

## **Pubic Publics: The Zuma Trial and the history of Sex in South Africa**

In late 1927 a new Immorality Act for the Union laid the *de jure* foundations for the public life of 20<sup>th</sup> century South Africa. Why was this legislation against immorality necessary at all? Lawmakers debating the merits of this, and subsequent acts, argued that despite the robust universal loathing in "metropolitan and settler cultures" as well as "intact native cultures", that despised Sex across the colour line, in the hurly-burly of industrializing spaces these Acts were necessary. This new world was described as one in which women in particular were entering new economies and breaking through older kinship and labour forms, indulging in new identities and intimacies. Everywhere male class and cultural power was under siege. Eales, Bozzoli, Guy, Badassy, Hyslop, Cousins and many others have written of the accommodation of patriarchies that began to cement around control over women's migrations, their labours and their relationships, across all spectra of South African social life. Most historical work on this has been unable to conjoin research on women and men termed "Coloured", "Native", "African", "Asian", "Indian", "European", "Afrikaner" and "white", except in work on health sanitation segregation, where the meeting together of these simultaneous constructions is impossible to disentangle.<sup>1</sup> Instead the focus of most work has been to study the histories of South African women and men as if they really could not be studied or understood outside of their categorizations. This has had the effect of solidifying popular convictions of "really existing", distinct and separate "cultures and races" into the present. Despite the challenges of writing about these phenomena in chords, historians and sociologists such as Walker and others, have been able to show that this elaborated control, predicated on the ground of moral cultural necessities, created the supra exploited social and labour power necessary for the growth of South African racial capital.<sup>2</sup> Special precautions and practices were needed to guard these cultures, to prop them up and to underpin them. Women's bodies then, and now, formed instruments for specific assertions and utterances by powerful men. While younger men were also exploited "women" were categorized in permanent and fixing ways in law and practice. In this way the category "man" was also fixed. Men thus made spoke on behalf of women, and justified their actions as protecting "women's interests". Since men could not bear children, women's conceptive powers,

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<sup>1</sup> For the latter see M. Swanson "The Sanitation Syndrome: Bubonic Plague and Urban Native Policy in the Cape Colony, 1900-1909," *Journal of African History*, (18 1977) and work by R. Packard *White Plague Black Labor: Tuberculosis and the political economy of health and disease in South Africa* (Berkeley: University of California Press, 1989); Dubow, Parle, Burns and others on health (complete) and for the former J. Guy, "An Accommodation of the Patriarchs: Theophilus Shepstone and the Foundations of the System of Native Administration in Natal," paper presented at Conference on Masculinities in Southern Africa, University of Natal, Durban, July 1997; "Gender oppression in southern Africa's precapitalist societies," in *Women and Gender in Southern Africa to 1945*, edited by C. Walker (Cape Town: David Philip, 1990); P. Badassy " 'and my blood became hot!' Crimes of Passion Crimes of Reason" (University of KwaZulu-Natal, Unpublished Masters Thesis); paper of same title presented to the History and African Studies Seminar (University of KwaZulu-Natal, October 2005); E. Brink " 'Maar a Klomp Factory Meids' " in ... and A. van Niekerk "Whitewomen and Zebediela"; and M. Swan, P. Podbury, I. Goldin; and K. Eales "Patriarchs, Passes and Privilege" in P. Bonner, I. Hofmeyr et al *Holding their Ground* (Johannesburg: Ravan Press, 1989); B. Bozzoli, "Marxism, Feminism and Southern African Studies", *Journal of Southern African Studies*, (9: 2, 1983). For Hyslop and Cousins see later references.

<sup>2</sup> C. Walker "Women and Migrant Labour" in *Women and Gender in Southern Africa to 1945* (Cape Town: David Philip, 1990).

and their birth labours, were the target of a plethora of laws and provisions through to the democratic era of 1994. These laws drew chain fences around so-called religious, spiritual, biological, scientific legitimations of difference. All of these were preeminently *cultural* explanations and while appearing to be fixed, were actually plastic; while appearing to "be given", were actually being made and remade. Their remaking required effort and new materials, and they depended on naturalisation—always vulnerable—for their persevering, but in the end always very brittle, power.

These naturalizations, of the Vice and Unnatural crimes of "miscegenation", also stood in an international field of law-making and law-enforcing. Until the 1940s at least they were neither unusual nor abhorrent in the eyes of most of the powerful in the world. While many women and some men certainly resisted these laws, and the practices that matched them, and many struggled against the consequences of these state intentions, the "Politics of the Womb" formed a central part of the Public Politics of South Africa throughout the 20<sup>th</sup> century.<sup>3</sup>

But this Politics of the Womb only touched one side of South African Public Politics. Obsessed with creating and defining the boundaries of race through containing "Unnatural Acts", and with classing "whites" out of poverty, the work of classifying, naming and attacking all homo Sex Acts bubbled over in these same cauldrons. While South Africa's miscegenation and race obsessed laws concerning hetero Sex have been almost universally decried, there is far less recognition of the package deal of "Sex thinking" on South Africa legal orders hinged. It is salutary, and indeed thrilling, that one of the first public figures in late apartheid and post-apartheid South Africa to name and interrogate this was and remains the Anglican Archbishop Desmond Tutu. His ability to see the linkages between Sexual exploitation and oppression across a range of powerfully constructed divides, and his ability to insist that "freedom is indivisible", has provoked and nurtured a space, a counter-point, to more than a 100 years of blinkered thinking in South African liberation talk and strategy.<sup>4</sup> As Croucher, Wojcicki, Ratele, Forman, Gevisser, Cameron, Epprecht, Reddy and others have shown<sup>5</sup> unlike "miscegenation",

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<sup>3</sup> L. M. Thomas's work has been inspirational. See her *Politics of the Womb: Women, Reproduction, and the State in Kenya*. (Berkeley: University of California Press, 2003); also see D. Jeater, *Marriage, Perversion and Power: The Construction of Moral Discourse in Southern Rhodesia 1894-1930* (Oxford: Clarendon Press, 1993); T. McClendon, "Tradition and Domestic Struggle in the Courtroom: Customary Law and the Control of Women in Segregation-Era Natal," *The International Journal of African Historical Studies*, 28, no. 3 (1995); B. Carton, *Blood from Your Children: African Generational Conflict in South Africa* (Charlottesville: University Press of Virginia, 2000); Shula Marks, *The Ambiguities of Dependence in South Africa: Class, Nationalism, and the State in Twentieth Century Natal* (Baltimore: Johns Hopkins University Press, 1986).

<sup>4</sup> Cite here D. Tutu's many talks and speeches on the links between racial sexual oppression and the oppression and stigmatization of homo erotic love and sexuality.

<sup>5</sup> S. Croucher, "South Africa's democratization and the politics of gay liberation", *Journal of Southern African Studies* (28:2 2002); M. Gevisser, and E. Cameron *Defiant Desire: Gay and Lesbian Lives in South Africa* (New York: Routledge, 1995); R. Forman "Randy on the Rand: Portuguese African Labor and the Discourse on "Unnatural Vice" in the Transvaal in the Early Twentieth Century" *Journal of the History of Sexuality* (Volume 11: 4, 2002); J. Wojcicki, "The Movement to Decriminalize Sex Work in Gauteng Province, South Africa, 1994-2002", *African Studies Review*. (Dec 2003); K. Ratele "Masculinity, sexual rights and development" (International Workshop on Sexuality, Sexual Rights and Development, Stockholm, 6 April 2006); M. Epprecht, "Unnatural Vice' in South Africa: The 1907 Commission of

"homophobia", while not yet named in South Africa, was present in law, in policing, in education, in health, in working life and many other spaces. Hatred of homo Sex, as Unnatural and Immoral, was emerging with energy and evolving into recurring powerful public political force. The right to "Sexual orientation", a concept only named in the last part of the 20<sup>th</sup> century; the right to equality for women; women's rights to their bodies -- all of these words and terms now so familiar to us -- were all impossible to imagine in the juridical, executive, and political discourses available through many of the first eighty-five years of South Africa's life as a nation state. The South African state had for so long, it seemed, depended on *these* Sex controls. What would happen in 1994, as these names, Acts, justifications, codes, practices were challenged, and then scraped away? Just as "our cultures" had been used to define and prop up anti "racial Sex, "homo Sex" and "unnatural Sex" laws in the 1900 to 1980s, so after 1994 "our cultures" would be used to anchor arguments for homophobia; for the stigmatisation of women; for attacks on, control over, and demonisation of women; and provide the justification for continuing abrogation of women's access to equality before the new Law of South Africa. <sup>6</sup>

This paper aims to characterize some of the key features of Public Politics before 1994, as part of a wider history of Sex in South Africa. The focus is on the state and society and yet both were, and remain, shot-through with complexity and contradiction. While it is right and just that the South African minority-controlled political economy and state be held responsible for the authority and power it wielded unjustly over such a long time, nevertheless male elites and power brokers in other spheres (many layers of "traditional rulers", later "Bantustan" leaders; elites in the communities designated Coloured and Indian), contributed to these inequalities and undermined resistance and struggle whenever they could reap net personal gain.<sup>7</sup> In this paper the capitalised "Sex" rather than "sex" is employed to designate a specific site of sexual relations, in which actual brains and intermingling bodies might not have been involved, but where they have been implicated. In this sense Sex is not about what people actually do, but about what they must needs always "do" in "the light of" the implications of and insistences of Public Politics. The paper asks whether or not the last 13 years in general, and the last twelve months particular, have moved us beyond Public Politics, and finally offers some tentative conclusions.

