummer *Sexual stigma* (1975).

¹³⁶ Vance (n 108 above) 877.

¹³⁷ Vance (n 108 above) 878.

¹³⁸ M Foucault *The history of sexuality, Vol 1: An introduction* (1978) (originally published in 1976) 92-95 105-106 139-140.

¹³⁹ Vance (n 108 above) 878.

¹⁴⁰ P Drucker 'The fracturing of LGBT identities under neoliberal capitalism' (2011) 19 *Historical Materialism* 3.

no longer so confined. Jeffrey Weeks' work on sexuality in Britain, for example, underlines the importance of drawing a distinction between homosexual behaviour, which he considers a universal phenomenon, and homosexual identity, which he considers to be historically and culturally specific.¹⁴¹ The making of any sexuality or gender identities, however they are described – gay, lesbian, bisexual, transgender, intersexual or, indeed, heterosexual and so on – should be considered as open to the same historical and cultural analyses that are tethered to the organisation and reorganisation of family, gender, household, class, and work in specific locales.¹⁴²

Another insight drawn from transformative social constructionism, in its interrogation of biological essentialism and heterosexual normativity, is the postulate that the direction of erotic interest, whether it is classified as heterosexuality, homosexuality, bisexuality, lesbianism, transsexuality, intersexuality or any other erotic classification, is not necessarily fixed. This is because erotic and sex/gender categories organise around prevailing cultural frames. In its more radical form, transformative social constructionism maintains that there is no essential sexual desire that is biologically anchored, and that any desire is constructed in culture and the historical context in tandem with the capacities of the body.¹⁴³ However, for the purposes of developing an inclusive equality framework for recognising diversity in sexualities it is not necessary to prove which of the two – the middle ground or the radical form – is 'true', in the scientific sense.

Ultimately, it is not the origin of erotic desire that should matter for the purposes of cultural and juridical recognition but the acknowledgement that there are diversities in freely expressed and freely sought human erotic desires which ought not to be required to conform to a heterosexual matrix. The biological essentialism of heterosexual sexual desire no longer is the only explanation, even if it remains dominant. There are alternative explanations: some occupy the middle ground and see biology as interimbricated with history and culture; others discount biology altogether other than its capacity to inform what is physically possible, but all have the common objective of denaturalising sexuality.

141 J Weeks *Coming out: Homosexual politics in Britain from the 19th century to the present* (1977); see also J Katz *Gay American history* (1976); J d'Emilio 'Capitalism and gay identity' in H Abelove et al (eds) *The lesbian and gay studies reader* (1993) 467-476; J d'Emilio *Sexual politics, sexual communities: The making of a homosexual minority in the United States, 1940-1970* (1983).

142 Vance (n 108 above) 877.
Vance (n 108 above) 876.

143 Vance (n 108 above) 878.

3.3 Deconstructing the relationship between sexuality and gender: Drawing on Richardson's analytic template

The heterosexual matrix naturalises a normative relationship between sexuality and gender. On biological properties, it constructs a principle of consistency so that sexuality and gender stand or fall congruently together in a seamless, universal web without regard to history and culture. In this matrix, sexuality is not just related to but also conflated with gender arrangements, as if the concepts are interchangeable.¹⁴⁴ Gender is taken to constitute sexuality and sexuality to be expressive of gender.¹⁴⁵ Reproduction is assumed to be an important and necessary element in a sex/gender differentiation system. The outcome of the principle of consistency is not just heterosexual normativity but also patriarchal normativity. Cumulatively, these two cultural forces produce heterosexual patriarchy or hetero-patriarchy.¹⁴⁶ Hetero-patriarchy signifies the normatisation of doubleness or even tripleness in cultural hegemonic power in which sex, biologically binarised between male and female, logically connects to gender binaries which overlap teleologically rather than arbitrarily with sexuality binaries in which the masculine is dominant. This naturalised sexuality/gender nexus has been critiqued from feminist and post-structural perspectives.

Comprehension of the naturalised relationship between sexuality and gender opens up an important deconstruction site for a deeper understanding of sexuality in any discourse on sexualities, including African sexualities. Diane Richardson analyses constructionist approaches that interrogate the naturalised sexuality/gender nexus. Her analysis provides us with a valuable template guiding us through approaches which, albeit motivated by different epistemological concerns, nonetheless collectively provide a conceptual resource from which to construct a transformative equality approach that is cognisant of the sexuality/gender nexus.¹⁴⁷ Richardson's template comprises five main 'strands' or schools

144 Vance (n 108 above) 879.

145 Richardson (n 108 above) 461.

146 F Valdes 'Unpacking hetero-patriarchy: Tracing the conflation of sex, gender and sexual orientation to its origins' (1996) 8 *Yale Journal of Law and the Humanities* 161; AP Harris 'Heteropatriarchy kills: Challenging gender violence in a prison nation' (2011) 37 *Washington University Journal of Law and Policy* 13 at 22-23; GS Elder Hostels, *sexuality and the apartheid legacy: Malevolent geographies* (2003).

147 Richardson (n 108 above) 457.

of thought which illuminate the intersection between sexuality and gender.¹⁴⁸

3.3.1 Naturalist approach

The first school of thought in Richardson's template captures biological essentialism. It is an epistemology of sexuality that – across cultures – dominates our understanding of the relationship between gender and sexuality to this day. This approach, which naturalises and normatises gender and sexual binaries and connects gender and sexuality as coherent components of a congruent polarity, has been discussed in the section on 'essentialist social construction' (above).¹⁴⁹

3.3.2 Prioritising gender over sexuality

The second school of thought is constructionist. It is represented by feminists who, from a materialist perspective, critique the essentialist approach, arguing that gender is the main category in explicating sexuality.¹⁵⁰ The binary divide between heterosexuality and homosexuality is seen as deriving from the creation of gender categories through social stratification in patriarchal societies.¹⁵¹ According to this perspective, gender is constitutive of sexuality and sexuality is an expression of gender. Though sexuality and gender are linked, gender is the 'central organising principle' that, in turn, informs the construction of sexual selves.¹⁵²

3.3.3 Gender as an effect of sexuality

The third school of thought also is constructionist as well as feminist, but with an important difference. It regards *sexuality* and not gender as the central organising principle. It is a perspective advocated by feminists who posit that sexuality is constitutive of gender and not the reverse.¹⁵³ From a radical feminist perspective, heterosexuality is the sine qua non of gender. A leading exponent of this view is Catherine MacKinnon. She argues that

148 Richardson (n 108 above) 458.

149 Sec 3.1.

150 Richardson (n 108 above) 461-462.

151 As above.

152 Richardson (n 108 above) 461.

153 C Delphy 'Rethinking sex and gender' (1993) 16 *Women's Studies International* 1.

sexuality creates and institutionalises gender relationships in which there is male sexual dominance and female sexual subordination.¹⁵⁴ She says:

Feminist inquiry into women's own experience of sexuality revises prior comprehensions of sexual issues and transforms the concept of sexuality itself – its determinants and its role in society and politics. According to this revision, one 'becomes a woman' – acquires and identifies with the status of the female – not so much through physical maturation or inculcation into appropriate role behaviour as through the experience of sexuality: a complex unity of physicality, emotionality, identity, and status affirmation. Sex as gender and sex as sexuality are thus defined in terms of each other, but it is sexuality that determines gender, not the other way around ... Sexuality, then, is a form of power. Gender, as socially constructed, embodies it, not the reverse. Women and men are divided by gender, made into the sexes as we know them, by the social requirements of heterosexuality, which institutionalizes male sexual dominance and female sexual submission.¹⁵⁵

3.3.4 Sex and gender as separate, non-deterministic, historically and culturally situated systems

Richardson's fourth school of thought is actually an overview of the discourse of poststructuralism. Unlike the other schools of thought, this discourse breaks the link between sexuality and gender. Gayle Rubin is credited as a trailblazer in the conceptual separation of sexuality from gender so that ultimately they are understood as being distinct categories.¹⁵⁶ Rubin does not deny that gender theory and its conceptual tools for detecting and analysing gender-based hierarchies offer explanatory power in relation to sexuality, but she maintains that sex and gender are not interchangeable.¹⁵⁷ Her approach has been developed in part as a critique of feminism. She is not questioning feminism's proven capacity to theorise gender, but rather its capacity adequately to theorise sexuality using the canon of gender.

Rubin's concern is that in theorising sexuality, feminism has not been sufficiently inclusive and, moreover, has constructed a sexual system that mimics a patriarchal sexual hierarchy through 'sexual demonology' and

¹⁵⁴ CA MacKinnon 'Feminism, Marxism, method and the state: An agenda for theory' (1982) 7 *Signs: Journal of Women in Culture and Society* 515; see also C Ingraham 'The heterosexual imaginary: Feminist sociology and theories of gender' (1994) 12 *Sociological Theory* 203.

¹⁵⁵ MacKinnon (n 154 above) 531 533 (footnotes omitted).

¹⁵⁶ Rubin (n 21 above). See also B Martin 'Sexualities without gender and other queer utopia' (1994) 24 *Diacritics* 104.