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Enquiry". *The International Journal of African Historical Studies*, (34:1 2001), V. Reddy, "Homophobia, human rights, and gay and lesbian equality in Africa", *Agenda*, 50, *African Femininism 1* (Special Issue, 83-86. 2001). \* add\* Also cite work of T Dunbar Moodie; C. Burns; V. Ndatshe; K. Jochelson; K. Breckenridge; D Posel; P Delius & C Glaser; N. Erlank; and Z. Achmat here.

<sup>6</sup> The work of R. Morrel in conceptualising and making space for the field of critical men's studies in Southern Africa must be given special mention and credit here. Cite 4 major collections and works he has authored here. Also See C. Murray on Gender and SA Law and several key post 2000 texts on gender and law in issues from land and unionization to health and family life.

<sup>7</sup> Refer to work by A. Mager on Ciskei; to work by Beinart and others in Transkei and to new work by L. Ntsebeza *Democracy Compromised: Chiefs and the politics of land in South Africa* (Cape Town and Netherlands: HSRC and Brill Academic press, 2005/6).

## Immorality

As all readers and writers of South African history know in the Segregation Era, from 1910 to 1948, a series of Labour and Employment Acts; Land Acts; Market Goods; Sales and Farming Acts; Banking and Savings Acts; Native; Coloured, Asian and European Administration Acts; Acts governing Association and Speech; Pass Controls; racial and ethnic Property Acts; Urban Areas Acts; Health and Education Acts as well as various Acts convening, specifying and patrolling "Immorality" were designed with women's public capacities in mind. Without classifying the fruits of wombs this edifice would have been useless. In the Apartheid era these Acts gave way to Population Registration Acts; new Pass Laws; Group Areas Acts; new Employments Acts; Bantu Homelands and Authorities Acts; new Coloured and Asian Affairs Acts; new Association and Speech Acts; new Health, Welfare and Education Acts; new Foreign Affairs; Policing and Military Acts, and through all of these the economic and social bases of increasingly ethnicised, racialised and class divided society was further entrenched. All of these ideologically driven Acts paid even more zealous attention to containing male Sex performance and male seed. Women's Sex was vigilantly policed. The site of women's wombs provided the basis for assessing citizens and subjects. Homoerotic Sex as well as any cross-racial Sex, including such Sex in marriage, was named and criminalised.

Adult "white" women achieved the franchise in the early 1930s, at the very time that men designated Native lost their vote in the Cape, and a similar fate awaited the franchise of men called "Coloured" and "Indian" in the Cape 20 years later. A bargain was struck. Women called "white" got the vote so that the hegemony of whiteness could be sealed-up, and this depended on men called "white", and already citizens, meeting their obligations to protect South Africa, their womenfolk, and their interests. So women classified as "white" entered the public domain as partial citizens (not granted full *de jure* legal status until 1994), on the backs of men called "black". Women designated "black" (variously African, Asian, Chinese, Coloured, Native, Bantu) lost no franchise since they had enjoyed no *de jure* citizenship, by most definitions, until 1994. But "black" women were dragged into the net just as surely as if their names were on every page of these Constitutional Amendments to the Act of Union.

So before 1994 women's bodies acted as a special touchstone in South African legal and executive powers, as well as the *de facto* life forces of the region. After 1994 the legal and state protection of "womenliness", as the public bone of South African masculine citizenship, was exculpated. New, counter-hegemonic, orientations and performances of manliness also became possible to define as "Citizen Man". But is unclear yet what the longer term consequences of this have, and can be.

In southern Africa even before 1910, though this paper takes that era as its start, women's raced and classed bodies, were privileged and typed, and their needs, their endangerment, their value, and their protection made the base-line for racial male citizenship. As Hyslop has shown in his riveting paper on the links between white working class women, sexual purity ideologies, anti-'Asian' hatreds, and the rise of Afrikaner Nationalist party powers in the late 1930s,

(T)his odious piece of legislation essentially rationalized existing provincial measures preventing African men from having sex with white women. These prohibitions were contained in broader pieces of legislation aimed at regulating prostitution. The Immorality Act consolidated these existing regulations and introduced a new provision making sex between white men and African women illegal. The Act did not, however, outlaw sex between whites, coloureds and Indians. Nor did it in any way affect the legality of marriages between whites and Africans. There was a sharp rise in marriages between whites and Africans in 1927 and 1928 as cohabiting couples sought to legalize their relationship.<sup>8</sup>

In the Cape Colony Law Number. 36 of 1902 titled the "Betting Houses, Gaming Houses, and Brothels Suppression Act" followed in a long line of statutes and ordinances designed to:

Prohibit [s] voluntary sexual relations for the purpose of gain between white women and ... aboriginal natives; the maximum punishment for women is two years' imprisonment at hard labor (Sec. 24); ... for procuring up to five years at hard labor, ... and for male procurers additionally up to 25 beatings (Secs. 35 and 36).<sup>9</sup>

In these early days pimping by a man or woman, and selling Sex as a woman, was only an offence when the customers or procurers crossed "race" lines. In Natal and in the Oranje-Vrystaat there were very similar Acts passed, and in the Zuid Afrikaanse Republiek, in addition to erecting the self-same chain fence of public propriety around commercial "cross race" Sex, "black" men committing offenses so described were specially punishable if they purchased Sex from "white" women but not the other way around.

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<sup>8</sup>J. Hyslop "White working class women and the invention of Apartheid: 'Purified' Afrikaner Nationalist agitation for legislation against 'Mixed Marriages', 1934-9" *Journal of African History* 36 : 1995, p. 65-66.

<sup>9</sup> Detailed evidence for this section from: A. Du Toit, 'Political control and personal morality', in R. Schrire (ed.), *South Africa: Public Policy Perspectives* (Cape Town, 1982), 65; R. Findlay, *Miscegenation: A Study of the Biological Sources of Inheritance of the South African European Population* (Pretoria, 1936); G. M. Hardie and G. R. Hartford *Commentary on the Immorality Act* (Act NO. 23 of 1957), (Cape Town: Juta & Co, 1960); P. Furlong, *The Mixed Marriages Act: An Historical and Theological Study* (Cape Town: African Studies Centre, University of Cape Town, 1983); Charles van Onselen "Prostitutes and Proletarian, 1886-1914" in *Studies in the Social and Economic History of the Witwatersrand Volumes I & II*, (New York: Longmans, 1982); and the detailed time line at: [http://redboneheritagefoundation.com/Chronicles/interracial\\_marriage\\_timeline.htm](http://redboneheritagefoundation.com/Chronicles/interracial_marriage_timeline.htm) Accessed 5/50/2007.



As Jeremy Martens and others have shown in work on Natal,<sup>10</sup> in that Colony the 1903, Number 31, "Criminal Law Amendment Act," prohibited "indecent relations between white women and coloured persons". Here "coloured persons" were defined with reference to the "Vagrancy Law", Number 15 of 1869, as "Hottentots, Coolies, Bushmen, Lascars, and members of the so-called Kaffer population." The Oranje-Vrystaat and Zuid Afrikaanse Republiek's Immorality Ordinances were similar to Natal's, but with a much broader definition of "Native", (including "Natives of the indigenous or coloured races of Africa, Asia, or St. Helena"). Most accounts that examine these Acts do so without imbricating the kinds of Commissions of Inquiry into Sex taking place at the same time, Commissions of Inquiry into Sex between men on the gold mines. The Sex lives of Tsonga men; Chinese men; Pondo men; Zulu men; Xhosa men; Mfengu men; Baca men; Pedi men; Sotho men and many more classifications besides, provoked heated debate amongst mine medical officers; mine officials; recruiting agents; religious officials; cultural experts; the state departments of Portuguese East Africa; as well as several departments of the nascent South African state.