¹⁵⁷ Rubin (n 21 above) 170.

'recreating a very conservative sexual morality'.¹⁵⁸ She does not deny the overlap between gender and sexuality, not least because the 'sex/gender system transforms biological sexuality into products of human activity',¹⁵⁹ and that 'the development of the sexual system has taken place in the context of gender relations'.¹⁶⁰ Rather, her argument is that merging the two suggests that sexuality is reducible to sexual intercourse. She argues that gender and erotic desire are not one and the same and, as the issue becomes more about sexuality and less about gender, feminist analyses become misleading and even irrelevant.¹⁶¹

Queer theory

The discourse to delink the relationship between sexuality and gender has been taken a step further by theorists working within deconstructionist paradigms associated with what Teresa De Lauretis first described in 1991 as 'queer theory'.¹⁶² On the one hand, queer theory emerged as a new academic discipline representing a new critical and radical rethinking of Western gay and lesbian cultures and politics. On the other, it is not so much that its theoretical underpinnings are new, but that its concerted effort is to develop a grammar for not merely decentring but, more radically, for displacing a metaphysics of both sex and gender. In this sense it is important not to lose sight of the fact that the theoretical strands of queer theory are found both in feminist theory and in the deconstructive work and post-structural schools of thought associated with leading French philosophers, especially the psychoanalytical discourse of Lacan, Derrida's grammatology and Foucault's history as discourse.¹⁶³

158 Rubin (n 21 above) 166.

159 G Rubin 'The traffic in women: Notes on the "political economy" of sex' in R Reiter (ed) *Towards an anthropology of women* (1975) 157 at 159.

160 Rubin (n 21 above) 170.

161 As above.

162 A Jagose 'Queer theory' (1996) *Australian Humanities Review*, <http://www.australianhumanitiesreview.org/archive/Issue-Dec-1996/jagose.html> (accessed 24 December 2014); T de Lauretis 'Queer theory: Lesbian and gay sexualities' (1991) 3 *Differences: A Journal of Feminist Cultural Studies* iii.

163 LM Alcoff *Visible identities: Race, gender, and the self* (2006). In respect of the French philosophers' psychoanalytic and deconstructive discourses, the following works can be cited as examples only: on psychoanalysis, J Lacan *Ecrits* trans B Fink (2006), originally published in French in 1966; on deconstruction and history as discourse, see, respectively, J Derrida *Of grammatology*, trans GC Spivak (1976), originally published in 1967; M Foucault *History of sexuality, Vol 2*, trans R Hurley (1990).

Partly on account of its fairly wide theoretical base, queer theory is not a single idea but is a transposition of disparate theoretical strands of post-structural thinking to the metaphysics of sex and gender.¹⁶⁴ Linda Alcoff summarises the core of post-structuralist thinking that informs queer theory.¹⁶⁵ A major post-structuralist premise is that there is no biological determinism or a deterministic human and cultural history, as such. In this sense, sex and gender are nominal – mere fictional constructs. They are not real for the reason that they are totally imprinted by history and culture.¹⁶⁶ Therefore, there is a potentiality for a ‘free play’ of sexual and gender diversity and expression without the encumbrance of a deterministic sex or gender identity, whether formulated by the patriarchy or by feminism.¹⁶⁷ Ultimately, queer theory can be understood as a discourse not merely critiquing the essentialism of sexual acts and sexual identities that are built around the normativisation of *any* sexual culture, but also unseating the metaphysics of sex and gender. In this sense, it is a heuristic that seeks to do what feminist anti-essentialist approaches did for Western feminism when they critiqued inherent reductionist and universalising tendencies within feminist approaches in order to reveal the ‘manyness’ of women.¹⁶⁸

Steven Seidman captures much of the theoretical orientations of queer theory by explicating the politics behind the theory.¹⁶⁹ The politics underpinning queer theory are a politics of difference and pluralism which aims to construct a political community that accepts the imperative of the equality and uniqueness of any sexuality. Queer theory signifies a departure from advocating equality for stigmatised sexualities through identity-based theory, and a move towards foregrounding the politics theorising sexual diversity and its non-hierarchical recognition in a plural democracy. Seidman describes queer theory as both theory and praxis, which seeks to mobilise against all normative hierarchies whether they are straight, belong to the mainstream, or are lesbian and gay.¹⁷⁰ The aim is to problematise *all* identity-based approaches and not just heterosexuality. Ultimately, queer theory seeks to achieve a radical plural democracy in which there is no hierarchical recognition of any sexuality or gender.

¹⁶⁴ Works associated with queer theory include E Sedgwick *Epistemology of the closet* (1990); Butler (n 123 above); D Halperin *Saint Foucault: Towards a gay hagiography* (1995); J Halberstam *In a queer time and place: Transgender bodies and subcultural lives* (2005).

¹⁶⁵ Alcoff (n 163 above) 140.

¹⁶⁶ Alcoff (n 163 above) 140, citing M Foucault ‘Nietzsche, genealogy, history’ in P Rabinow (ed) *The Foucault reader* (1984) 83.

¹⁶⁷ Alcoff (n 163 above) 142.

¹⁶⁸ Spelman (n 57 above).

¹⁶⁹ Seidman (n 66 above) 116 118.

¹⁷⁰ Seidman (n 66 above) 118.

By moving away from all sexual identities, whether described as heterosexual, homosexual, gay or lesbian, the politics of queer theory concomitantly abandons a linguistic and discursive archive that implicitly privileges heterosexuality as the norm, thus keeping alive sexuality as a binary and master framework for constructing the sexual self. This abandonment deconstructs a power and knowledge system that continues to define bodies according to fixed sexualities even when, say, homosexuality is socially and juridically recognised. The goal is a radical transformation of the epistemology of sexuality in order to displace all binaries and hierarchies so that there are no sexual majorities and minorities.

Halberstam's transgender discourse provides an illustration of how it is possible to see normative hierarchies in all sexualities, including lesbian and gay sexualities.¹⁷¹ The discourse argues for an understanding of sexuality that breaks with the binarised heterosexual/homosexual matrix, highlighting that understanding sexuality only through terms such as lesbian, gay, straight, male or female is not sufficient. This is so because such understanding limits us to homo/heterosexual binaries that do not cover the vast field of sexual experience, behaviour and self-understanding. For Halberstam, the physical body is a costume that can be altered outside the framework of binaries such that masculinity, for example, should not be understood as ordained in genetic men but, instead, constructed.¹⁷² Therefore, it is better to think about identities as potential, rather than fixed, and to think about sex, gender and sexuality as something that we construct and which potentially is changing so as to leave room for the yet unnamed.¹⁷³ The implication of Halberstam's argument is that, on a continuing basis, we need to discover a new language, exploring new vocabularies which describe, name, and accommodate sexualities and genders that are different and do not fit into normativised frameworks, even those of constructionist approaches.¹⁷⁴

Butler's constructionist theoretical approach, which first appeared in her groundbreaking work, *Gender trouble*, not only sought to frame gender and sexuality outside the normativised binaries but, equally significantly,

¹⁷¹ J Halberstam 'F2M: The making of female masculinity' in L Doan (ed) *The lesbian postmodern* (1994) 210-228.

¹⁷² As above.

¹⁷³ As above.

¹⁷⁴ As above.

also found a linguistic frame – gender performance – with which to denaturalise and delink sex and gender categories.¹⁷⁵ Butler's work is a critique of feminist approaches that restrict the meaning of gender to masculinity and femininity.¹⁷⁶ For Butler, identity and desire are not situated in a bodily essence or reality, but in sustained social 'performance' in speech and acts.¹⁷⁷ According to Butler 'there is no gender identity behind the expression of gender',¹⁷⁸ because gender identity is 'performatively' constituted by the very expression of gender.¹⁷⁹ Thus, it is discursive practices and, more specifically, cultural interpellation that produce gender, including gender hierarchies that are built around masculinity and femininity, and not gender or sexuality itself. When the practices are repeated and constantly produced, the gendered and sexed body is culturally produced and reproduced.¹⁸⁰

Butler has been at the forefront in critiquing feminist foundational constructions of gender. She highlights feminism's failure to resolve the circularity in its cardinal premise that gender is the cultural interpretation of sex (the biological category) and its ascription of a linguistically constrained meaning to the concept 'construction', which produces a limited understanding of gender.¹⁸¹ In this connection Butler asks whether the feminist premise that gender is culturally constructed is not a form of inscribing on anatomically differentiated bodies a social determinism in ways that foreclose the possibility of agency and transformation, rendering them passive recipients of inevitable cultural fiat.¹⁸² If that is so, she says it makes better conceptual sense to understand gender in the same way as biological destiny is posited.¹⁸³ Indeed, Butler argues that if gender construction implies social determinism, then sex cannot qualify as a pre-discursive anatomical facticity. Rather, we should treat sex as if it been gender from the outset.¹⁸⁴ Butler's arguments ultimately question the assumptions of the two-gender system in feminism and feminism's deterministic understandings of patriarchy.