In terms of male-male Sex the British Colonies of Southern Africa, and then the Union, examined and classified Unnatural Sex Acts amongst men in the wake of much international thinking. And, at first, their law-making and executive follow-through for women/men Sex Acts was also imitative. In the USA, Great Britain, Australia, New Zealand, Canada, parts of Europe; many parts of the rest of the colonised and independent world, Acts preventing "cross racial" sex were being, or had been, promulgated. In the next three decades, though, South African law makers would take these laws many steps further and into the heart of state-making.<sup>11</sup>

When the South Africa Union House of Assembly (under the Hertzog government) passed the Immorality Act Number 5, 1927, the Act stipulated a ban on all extramarital Sexual relations between "Europeans" and "Africans". In this Act "Illicit Carnal Intercourse" was defined as an offence, and punishable with prison terms of up to five years for men and up to four years for women. In the *House of Assembly Debates* the then Minister of Justice, Tielman Roos, argued that his proposal was defensible because it "protected the Native women of South Africa" as well as his constituency's womenfolk, and he claimed "in order to teach the populace that intercourse between Europeans and natives was not a thing to be taken lightly".<sup>12</sup>

From 1928 to 1938 about 550 Europeans (among them 75 women) and 600 Natives (among them 510 women) were punished for offences under this specific Act. In the mid

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<sup>10</sup> J. Martens "Settler Homes, Manhood and 'Houseboys': An Analysis of Natal's Rape Scare of 1886" *Journal of Southern African Studies*, Vol. 28, No. 2. (Jun., 2002), pp. 379-400 and "Polygamy, Sexual Danger, and the Creation of Vagrancy Legislation in Colonial Natal" *The Journal of Imperial and Commonwealth History* Vol. 31 No. 3, 2003, pp. 24-45. See also work by T. McClendon; Z. Achmat, C. Van Onselen, A. MacDonald, J. J. Van Helten and K. Richards, A. Davin and others.

<sup>11</sup> Cite Anne Stoler "Carnal Knowledge"; Tim Cousins "Degeneration"; Saul Dubow "Scientific Racism" and the work of USA authors on this such as Nancy MacClean and her work on the USA south. N. MacLean, "The Leo Frank Case reconsidered: gender and sexual politics in the making of reactionary populism", *The Journal of American History*, (LXXVIII 1991).

<sup>12</sup> *South African House of Assembly Debates HANSARD* (Government Printer: Pretoria ) p. 26, p. 36. and 1927, p.37.

1930s, as Hyslop has so nimbly demonstrated, the United Party-held government was scrambling to shore up racial power against the rise of Afrikaner Nationalist ambitions. Women's bodies were central to the elections at the end of the decade and saw the opening days of World War Two dominated still by fighting over Immorality and its new bastard, "Mixed Marriages". Trapped in their own racial quagmire the united Party set about with a commission of Inquiry into the "serious matters at hand" and in 1939, just before the outbreak of War, the De Villiers Report recommended in favour of legislation to counter these new threats. These recommendations were not acted on because of the break-up of the Hertzog-Smuts government in the face of a new tremendous world wide threat: global war.

Lest reader's think that the major symbolic opponents in the 1930s anxiety around public politics were the masses of "blacks" and the ruling race of "whites", and as Hyslop has shown, serious readers of the South African past have to be able to read across divides in social life for reasons, irrational and powerful, motivating action as well as discursive formation. In the 1930s,

A major strand in the Malanite's support for mixed marriage legislation was their attack on the Indian shopkeepers of the Transvaal, who were collectively accused of seducing Afrikaner women. A standard narrative was evolved and propagated by Malanite politicians which held that Indian shopkeepers were hiring Afrikaner women as shop assistants, then seducing them with the intention of trapping them into marriage, and thus gaining ownership of the women's property. This discourse was useful to the Nationalists in two respects. Firstly, it channeled Afrikaner resentment of the success of Indian shopkeepers into support for the drive of aspirant Afrikaner capitalists to displace the Indians in the retail sector. Secondly, it picked up the resentment of Afrikaner men that some of 'their' women were working in Indian-owned business in a way which threatened racial hierararchy. It linked this resentment to a fear of the loss of control over women This provided an important way of winning backing for Malanite organizations and votes for the GKP. The commercial success of the descendants of late nineteenth-century Gujerati immigrants was a very clear feature of Transvaal life by the 1930s. According to Swan, between 1932 and 1946 millions of pounds worth of property was brought by Indians in the Transvaal.<sup>13</sup>

After the War, the National Party's slim victory at the polls encouraged every effort at shoring up support. The Politics of the Womb and Public Politics were roped in for speedy assistance. In early 1949 when,

[the] Nationalists introduced legislation into parliament banning mixed marriages. The UP, having helped generate a white consensus over mixed marriages, could only argue rather weakly once again, that the best way to avert such marriages was through public opinion. Piloting the bill through parliament, the Nationalists' Eben Donges could smugly point out that the legislation was based on the report of the UP appointed De Villiers Commission. The bill was duly passed, and South Africa had its first piece of apartheid legislation.<sup>14</sup>

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<sup>13</sup> Hyslop, "White working class" p. 68.

<sup>14</sup> Hyslop, "White working class" p. 80.

In this essay Hyslop argues against psycho-analytic and post structuralist approaches to South African history that divorce themselves from an engagement with the cynical purposefulness and plotting agency of power elites. While doffing his cap at the crucial role of the unconscious in shaping Sex desire, and in yoking it to race and other typologies (heter/homo; natural/ unnatural; deviant/appropriate), Hyslop shows here and in other places that the genre of social history, with all its baggage of Marxist and liberal enlightenment thought, political indignant passion, and implicated with the key assumption of the essential right to equal worth of each person, is able to present a compelling explanation for the "race and sex" maps of South African public publics. It is true that leaders in South Africa have never made laws and led social movements without complex interactions with "the masses", however constructed. But Hyslop, here and in his other works on education, language, class and power, shows that in the 1940s the South African Prime Minister and his cabinet were "self-aware", and that Malan was, like others before and after him a "manipulative leader". Hyslop argues that just as Nietzsche articulated the insight that "The priest rules through the invention of sin", so Daniel Francois Malan, ordained minister of the Dutch Reformed Church, played a large part in the invention of the "sin" of "mixed marriage", and used it as one of the methods through which he and his supporters attained power.<sup>15</sup> Constructing and maintaining hegemony requires dedicated conscious thought and praxis and these labours leave scratches and marks in the many archives of the past.

Before 1949 "Mixed Marriages" were not explicitly yoked to the existing Immorality Act. From 1910 to 1948 neither the Union of South Africa, nor any of its, predecessor states had imposed specific *de jure* prohibitions against so-called Mixed Marriage. The Zuid Afrikaanse Republiek had created racially distinct structures for white and black marriages making it impossible for marriages which were viewed as "miscegenating" to be solemnized in that part of the country. But the Zuid Afrikaanse Republiek, and later the Transvaal Province that succeeded it, did recognize the validity of inter-racial marriages contracted in the other three provinces, placing no actual legal obstruction in their way.<sup>16</sup> In Natal and the Cape laws for "Native Marriages" and "Hindu" and "Muslim" marriages supposed "ethnic" and "race" valuations into their very essence and Nafisa Essop Sheik, Linda Naidoo, Patrick Furlong and others have written about the consequences and contradictions of this.<sup>17</sup> After 1949 the legal mechanisms to prohibit Mixed Marriages were strengthened at a rapid pace, with the Population Registration Act just one part of this arsenal of public acts.<sup>18</sup>

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<sup>15</sup> Hyslop "White working class women" p. 81, citing Friedrich Nietzsche, "The Anti-Christ" in *Friedrich Nietzsche: Twilight of the Idols and the Anti-Christ* [R.J. Hollingdale ed. and trans.] (London: Harmondsworth, 1974), p166.

<sup>16</sup> A. Du Toit, 'Political control and personal morality', in Robert Schrire (ed.), *South Africa: Public Policy Perspectives* (Cape Town, 1982), 65; R. Findlay, *Miscegenation: A Study of the Biological Sources of Inheritance of the South African European Population* (Pretoria: Juta, 1936).

<sup>17</sup> Cite N Essop Sheik "Labouring Under the Law: Gender and the Legal Administration of Indian Immigrants under Indenture in Colonial Natal 1860-1907" (unpublished Masters Thesis, University of KwaZulu-Natal, Durban, 2005); and L. Naidoo "Marriage Law in Natal" (Unpublished Honours Thesis, University of Natal, 1996).

<sup>18</sup> See the work of A. Du Toit; D. O' Meara; S. Dubow, B. Magubane and K. Breckenridge for the legal, ideological, discursive and techno-politics created to elaborate and sustain the Apartheid state.



The definition of Immorality also had to grow to accommodate these new ambitions. In 1957 the Immorality Act was passed into law in South Africa. It incorporated, extended, and ultimately superseded, no less than ten previously enacted and closely related statutes. Of these six were in effect in southern African territories before the Union of South Africa was constituted in 1910. This 1957 Act was predicated upon the already omnibus version passed into law thirty years earlier.