¹⁷⁵ Butler (n 123 above). Butler's other works include *The psychic power of life: Theories in subjection* (1977); *Bodies that matter* (n 130 above).

¹⁷⁶ Butler (n 123 above) vii-viii.

¹⁷⁷ Butler (n 123 above) 180.

¹⁷⁸ Butler (n 123 above) 33.

¹⁷⁹ Butler (n 123 above) 33.

¹⁸⁰ Butler (n 123 above) xiv-xv.

¹⁸¹ Butler (n 123 above) 11.

¹⁸² As above.

¹⁸³ As above.

¹⁸⁴ Butler (n 123 above) 12.

The essential premise in Butler's theoretical approach, unlike that espoused in traditional feminist approaches, including MacKinnon's radical feminism,¹⁸⁵ is that we do not begin with gender or sexuality, but with performance which, in turn, constitutes gender and sexuality. The implication of Butler's approach is to destabilise the coherence that is given to gender and sexuality. It is an approach that frees the body from any particular gender or sexuality so that potentially it is open to multiple permutations and transformations of genders and sexualities. At the same time, the body is not totally free because it remains anchored in a society and a culture in which there is a compulsion to perform gender in a certain direction. In a cultural context where heterosexuality is 'compulsory', gender performance that is not compliant is punished.¹⁸⁶ In a Foucauldian sense, the body remains subject to the influence or discipline of the prevailing socially and culturally produced regulatory norms, including naming, categorisation and normative grids of intelligibility.¹⁸⁷

It can be asked whether queer theory has any relevance for an epistemology of African sexualities, especially given the origins of the queer canon in the West. The answer is resoundingly positive. It would be a mistake to regard queer theory as irrelevant to African scholars, as Marc Epprecht claims for example.¹⁸⁸ Rather, it is a crucial theoretical archive for framing sexualities in settings where the LGBTI taxonomy and its normative identities may distort local grammars of sexualities, such as in African settings where transgressive sexualities historically remain hidden and not openly lived and articulated. Queer theory coheres with Fraser's status-subordination approach with its accent on overcoming inequality rather than vindicating Hegelian identity.¹⁸⁹ Furthermore, by implication, queer theory coheres with a hermeneutics of Africanness which I advocate in this book as a hermeneutics in which *all* identities are better understood as identifications that are contingent and open to radical historicisation.

Whatever the cultural and geographical location, queer theory is an important conceptual resource for thinking more seriously about intersectionalities, as well as more flexibly about the diversity of sexualities and genders in different cultural settings, so as to achieve inclusive equality. It is a useful resource for constructing an equality framework that is porous to plural gender and sexual subjectivities in a way that shuns

¹⁸⁵ MacKinnon 'Feminism, Marxism, method and the state' (n 154 above).

¹⁸⁶ Butler (n 123 above) 177-178.

¹⁸⁷ Corrêa et al (n 39 above) 123-126.

¹⁸⁸ M Epprecht 'Foreword' in M Steyn & M van Zyl (eds) *The prize and the price: Shaping sexualities in South Africa* (2009) vi.

¹⁸⁹ See sec 2.2 above.

gender and sexual master-dichotomies and recognises that the link between gender and sexuality is not determinate or uni-directional.¹⁹⁰ Rather, depending on the concrete setting, including the cultural, sub-cultural and social settings, it can be complex, fluid and unstable so as to admit a fragmentation of sexualities and gender identities that are outside the conceptual LGBTI framework. Queer theory requires that we are not wedded to the heterosexual/homosexual binary as a master framework for building knowledge about sexual selves and their social and cultural institutions.¹⁹¹ Instead, it invites us to treat LGBTI as no more than a broad compass or broad grid of intelligibility, and certainly not a determinate one, for guiding us in our thinking about a human rights framework that can accommodate a marginalised or even excluded plurality of sexualities and gender identities, and can imagine sexualities without binarised genders.

Thus, queer theory relativises the LGBTI framework so that we use it to mobilise the rights claims of persons with diverse sexualities aware of not only its strategic value but also its epistemic and emancipatory limits. The LGBTI framework is built on a foundation of gender and sexuality as natural categories.¹⁹² Even if transgressive, the framework, as argued earlier, is a ‘reconfiguration’ rather than the eradication of the heterosexual matrix through which a heteronormative gaze recognises bodies, genders and sexual desires.¹⁹³ In critiquing the term ‘sexual orientation’ Carl Stychin makes the point that seeking remedial recognition of a category that has been invested with social and historical meaning, but has been misrecognised, is an important social goal.¹⁹⁴ However, to do so does not dispense with the more general problem of the limits of categorical thinking, especially its exclusionary tendencies.¹⁹⁵ In using the category, we should concomitantly maintain a level of ‘provisionality’ in its use so that it does not become exclusionary in its own right.¹⁹⁶

The transformative way forward, therefore, is to avoid over-determining LGBTI as a grid of intelligibility, including its own gender binaries. In seeking to ‘normalise’ historically excluded sexualities and genders, queer theory alerts us to the danger of creating new systems of normative dominance and hierarchy.¹⁹⁷ Therefore, the LGBTI category

¹⁹⁰ Richardson (n 108 above) 464.

¹⁹¹ Seidman (n 66 above) 126.

¹⁹² Butler (n 123 above) 154-155.

¹⁹³ Butler (n 123 above) 194.

¹⁹⁴ C Stychin *Law's desire: Sexuality and the limits of justice* (1995) 155.

¹⁹⁵ As above.

¹⁹⁶ As above.

¹⁹⁷ Seidman (n 66 above) 128.

should not be applied in a way that elevates it to a master framework that comes with rigid psychological and social boundaries for determining inclusion criteria that ultimately, and paradoxically, serve to suppress or erase individual subjectivities and group formations that are not compliant.¹⁹⁸ When new rights-holders are admitted into the pantheon of sexual rights but others are left out through the use of over-determined criteria, we produce 'strangers'.¹⁹⁹ Writing from a human rights perspective, Sonia Corrêa et al implore us to avoid the trap of well-intentioned advocacy and human rights reforms that achieve a measure of success but inevitably result in incomplete, albeit expanded, 'sexual citizenship' as only those groups cohering with the human rights law paradigm are admitted to citizenship. Drawing on the work of Butler and other philosophers, Corrêa et al beckon us towards a human rights theory and praxis that are inclusive rather than exclusionary, and discursive rather than linear.²⁰⁰ They urge us to think about human rights as a transformative rather than a linear or incremental project and, in the final analysis, as a discursive process that is constantly made and remade by social groups as part of their ongoing political struggle.

Limits of queer theory

At the same time, its insurgent insights aside, queer theory, as with any other critical knowledge system, is not above reproach. There are aspects of queer theory and post-structuralism in general, which paradoxically seem over-deterministic and even implausibly totalising.²⁰¹ It is as if poststructuralists implicate one genus of determinism – nature or biology – and supplant it with another – culture and history – to the point of obscuring biology, gender and consciousness altogether. Alcoff makes this point by way of criticising the theoretical excess of poststructuralism.²⁰² Doubtless, when interpellated, knowledge and power constitute a coercive structure. Knowledge and power function as constraining forces that tie the individual to an identity. But the question is: how totalising is the coercive structure? Are corporeality and intentionality completely erased by their imprint? Is the coercive power of interpellated knowledge and power so total that it denies the subject agency? These are hard questions. Responding to the last two questions in the affirmative serves implausibly to reduce sex and gender to nominalism and to remove the place of agency

198 Seidman (n 66 above) 126-128.

199 Corrêa et al (n 39 above) 161.

200 As above.

201 Alcoff (n 163 above) 140.

202 As above.

from what is suggested by the experience of the intersection between raced subjects and coercive knowledge/power systems.²⁰³

In responding to the question as to whether the power of discourse renders sex and gender categories nominal, we can begin by the observation that even where there is a sustained and systemic effort to interpellate knowledge and power, the effort to oppress rarely is ever completely successful. More often than not, oppression is incomplete so as ironically to leave, albeit by default rather than by design, interstices for the emergence of insurgent power.²⁰⁴ The emergence of feminism tells us women have subjectivities and are participants in the making of their identities and are not merely at the receiving end of discrepant power in patriarchal discourses. The histories of resistance against racial oppression and colonial rule reveal a rich archive of persons who are oppressed but who historicise the knowledge and power systems loaded against them as much as they themselves are historicised. Thus, the passive submission of oppressed subjects to power is one possible response but is not the only one. Depending on the specific circumstances and historical moment, there is also a place for positionality and human agency: a space for the oppressed as a participant in the historical moment, as someone who becomes conscious of oppressive circumstances and may negotiate, or compromise, or ultimately, resist.²⁰⁵

Identities, including sexual and gender identities, are real, as Stuart Hall maintains.²⁰⁶ Sexual and gender identities can be disrupted but are not as free-floating as poststructuralism suggests.²⁰⁷ Lynne Segal appropriates Hall, in part, to make these points in her critical appraisal of Butler's position on gender as performative.²⁰⁸ In a counter-argument to gender identity as inscribed in heterosexual discourse through cultural reiteration but without any secure attribution of identity or bodily markings, Segal underscores the existential grounding of identities in the material organisation of our lives.²⁰⁹ Whether our sexual or gender identities are freely chosen or thrust upon us, she reminds us that the identities are real and not phantasms. Drawing on Hall, she says that the

203 Alcoff (n 163 above) 140, citing JM Valadez *Deliberative democracy, political legitimacy and self-determination in multicultural societies* (2001); M Omi & W Howard *Racial formation in the United States: From the 1960s to the 1980s* (1986).