A South African "sense of Immorality" was now a firmly established part of public life. In 1963 A. M. Honoré reviewed the new book on the Immorality Act of South Africa, a newer version of the 1927 Act, and itself emboldened by the 1948 Prohibition of Mixed Marriages Act. In his review of Hardie and Hartford's *Commentary on the Immorality Act (Act No. 23 of 1957)* Honoré argued that the book showed that immorality,

... in the South African sense, is not confined to sexual relations between white and coloured persons but includes offences connected with brothels, prostitution, the defilement of children, abduction, sexual offences against females, idiots and imbeciles, the use of drugs for sexual purposes and offences such as indecent exposure. Nevertheless, section 16 of the Act, which prohibits "almost all behaviour of a sexual nature between white and coloured persons" is the best known section of the act and takes up 35 of 96 pages of text in this book. In the text and especially the examples at the end of each section-entertaining if they were not tragic to the persons concerned-we see the law not as an ass but as a malicious peeping Tom, an instrument of tyranny half blunted by hair-splitting. The authors' commentary, which contains not a word of comment on the policies underlying the Act, is a very competent piece of work.<sup>19</sup>

A few months before Honoré's review across the international public sphere South Africa's newest forms of public political life were becoming a target of anti apartheid agitation inside South Africa. *Drum Magazine*, *City Press*, and *The World*, all directed at an urban audience categorized as "black" as well as the *Sunday Times* and the *Rand Daily Mail* delighted in exposing police officers; conservative white males in rural areas; business men and celebrities "caught with their pants down".<sup>20</sup> South African public life was dealt a severe blow. Here story after story, while purporting to unmask the hypocrisy behind white public power, also cemented and solidified this hegemony: in these stories there are black people and white people; they "are" different; "crossing lines" is pleasurable and so dangerous, because it is "real". South Africa in the new millennium has not recovered from this thicket of public utterances. Religious speech and practice, and especially the utterance of organized Christian religious institutions in South Africa was very confused and contradictory in reacting to, and fueling, this state of affairs.

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<sup>19</sup>A. M. Honoré "Review of Hardie and Hartford's *Commentary on the Immorality Act (Act No. 23 of 1957)*" in *The Modern Law Review*, Vol. 26, No. 5. (Sep., 1963), p. 607.

<sup>20</sup> Cite the long list from the *Free State Modern History Press Clippings Collection* I have been using and saving here, and perhaps some choice examples. Also see debates in 1977-78 about repeal of Mixed Marriages, and again in 1982/3, in these newspapers and in *Vaderland*, *Die Beeld* and *The Natal Mercury*.

Patrick Furlong's masters thesis, and then subsequent books on this theme, and the texts on the history of Churches and their engagements with apartheid, have parleyed carefully with this history, and most have agreed that responses to these Acts as well as to their diabolical consequences were at best desultory, and at worst directly implicated and called into action.<sup>21</sup>

Outside South Africa even conservative and main-stream media emanating from societies famed for their own racial laws, began to target these Acts. In 1962 *Time Magazine* carried this piece:

Boy met girl in a government office in Pretoria. She was a clerk, he a local merchant who came in on official business. Soon they were going out to movies together; finally, they drove up to Salisbury, Southern Rhodesia, and got married. But three weeks after the couple returned to South Africa and set up housekeeping in Durban, two detectives knocked at the door and took them off to the police station. Reason: Charlotte Bloem, 22, was white, and Syrub Singh, 28, was an Indian.

**Upward Spiral.** Their case involved two extraordinary apartheid measures: South Africa's Immorality Act, which forbids sexual relations between people of different colors, and a second law, which prohibits mixed marriages. As a deterrent, the Immorality Act has worked none too well over the years. In the past decade, about 4,000 mixed unmarried couples have been convicted. Victims need not be caught in the act; they can be jailed if discovered in suspicious circumstances. Last summer John Rudd, 34, a prominent Johannesburg businessman, was arrested in his home with Dottie Tiyo, a dark-skinned 21-year-old professional dancer; when the police came in, Rudd wore only a towel, and the girl had his bathrobe on. Each drew six months in prison.

Some of the most publicized cases have involved seemingly staunch supporters of apartheid, including one high government official. Many white policemen have been arrested for making love to non-white prisoners in their own scout cars.

Often the scandals involve girls from the so-called "colored" groups;—their light skins are a constant source of confusion to sailors and other foreigners in the Cape. When one seaman from Sweden was recently sentenced to eight strokes with a police cane for attempting sexual relations with a non-European, his Swedish captain protested angrily: "Cape Town is full of beautiful colored girls who look exactly like southern Europeans to anyone from Scandinavia!"

**Married or Not?** Since most cases are reported in the press, thousands of lives and careers have been wrecked. In Port Elizabeth last month, a white man drove his car off the pier and drowned after he learned that police would bring Immorality Act charges against him; in Klerksdorp, a father of four children asphyxiated himself rather than go to court for his affair with a black woman.

But Syrub Singh, the Indian, and his new white wife Charlotte, who had taken the Hindu faith, stood proudly in the dock last week in Durban's regional court. The prosecutor sought to prove that the Singhs' marriage did not exist since South Africa's Mixed Marriages Act rendered it automatically invalid. Thus, he argued, the "unmarried" couple, by living together, had violated the Immorality Act. The defense attorney retorted that the Singhs were indeed legally married since South Africa's legislation could hardly apply in Southern Rhodesia, where the wedding took place. As they awaited the court's decision, Syrub and Charlotte knelt in Durban's Hindu temple and prayed: "Please, may we never be parted."<sup>22</sup>

<sup>21</sup> Furlong, de Grunchy, Villa-Vincencio, Tutu, Kearney, and others. See Appendix 1 for a very different view articulated by the *South African Council of Churches* in 2006.

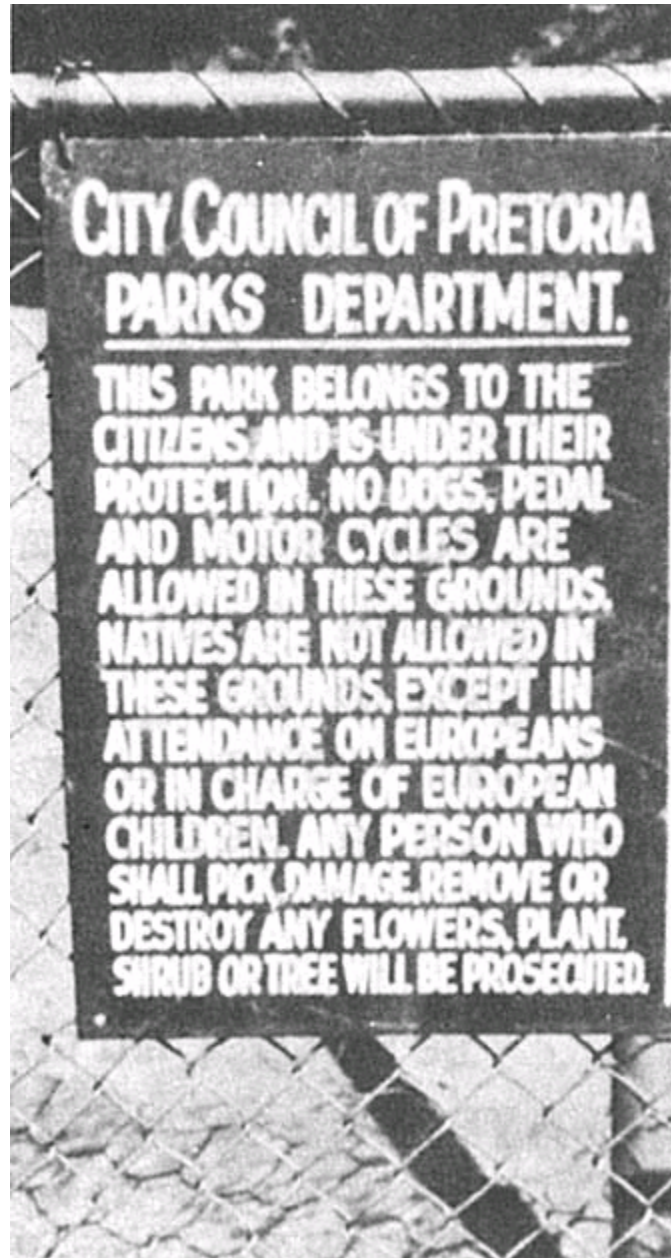
<sup>22</sup> *Time Magazine* February 9 1962 "Sex and Color"

<http://www.time.com/time/magazine/article/0,9171,938311-1,00.html> Accessed May 12 2007