204 J Comaroff & J Comaroff *Of revelation, colonialism and consciousness in South Africa Vol 1* (1991).

205 Alcoff (n 163 above) 144-149.

206 See ch 2.

207 L Segal 'After Judith Butler: Identities: Who needs them?' (2008) 25 *Subjectivity* 381.

208 Segal (n 207 above) 382 385.

209 Segal (n 207 above) 385.

more we try to disrupt them the more paradoxically we confirm the existence of what is being disrupted.²¹⁰ In short, Segal is saying that our biology and our sexed embodiment are real in a pivotal sense and that normative culture cannot erase them. We cannot, through semiotic analysis alone, escape that biology conditions cultural life even if the question always is to what extent.

3.3.5 Sexuality and gender elision

In Richardson's fifth school of thought sexuality and gender are so closely connected that they cannot be extricated from each other.²¹¹ This last category resembles the essentialist approach (the first school of thought) but only in terms of its expression and not in its supposed origins. The constructionist framework used by Tamsin Wilton is associated with the insight that gender and sexuality are 'inextricably woven' such that the two categories are conflated with the erotic and non-erotic aspects of gender and are a part of the same social architecture.²¹² Wilton uses the term 'heteropolarity' to capture the polarity that saturates gender and sexuality not as something natural, but as socially constructed.²¹³ An important insight in Wilton's analytical framework is that heteropolarity explains not only heterosexual relationships but also, more significantly, same-sex in relationships which gender identities are constructed around masculine and feminine binaries.

4 Way forward

Sexuality is not something free-standing, outside of culture. In the final analysis the project of deconstructing sexuality concomitantly is a project in deconstructing the broader culture, wherever it is located. Martin Chanock highlights the importance of recognising that, just as colonialism has been historically orientalising, so the emergence from colonial rule has witnessed political elites in 'postcolonial' states deploy cultural power using the West as an occidentalising rhetorical counter.²¹⁴ As part of a

210 Segal (n 207 above) 385, citing B Johnson & E Otto 'A conversation with Stuart Hall: On the use and status of the term 'post-colonial' (1999) 7(1) *Journal of the International Institute*, available at <http://hdl.handle.net/2027/spo.4750978.0007.107> (accessed 8 June 2017).

211 Robinson (n 108 above) 464.

212 T Wilton 'Which one's the man? The heterosexualisation of lesbian sex' in D Richardson (ed) *Theorising heterosexuality: Telling it straight* (1996) 125.

213 Wilton (n 212 above) 138.

214 M Chanock 'Human rights and cultural branding: Who speaks and how?' in A An-Na'im *Cultural transformation and human rights in Africa* (2002) 38 at 44-45.

political project to construct and assert a powerful ideology of nationalism and nation-building, sexualities that lie outside the dominant cultural frameworks are vulnerable to being cast as belonging to the West, as un-African and lacking in indigenous authenticity and legitimacy.²¹⁵ In this occidentalising process, culture is used to build a state-sanctioned politically correct discourse. It is used to exclude from state protection social groups whose sexualities are outside the domain of majoritarian and hegemonic culture. Once consigned to the domain of transgressive culture, the consequent oppression and suffering are sanitised so that they are not politically recognised as a juridical wrong but, instead, as just deserts.

Part of the work in clearing the African sexuality underbrush, therefore, requires highlighting the dangers of an uncritical acceptance of hegemonic discourses about African sexualities that assume an African cultural essence, as doing so has self-fulfilling outcomes which are apt to legitimise the status quo in many African states, keeping human rights beyond the domestic reach of excluded and marginalised sexualities. The question of who/what is African requires conceding at the outset that in a continent made up of diverse civilisations, histories, cultures, religions, ethnicities and so on, Africanness cannot claim ontological stability. Rather, the concept of Africanness is a contested concept that lends itself to varied uses depending on the context and intention of the actor(s), including 'manipulation and collective passion'.²¹⁶ The concept of African sexualities is no different.

Culture is neither monolithic nor static. In polities that recognise pluralism, the claim of a monolithic African sexuality based on religion faces a similar challenge in its efforts to maintain an untenable singular axiom on a continent where social groups and individuals share different theistic and non-theistic beliefs. Ethnographic accounts of contemporary sexual lives, experiences, identities and relationships among Africans clearly refute this monolithic axiom and, instead, attest to a heterogeneous sphere of sexualities that lie outside the dominant social and/or legal orders.²¹⁷ Political activism, research and emerging scholarship on the African continent lend their weight, not just to providing contrary evidence but also to challenging hegemonic constructions of sexuality and advocating alternative constructions.

²¹⁵ B Ndjio 'Sexuality and nationalist ideologies in post-colonial Cameroon' in S Wieringa & HF Sivori (eds) *The sexual history of the global south: Sexual politics in Africa, Asia and Latin America* (2013) 120-144.

²¹⁶ EW Said *Orientalism* (1979) xvii.

²¹⁷ Tamale (n 1 above).

In advocating the recognition of diverse sexualities, I am mindful of the fact that sexuality claims are vulnerable to misconceptions and distortions, especially by their opponents. There is a need to reassure all stakeholders that the parlance of sexuality-freedom is not a Trojan horse for condoning conduct that harms others. From the outset it is important to clear away this underbrush of potential misconception so as to clarify what is at stake. The claim has never been that sexual claims are human rights *sui generis* that come with an entitlement to unqualified respect, protection or fulfilment regardless of their adverse impact on the rights of others. The duty to respect the rights of others and to refrain from conduct that harms others is a core value and a point of departure in discourses that frame sexuality as a fundamental right.²¹⁸ Thus we are not clamouring for an antinomian licence or anarchic exceptionalism.²¹⁹ Rather, it is a struggle for cultural recognition against the backdrop of a legally sanctified cultural system that disciplines, oppresses and even persecutes certain disfavoured and stigmatised sexualities merely because they defy heteronormativity.²²⁰ It is a political and juridical demand for the enjoyment of equal citizenship in respect of sexualities that are at the receiving end of a misrecognition which has cultural roots.

African sexualities are as complex and as diverse as their counterparts elsewhere. Admittedly, the language and many of the analytical frameworks that are used in contemporary discourses on sexuality were first assembled in the West. At the same time, as suggested at the beginning of this chapter, the language and the frameworks are a relevant and necessary part of the discourse. What is important is that we are able to fathom their use as well as their limitations in African settings. From this perspective, Carole Vance's widely cited statement that 'the hallmark of sexuality is its complexity: its multiple meanings, sensations and connections' has equal resonance in examining African sexualities.²²¹ Vance's statement is instructive partly because it alerts us to the importance of bringing nuance to any discourse on sexuality. Avoiding over-generalisations and essentialism is an important concern in mapping African sexualities. At the same time, there is a need to avoid unproductive anti-essentialism so that we can tap into productive transcultural knowledge and experience.

²¹⁸ AM Miller *Sexuality and human rights* (2009) 44.

²¹⁹ Miller *Sexuality and human rights* 44; CG Ngwena 'Sexuality rights as human rights in Southern Africa with particular reference to South Africa' (2002) 17 *SA Public Law* 1 at 2.

²²⁰ Fraser *Justice interruptus* (n 32 above) 18-23.

²²¹ C Vance 'Pleasure and danger: Towards a politics of sexuality' in Vance (ed) *Pleasure and danger: Exploring female sexuality* (n 21 above) 3.

Sexuality claims should not be subject to limitations more onerous than other rights simply in order to require conformity to a single, state-ordained heteronormative standard. More pertinently, respect, protection and the fulfilment of sexuality should not be denied merely on account of a politically, culturally and legally privileged sexual moral value system that, ideologically, serves the same political and cultural interests as racism, ethnocentrism, religious chauvinism and other ‘isms’.²²² The equal citizenship claim is that in a liberal society that professes a commitment to pluralism there ought to be recognition of a democratic and pluralistic sexual ethics that recognises benign variations of sexual cultures rather than pursues conformity to a sanctified hierarchical system of sexual values.²²³ When diverse sexualities are oppressed through state regulatory standards that stigmatise – or worse – criminalise sexual value systems or behaviours that are different from the privileged standard, the outcome is a sexuality hierarchy:²²⁴ the apartheidisation of sexuality and the institutionalisation of the status subordination of othered social groups. The struggle for the recognition of transgressive sexualities is a struggle for a pluralistic domain of sexuality ethics that is inclusive, overcoming status subordination and sexuality hierarchisation.

222 Rubin (n 21 above) 152.

223 Rubin (n 21 above) 153.

224 Rubin (n 21 above) 152-155.