If I had had more time I would have included a review here of the excellent annual *South African Institute of Race Relations* publications, in which the numbers and kinds of persons charged and found guilty under both the Immorality Act and the Prohibition of Mixed Marriages Acts is to be found. These *Annual Reviews* also contain analysis of the resources used by the Police, Jails and the Courts to find and prosecute offenders. Deeply offensive to read are the many cases where people sought reclassification of their racial typography based on love, intimacy, forced separation of kin, or intentions for marriage. This is where I want to build the bulk of the paper in my next writing attempt. I want to show over and over again the links between claims for "authentic and essential types" of people, rooted in "culturalist" claims. The Politics and the Womb, and its special implications for Pubic Politics, will be my intended target. I want to be able to reiterate the role of particular spokespeople and opinion shapers:- cabinet ministers; religious leaders; traditional leaders; Bantustan leaders; leaders of the African nationalist and black consciousness movements; of exiled and internal insurgents; of the labour movement; and of civic movements. Here I want to begin with the most notorious cases, drawing on the outstanding and original work of historians, playwrights and artists. The works of Athol Fugard and Zakes Mda will be central. An analysis of the context for and impact of the 1970s Fugard powerful play "*Statements After an arrest under the Immorality Act*" and the award-winning post Apartheid novel by Mda, laying bare the notorious Excelsior "Immorality" fiasco in the early 1970s, "*The Madonna of Excelsior*" will take central stage. Works by Lewis Nkosi, Breyton Breytenbach, Peter Abrahams, Bessie Head, and several key DRUM-era writers, who dedicated their considerable caustic powers and insights into pillaring and exposing the impact of these pubic laws and practices, will be key. The section must include detailed commentary on the rising opposition to these laws locally and internationally. Here the role of Helen Suzman, inside the white-only legislature, and her leadership of annual assaults and diatribes against these laws, from the 1950s to their eventual repeal under "Botha's reform era" in the mid 1980s, will be parsed.

It was clear in pre 1994 South Africa to whom the "parks" (or "public" space) belonged and to whom the state addressed when "citizens" were called into an audience, after 1994 it is not as clear that every facet of the public worlds created by decades of pubic life have been erased.

The photo image below, of a Public Parks Department sign in Pretoria taken in the 1950s, powerfully underscores these exclusions and inclusions.



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I have demonstrated I hope that Deborah Posel, and other excellent historians and sociologists of South Africa, are not correct when they see the explosion of Sex talk and public publics as a post apartheid phenomena. The next part of the paper will explore the post 1994 debate in more detail.

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<sup>23</sup> Robin Wright, *The Christian Science Monitor*, and the Alicia Patterson Foundation. <http://www.aliciapatterson.org/APF001975/Wright/Wright10/Wright10.html> accessed May 20 2007

## Zuma

In post-Apartheid South Africa the links between human rights, sexuality, and sexual orientation emerged into a *de jure* protected national public space for the first time. A new kind of Sex talk was being born. Before 1994 this speech was neither protected nor widely shared. After 1994 the production and circulation of erotic speech and art; debates around and legislation for sexual health rights; the naming of forms of gender inequality and legal steps to redress this; debates around the impact of sexual stigma and disease; as well as a range of other obviously and less obviously sexually implicated debates, began to take their place on a newly envisaged "national stage" in a new way. These state-protected thematics emerged in the midst of a new naming, counting, analysis of "violence against women and youth" and "the rising toll of HIV-related illness and death" in South Africa. It is yet unclear how all of these productions, experiences, and discourses interconnected and shaped one another.

For example: did the wide-spread and newly open dissemination of western and southern commercially-produced heterosexist male-directed pornography, gaining momentum in print, visual and electronic form at the very same time as the HIV pandemic began to take hold of the sub region, have any relational connection? Did the legal freeing-up of homoerotic relationships impact upon heterosexual women's claims for sexual freedom? Did the new laws protecting women's equality and status impact upon gender power in the household? Did the reproductive health right debate, and the health and social welfare department provisions for this, receive impetus from—or shape—new forms of violence against vulnerable people? Did these strands emerge in isolation from one another? Or is it more likely that connections between new gender freedoms and new gender violence were stoked into combustion by the loss of male industrial labour, with the consolidation of mining and the liberalizing of South African markets to cheaper foreign imports? In other words: was political economy more implicated with sexual violence and sexual illness, as well as the *de facto* limits to sexual freedoms, than the rise of new cultures, legal frameworks and discourses of freedom?

At the end of 2006 the South African Parliament passed new legislation making legally possible, and protected, the marriages of gay and lesbian women and men. Across the world media in December expressions of joyous support and of wrathful condemnation poured forth for this land-mark on the African continent. The form and shape of myriad responses travels the now familiar paths of public debate over sexuality and its discontents in the region over the last 13 years, and before that since Union in 1910.

This is the broader context for "African sexualities", the sub-title of the special issue of *Culture, Health & Sexuality* published in May 2005. The edition forms part of a complex and overlapping thicket of research, policy making, writing, thinking about, interventions and assessments of interventions, and more research and writing about sexuality in Southern Africa over the last decade.<sup>24</sup> The volume grows out of a conference, "Sex and

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<sup>24</sup> This section is based on a long version of a shorter Review Article I have written about this Conference, and the editions of papers that followed, in the journal, *Culture Health and Sexuality*.



Secrecy", hosted by the Wits Institute for Social and Economic Research, the Graduate School of Humanities and Social Sciences, and the Gay and Lesbian Archives held in 2004. This gathering was the 4<sup>th</sup> conference of the International Association for the Study of Sexuality, Culture and Society (IASSCS). In the "Introduction" to the volume the editors, Reid and Walker, soon delimit the bulk of the Edition to a concern with Southern African sexualities and name as the focus: "concerns emanating from the Southern African situation". At the Conference itself, the conveners (Reid, Walker and Posel), gathered together panels with diverse thematics based on work from many hemispheres—northern, southern, western, pacific, eastern spaces. Africa itself was well served with case studies and thematic papers from all parts of the continent, especially central and south-eastern Africa, with a large concentration of papers on South Africa. The editors of this edition of selected papers from the Conference argue that this selection, "African Sexualities", contributes to a "more nuanced and holistic" understanding of African sexualities by focusing on men and masculinities in Southern Africa. There focus is well taken. In 2004 an edition devoted to Africa wide debates *Rethinking Sexualities in Africa* was published that addresses many of the same themes but with a focus on the continent as a whole. As with the Arnfred (et al) book collection the papers from the WITS Sex Conference are really "Works in Progress", since each and every paper opens up more questions than it answers. These papers are fluid and suggest in each case directions for new work to be done.

If there is one area of conclusion and agreement then it is this: with deep textual, oral and ethnographic research all the authors demonstrate in these papers that popular and officially made claims that deep seated and fixed "cultures" and "traditions" in South African "peoples", cultures and traditions often voiced as the generator of "African" as opposed to "white", "urban", "modern", "western" sexualities, is unsupportable using any social or humanistic methodology of theory or analysis. When "tradition" is seen a series of unbroken, deeply held, sets of practices, experiences and discourses from some distant past into the here and now, this body of collected research finds that "traditionalist" explanations disguise and obfuscate more than they clarify and explain.

For the South African context Sasha Gear's paper on men in prison, and the possible ruptures this brings to patriarchal heterosexist sexual identities, also reveals that for the most part gender stereotyping and gender role ascription continues and is adapted and reinforced in male prison experience. Just as Gear draws on the history of male migrancy and single sex mining hostel life as a reference point in her work, showing the effort and labour involved in remaking patriarchies, so Mark Hunter's work shows again that "Zulu manliness" has a complex and shifting history and that the figure of the male lover, the *isoka*, has emerged over time and in the midst of innovation. Continuity is only made possible by change and the forces of men's relational worlds have shifted rapidly since the 1970s. Both papers show that the continued salience in daily discourses (at the informal and local level as well as in parliament and in state policy documents) of claims to authentic "traditional" gender roles and "traditional cultures of sexuality" become threadbare under close analysis.

This is the work that much recent academic production on sexuality and gender roles does: the revelation of the threadbare quality of “tradition claims” after close inspection. Revelation that “traditional” might be very new and inter-cultural is at the centre of Marc Epprecht’s paper on nationalist masculinities and *machismo* in Zimbabwe. Here Epprecht demonstrates that heterosexual, virile, warring, homophobic models of manhood were products of the tensions and interfaces of white Rhodesian manliness with indigenous men, mission-educated and wage-earning, whose common bond was elaborated over time even violent opposition. Epprecht’s approach—dialectics at the centres of new hegemonies—may suggest fruitful approaches to the dialogical process embedded in masculinities in this region, with its especially complex layers of migrations; colonisations; commercializations; commodifications; conversions; nationalisms and the like—most packed into the last 150 years!

Spronk, in her work on female sexual dreaming and identity-making in Nairobi amongst Kenyan women who have moved into the secure professional middle class, highlights the plasticity and imagination that new material confidence and status can underpin. These options take place in a context where every day expectations still assert patriarchal roles for women. These new dreamers act, then, in the midst older forms. These dynamics create complex tensions around fulfillment, but do not sap their daily sexual and household decision-making that challenges the *status quo*. Spronk argues that : “... a developing career and a new financial position are building blocks both for self-esteem and for the ability to influence personal decisions”, and her work suggests that similar research in other southern Africa contexts as well as continent-wide would yield very fruitful evidence of counter and minority sexual cultures. The talk of sex and sexual experimentation of young people in Mozambique is the subject of both Karlyn and Manuel’s pieces. These author’s seek to demonstrate that ignoring the innovations and explanations of young people—whose experimentations with danger and trust, love and intimacy—risks the complete undermining of public health programmes and totally recasts easy notions of “Tsonga” or “Mozambican sexuality”, especially the notion of “the tradition”.

All of these papers, however, as they do the work of examination, close listening, and unmasking, do not explain the continued salience and power of “culture” and “tradition” in every-day public talk in Southern Africa. What work do these claims “do”? Why does this research—and many related examples have been published in the last 5 years—fail to shake, let alone undermine the continued and perhaps power in the market place of ideas!

The paper that gets closest to analysing this (the “work of tradition and culture” in new national public contexts) is Posel’s. Her grand summarizing paper was published before Jacob G. Zuma was accused of, then charged with, and then subsequently acquitted of, rape. The trial of the now the ex-deputy president of South Africa hit not only local but international headlines from the first accusation through to its completion, and the debate generated then and now about rape and South Africa has left deep echoes in daily life. It is very interesting to read Posel’s piece again, in the light of the acquittal and its aftermath. Now many of the observations she began making in 2004 at the Conference,

and completed for publication in her published work in 2005, can be put to the test in the context of the national obsession with this very high profile rape trial.

In her work Posel offers a rich discussion of the national implications of "baby rape" and "failed fatherhood" in South Africa in the late 1990s and early 2000 and, in her "Scandal of Manhood" piece, argues that in South Africa, by 2004, "... the issue of rape was politicized within a variety of public spaces opened up by the media once apartheid regimes of censorship had been revoked." Because these debates were highly fractured, and revealed deep contradictions, watching and closely observing the responses to rape debates of public figures and elected officials committed to "nation building" was an excellent way to analyse "scandals of manhood". She argues that "(t)he new discourses and politics of sexual violence, while prominent and dramatic, were neither wholesale nor unanimous...", demonstrating the continuing salience of the interweaving of race, class, region, sexuality and gender in the country. She points out "the extent to which the sense of a 'crisis of masculinity' has been tacitly racialised..." and concludes that:

... With the figure of the father, once the protective and powerful guardian of moral order, having merged with the figure of the rapist, popular anxieties of sexual violence became a crucible of wider fears and arguments about the normative foundations of the new democratic nation.<sup>25</sup>

This complex analysis leaves us wanting more on several scores: will this highly charged terrain allow for a move towards analysis of the creation of the "modern" sexualities that surround us all and enmesh and implicate us all living here in Africa today? In 2004, reviewing Pamela Cheek's *Sexual Antipodes*<sup>26</sup>, a study of the long term emergence of modern sexualities in the west, Steven Pierce, an anthropologist of Africa, argued that Cheek's study shows again the way that colonized world was implicated in modern European sexualities. Pierce appreciates the monograph for its persuasive demonstration of how a consensus has emerged that in the long-term and uneven emergence of "modern" Western notions of identity and sexuality "... contemporary systems of gender, race, and national affiliation are recent developments and grew up together."<sup>27</sup> Here, he argues, "... Pamela Cheek's work stands as a significant addition to this literature. In it, she argues that the late eighteenth century marked a watershed in the ordering of Western European sexual identities, particularly in Britain and France, her primary objects of analysis. At that time, Sex began "to play an important role in organizing an emerging Western European sense of being placed on the globe." What we need now I think is a new reflection on "Modern Sexualities and their discontents in South Africa". Here we would have to start with the Zuma trial.

On the 11<sup>th</sup> of June last year the South African political elite gathered near Greytown for the re-installation of a Zondi "chief" at the centenary and commemoration of the rising of

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<sup>25</sup> D. Posel "Scandal of Manhood" Check pages, 268-9

<sup>26</sup> P. Cheek *Sexual Antipodes: Enlightenment Globalization and the Placing of Sex* (Palo Alto: Stanford University Press, 2003)

<sup>27</sup> S. Pierce "Sexual Antipodes: Enlightenment Globalization and the Placing of Sex (review)" *Journal of the History of Sexuality* - Volume 13, Number 2, April 2004, pp. 234-23.

Bhambatha. Mbeki and Buthelezi, Ndebele and others were upstaged by the appearance of a jubilantly welcomed Zuma, according to media reports the following week. I received an e-mail the next day from a witness at the events. A world-renowned scholar of west African history, my friend wrote:

Regarding the Sunday gatherings, I will tell you when I see you. I was stunned by the popular reception given to Zuma. I don't know Zulu but he seemed to me to have such a command of the language that he is understood by his people. He can talk to them and I think it why they support him. He is very "Man".<sup>28</sup>

Along with many other South African citizens I had been thinking about this "very Man" for months.

In March of 2006 I wrote an e-mail to several dozen colleagues, graduate students, friends and activists.<sup>29</sup> I enjoined readers thus:

I will be joining Thenjiwe Magwaza and many others on Friday at the Durban High Court (where people will meet from 9am to 1pm) for 2 hours. .../ please let me know if you would like to show your support for the right of any person in our country to lay a charge of rape; and the right of the courts and police to go ahead with a trial when and if they believe there is sufficient evidence for a trial to go ahead.

That week and in the weeks afterwards many of us engaged in various public displays of outrage at the conduct of the ex deputy president and of his supporters. We wrote petitions; protested on the sides of roads; gathered to discuss and share ideas; wrote letters to the press and talked in cars, in buses, in classrooms, in schools, and around supper tables with our peers and with our children old, enough to read the signs discussing the pubic details daily of the "ZUMA RAPE TRIAL".

That March I wrote:

As the trail opened two grim statistics hanging over our heads as South Africans: while we have one of the lowest conviction rates for rapists in the world we also have the world's highest reported rape rate. Like every other country on earth rape is more likely to occur with men as the aggressor and women as the victim of the assault

That week for the first time as a "mass of experts" the authors of more than 15 major studies of rape, gender and sexual violence in South Africa were invited onto the South African airways and cited in newspapers across the country, asked to explain and define the context of the Zuma Trial. After alluding to these studies and their new public airing I wrote:

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<sup>28</sup> E-mail Communication; leading historian of West Africa, 12 June after trip to Bhambhata celebrations. Mbeki upstaged by Zuma.

<sup>29</sup> C. Burns E-mail created and sent 23 March 2006, from Durban. In possession of author.

These show that like every other state on earth a rapist in South Africa is "most likely, though not always" to be a man; a man known to the "not always but usually" female victim in some way, and the rape is most likely to occur on familiar turf, not against a woman or women in an alley-way or unusual space, by a war party, by strangers, or by a pathological man with a mental illness etc. The latter cases, while they occur--especially in times of war--are more widely reported than every day rape. Easier to sensationalize, and of course deeply disturbing, they are always in the minority in any country not at war.

I then sought to make a case for the special dangers of the trial and the conduct of leaders and elites in public space. I wanted to remind people about the past. I wrote:

The treatment of the complainant in this rape case, widely reported across SA and the world, has been a throwback to the past for many of us. Many reports the last few weeks by gender activists and legal commentators have noted that whether Zuma is guilty or not the complainant has had her entire childhood and sexual history cross-examined for days. She has had her name widely reported in the press. She and the prosecution lost their motion to have new legal thinking in rape trials followed in this one. The Judge was asked to rule her past sexual life, and that of Zuma, inadmissible, unless good cause was ARGUED by the defense. After ruling this way at first, the Judge reversed his ruling after argument from the defense, and said "he will decide later whether or not to rule the evidence admissible". This evidence was not led "in camera" and has been widely reported across the globe. Thus, even if the Judge eventually rules this evidence inadmissible later on, everyone in the world will have heard/read it already. Having said this the open court inside has been a hostile space but at least the law and due process, though flawed by years of patriarchal precedent in the view of many of us, have been followed. Newspapers over the past week, such as the *Mail & Guardian*, have traced these points and carried letters responding to them.

What particularly caught my attention that day, and propelled me to write to a wider group, was the publication in the *Mail & Guardian* that day of the scene of a middle aged woman, like me, dressed in an outfit styled as "battle dress", that the South African Press Association titled thus: "War cry".<sup>30</sup> Outside the court throughout the preceding weeks the drama of Pubic Patriarchy had been riveting. I wrote about this saying:

In the past 2 weeks we have seen older women miming raping the complainant on the ground. We have seen people claiming to be Zuma supporters saying they would "love to be raped" by Zuma, or that they agree that even if Zuma raped the complainant "she deserved it". We have seen people saying that the complainant was so lucky as to have been served sexually by such a great man. ... /... We have seen images of the complainant's face and body burned in front of the court room. We have seen images and heard sounds of a taxi blaring music supporting the accused pounding outside the court in Jhb so loudly that the police have eventually (and belatedly) forced it to move. We have seen purported supporters of Zuma chase coin security vans and create havoc in the blocks around the court. We have heard that the complaint is a stooge; a slut in the pay of Mbeki's faction; a pathological rape charger; a seductress; an attention seeker.

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<sup>30</sup> See *Mail & Guardian*, March 23 2006, <http://www.mg.co.za>. Accessed 23 March 2006\_



I wanted to explain my perception that this trial would drag into view, and dump into our lives for all of us to see, the public past and its present constructions. What were the claims being made in this trial?

I wrote:

We have not heard about Zuma's complex sexual History. Some might say that this is not business of the body politic of South Africa.

As this paper evinces, I hope, my reading of South Africa's past, leads me to think completely otherwise. I wrote:

Really?

What do the charges of a "set up" require to make sense? They require a Really, really diabolical view of Zuma's sexuality. If he was being defended as a man with a tragic "sex pathology", like an alcoholic who when presented with a drink collapses as a personality, that would be one thing. But he is being defended by many people in South Africa who write about this on web sites and discuss this on talk shows, as just an "average man" and sometimes as an "average Zulu man". Thus it is not his particular sexual problem that is being defended but his general sexuality: he stands for others. This makes the defense of his sexual conduct a much vaster issue with very wide philosophical and moral implications. "Jacob Zuma as metonymy for EVERYMAN".

I wanted to make the case that Zuma the man and the symbol (through his advocates and his supporters) was *insisting* on using essentialist and cultural arguments. Arguments deployed so many times in South African history before. It was difficult to make this case rapidly and without lengthy explanation so I argued:

Zuma's Sexual Politics has been on view for some years now. This is the man who recently headed the Moral Regeneration Movement in South Africa. Could any work of imaginative fiction be less believable than this? Recently many UKZN academics, such as myself, were called to support this Movement and our then Deputy President, by no less than our Vice Chancellor and our College Head. This was just a few months ago. Leaders from every sector of South African society have been "enjoined to get on board" with the Movement, led by KZN luminaries that include Narend Singh (now resigned from his provincial cabinet post because of an adulterous affair filmed and distributed widely in the last weeks). Zuma is the same man who has appealed in public for mentorship and leadership around the ABC of safe sex: "Abstinence; Be Faithful; and if neither are feasible in your life, always Condoms". This is the man who said female virginity testing and male self control were keys to stemming the HIV pandemic. This is the man who spoke about oral sex as "un African" in Parliament, when challenged by the African Christian Democratic Party about the South African Schools Life Skills Curricula and agreed it should be removed from texts discussing human sexuality in Schools. This is the man who sent me, and thousands like me, a Christmas public service message some years ago, enjoining me to protect myself and my family and "practice safe sex", via a

cell message courtesy of my cellular provider! In short, this is a man who has made sexuality an issue of public debate and policy. He has claimed the moral high ground for himself.

I next had to make the case that, even if Zuma was found innocent of rape, the corrosive outcomes of the trial (with its insistence on legitimating adultery and "unsafe sex", that he would again, and had already, offered to "pay" *lobola* and "damages" to the woman and her family), were momentous. As most observers by this time knew only too well Zuma had at first denied any sexual relations with the complainant and then some 10 days later alleged consensual sex. So what kind of Sex was being aired and constituted in our new democracy here?

I wrote:

So first he lied. But then, let us say, he told the truth later on. Going on the basis that he now tells the truth we can ask a few questions:

What is his truth? Is consensual sex with a major against the law? No. But it is against everything Zuma has given voice to in public life the last 7 years. He has had admitted unprotected sex with an HIV positive person, a close member of his family, his daughter's age, in his family home.

Ahem. If this is found to be the truth, is this grounds for conviction? No. Not in a court of law. But what about the court of public life? In South Africa today? Is this the moral regeneration you want for yourself? your family? your daughter? your son? your partner? your father?

I saved the sting of my anger and sadness for last:

The major claim of the Zuma supporters is that Zuma has been framed: Ah yes. The voice of white hot racism ("any African man presented with a scantily clad woman WILL BE TRAPPED--unstoppable, force of nature, can't help it") rears its ugly head again. The whole framing case rests on this fact. IF Mbeki had managed to have planted in Zuma's house a woman living with HIV, a friend of the family, just on the night of world-wide scrutiny of the man because of an ongoing corruption trial, etc etc; IF Mbeki and his team had managed to do this, why oh why could they be so sure that Zuma would be trapped by a such a person? A person who many thinking people might imagine to be a "long shot" for entrapment?

People who believe this are at the same time declaring about Zuma that he would needs be trapped by this scenario because any woman/vagina in his domain is a potential trap: he cannot resist a woman/vagina. It is not his fault. He is a victim of malicious and demon woman/vagina, like so many millions of men before him.

I then argued that to "work" the entrapment thesis had to make this age-old South African Sex argument, loaded with the pubic public utterances of a century or more, to achieve any veracity:

Every historian and anthropologist of Southern Africa ... has read the view voiced by racist eugenics or segregationist from the Southern Africa of the 1800s to the 1980s. Their arguments are housed in too many volumes of pseudo scientific literature and mission texts and political tracts and ethnographic documents to list. The canon of western thought is, as many scholars have evinced these past 4 years or more, replete with formulations of libidinous black men underpinning arguments by whites that seek to legitimize slavery, justify colonial rule as well as a host of other social and political positions of white domination. Thabo Mbeki himself offered a stinging critique of the racist discourses of hyper sexualization of African men and the objectification of African women in his famous set of addresses around the return from France and then the re-interment of Sara Baartman in the western Cape some 3 years ago, and much contemporary literary analysis and historical critique of colonialism has made this point for the past 20 years at least. Here is the unfathomable issue: how come is this view now being voiced daily on [www.friendsofjz.co.za](http://www.friendsofjz.co.za) and other spaces across our land afresh?

A close reading of this web site (which gets up to 280 postings daily) will set your head aflame with the most narrow minded and prejudicial view of African men's bodies and African women's obligations that I have seen since reading some of the aforementioned 19th century racist imaginings of "the body of the savage". It is heart breaking to have spent years of my academic life writing against this bilge, and reading the work of people I respect in many disciplines along the same lines, to see it propagated by young black men and some women, as well as Trade Unionists and officials of Youth Leagues and so on, in support of the ex Deputy President of our country! Here is how the argument goes: Jacob Zuma was framed in the same way any good man can be: by a vagina/woman. The vagina/woman is always set into place by more powerful forces of evil. The vagina/woman is demonized--the man is a victim of Eve all over again. Women/vaginas are trafficked as part of the commerce of daily life. Of course Zuma was trapped! Any man in his place would have been! And here is the additional catch: especially any African man.

In March, April, and May, stinging pieces about the trial, and its wider transmission belts, attacking and lamenting Zuma's pubic stand, in eloquent critical speech, were published by South African newspapers. Pieces by Barney Pityana and Njabulo Ndebebe, both academic and administrative leaders of major African universities in Pretoria and in Cape Town respectively, as well as the widely respected social scientist, Pumla Godobo-Madikizela, and a petition signed by leading South African women figures such as Marcus, Govender, Carolus and others were among the most articulate and devastating.<sup>31</sup> In May Laura Miti wrote a piece in *The Post*, a leading Zambian daily with an online version. Titled "The African Wife" she asked: "What are the Zuma wives going to do?". In this widely circulated piece she first summarized his televised appearance in the aftermath of his acquittal:

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<sup>31</sup> B. Pityana; N. Ndebele; P. Godobo-Madikizela as well as the responses of the Concerned South Africa Women (Marcus, Carolus, Govender et al); and the counter-attacks by the CYL, the ANC YL and the so called "Zuma supporters". See also John Qwelane's vitriolic response to them during and after the trial in THE SUN in the piece titled "Zuma was a victim of conspiracy!" from NEWS24.com, 15 May 2006.

Following his acquittal on rape charges, the former South African Deputy President Jacob Zuma was interviewed on state television. During the interview, he apologised to the nation for having, as he told the court during testimony in his own defence, had unprotected sex with a woman he knew to be HIV Positive.

During cross examination in court, he had further said that he had, after the said risky encounter, quickly taken a shower in order to minimise his risk of infection. He also said he had been for an AIDS test since and was Negative.

Then Miti went on to argue:

Now much has been said and written about the whole rape trial, what was said therein and the implications thereof on the fight for women's rights as well as the fight against HIV and AIDS. In all the hullabaloo, what has struck me most is that Jacob Zuma's wives have had so little mention.

In the hours of court appearance and celebrations afterwards, press conferences and interviews, not once has Zuma been reported as having made mention of the fact that he is a multiple times married man and that it is to these women he is most accountable for the escapade that delivered him to the dock. Instead, in his television apology, he made certain that it was very well understood even by the foggiest of brains that the apology he was making was only for the fact that he had neglected to use protection, but not for the indulgence itself.<sup>32</sup>

She then moved on to make a case for Zuma as "part for the whole", evoking a feminist argument about patriarchy and "the woman as wife, a victim of male power". Her argument was rooted in a concept of "the African wife", a particular kind of dutiful wife, whose victim-hood is seen to encompass specific contexts of care in the time of HIV AIDS, and whose life journey will include nursing a dying husband. Her article concluded not with a general evocation about the condition of dutiful African wives but with the installation of her self into the text. In the last stages of the piece Miti wrote as a member of this "class", using the first personal plural "we". She wrote:

Now one does not have to be particularly diagnostic to realise that there can be no shortage of willing women in Zuma's life. He has both power and money... Now I do not know what the Zuma wives' reaction to all this has been. It is also not known whether or not he has made them a private apology. What I do know is that from what is in the public sphere anyway, these women are a good representation of millions others across Africa. Wives dutifully waiting at home for their serial adulterer husband to come back and infect them with HIV.

So what are the Zuma wives, going to do?

What are the Zuma wives going to do now that they know from his own proud confession that on the second of November last year, while in a stone sober state (there has been no report of his having taken alcohol or drugs that night) he had implausibly risky sex with another woman? What will they do now that they know that he slept with her, knowing

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<sup>32</sup> L. Miti, "The African Wife" *The Post* "Zambia's Leading Newspaper", 13 May 2006 [www.postzambia.com](http://www.postzambia.com), accessed May 23 2006. My thanks to Victoria Phiri for this citation.

very well that unless what ever higher power he subscribes to decided in his favour, he would be infected with AIDS? That he made the decision on their behalf, or much rather in spite of them, to take a mind boggling risk because he just could not pass on an unexpected night of fun. The answer to that question is not difficult is it? It is that nine out of ten, the chances are that the Zuma wives will stay with him and he will continue to have unrestricted access to unprotected sex with them seemingly powerless against his recklessness.

She concluded

Jacob Zuma in his testimony in court spoke for many men. He spoke and said women are there for the taking. You can have as many as you want. It seems, from what we can see anyway, he was right in assuming that if there is a price to pay it will not be exacted by those most injured, his wives. They are just women, powerless against his recklessness.

### Conclusion (very tentative)

In April, at a gathering in Sweden, one of South Africa's foremost contributors to our understanding of the psychological and cultural consequences of our Sex politics, Kopano Ratele, broke new ground by linking anti "homo Sex" statements and anti "Immoral Sex" utterances by Zuma and supporters, Zuma's rape trial, and the wider public power of Politics of the Womb and Pubic Publics. South Africa was juxtaposed again with the "nations of the world". Now that Apartheid was over we were more able to see how our politics had in the past, and into the present, resonated with this thematic globally. Ratele wrote:

(T) hat fact that Zuma is neither the only African, nor African government incumbent, nor politician in the world whose discursive or material practices around sexual life deserve close attention tells us of the continuing dominance of a certain configuration of being a man or woman; masculinity is not what a man says or does, but part of the techniques of government. So politicians in Latvia, Poland, Uganda, the United States, and Zimbabwe, China, India, as a few of many examples we can offer, have either spoken against, to borrow a phrase from Epprecht ..., 'unnaturel vices', or at least gone along with discrimination against sexualities and sexual relations other than heterosexual ones. In these cases the fist of the ruling masculinity comes to down to crush men (and women) whose practices are regarded as queer. For example the Latvian president Vaira Vike-Freiberga in 2005 signed into law a constitutional amendment defining marriage as the union of a man and a woman. A similar constitutional amendment (stating that "marriage is lawful only if entered into between a man and a woman," and that "it is unlawful for same-sex couples to marry") was approved by the Ugandan parliament, with the law proscribing same-sex marriage thereafter signed by Ugandan President Yoweri Museveni – who on several occasions has pronounced on homosexuality.<sup>33</sup>

After several sustained pages of exploring the consequences of these connections, Ratele argued that:

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<sup>33</sup>Ratele, K. "Masculinity, sexual rights and development" Paper prepared for the International Workshop on Sexuality, Sexual Rights and Development, Stockholm, 6 April 2006, p. 10.



Zuma testified in his native tongue, isiZulu, and resorted frequently to tradition and culture to explain his behavior during the encounter, which he says was consensual, and following it - such as when he said he would be willing to enter into a traditional marriage with the complainant and pay "lobola," or bride's price for her.

He also testified that he had sex with the complainant when, he said, they both realized neither had a condom, because it is unacceptable in Zulu culture to discontinue a sexual encounter once a woman is aroused. The prosecutor argued that no South African culture demands that a man have unprotected sex with a woman. She said rather than Zulu-culture, it is Zuma-culture.

The ultimately defeated arguments of South Africa's Public Prosecutor, and Ratele, lead me to my tentative conclusion in this "work in progress".

Just as in 1927 a new Immorality Act for the Union laid the *de jure* foundations for the public public life of 20<sup>th</sup> century South Africa, so court and legal spaces in the post Apartheid South Africa again see turf battles over Wombs, Brides, Birth Cultures, Races of People; Sex, Vice, and Immorality. Yet in December the state ratified into law the possibility that men who love men, and women who love women, can do Sex, marry and form lasting state-recognized unions. This amazing series of events and enactments repudiated the Immorality and Prohibition of Mixed Marriages Acts underpinning the edifice of 20<sup>th</sup> century South Africa and suggested that "Zuma-culture", as much as racist and misogynistic "Segregationalist" and "Apartheid cultures", can be challenged and thwarted in this new and fragile democracy.

*Appendix 1* **NOTE: I include this Appendix since its existence amazes me and gives me hope.**

*The General Secretary has sent the following open letter to the Chairs of the Parliamentary Portfolio Committees on Home Affairs and Justice & Constitutional Development:*

**The South African Council of Churches** affirms the equal dignity and worth of each individual. As South Africans, we are proud that our society is founded on a Constitution that respects the fundamental human rights of all people and promises everyone equal protection before the law. We feel called by our faith and our convictions to articulate a religious motivation for marriage equality as a contribution to the public discussion of the reform of the Marriage Act, as required by the Constitutional Court.

**The moral imperative for a review of the Marriage Act, 1961** We recognise the need for a comprehensive review and transformation of all apartheid-era legislation, including the Marriage Act, in the light of our democratic Constitution if we are to live together as a united society amidst our differences and diversity. We recall with shame the role that legislation such as the Prohibition of Mixed Marriages Act and the Immorality Act played in the social engineering of racial domination. We are equally saddened that marriages conducted according to Muslim, Hindu and customary African rites have not enjoyed equal legal status with Christian marriages. As a part of this long overdue review, we must also consider how our society recognises and protects committed same-sex partnerships.

**Christians hold diverse views on marriage and homosexuality** We do not presume to speak on behalf of all Christians. There is not a single "Christian" perspective on marriage. We are alarmed by the widespread misapprehension that those who oppose equal marriage rights speak on behalf of a monolithic "Christian Church". Different denominations have different understandings of and policies governing marriage and divorce, and these have evolved over time. The Roman Catholic view, for example, is predicated on the belief that marriage is a sacrament that cannot be undone. Divorce in this tradition is therefore wholly unacceptable and never recognised. The Protestant and Reformed traditions hold marriage in equally high esteem, but in some situations reluctantly permit divorce as the lesser of two evils. Some churches see men and women as equally responsible for household decisions, while others uphold a tradition in which the male is the head of the household and women are encouraged to play a supportive, and ultimately subservient, role. In both cases, the churches concerned would see their positions as grounded in scriptural principles.

Currently, most churches uphold the union of one man and one woman as the only valid model for Christian marriage. At the same time, there is a growing number of dissenting voices in all denominations - people who see equal validation of homosexual and heterosexual unions as consistent with their understanding of the inclusiveness expressed through the unconditional love referred to as God's grace.

Christians hold equally diverse views on homosexuality. Today, most churches accept the overwhelming evidence that sexual orientation (as distinct from sexual behaviour) is a component of identity over which individuals exercise little or no conscious choice. Typically, they oppose discrimination against homosexuals. However, this acceptance is sometimes conditional on celibacy. Some Christians have difficulty reconciling such conditionality with an understanding of sexuality as a gift from God that has the potential to strengthen and enrich intimate human relationships.

**Scripture speaks afresh to each generation** Just as there is not one view on marriage, there is also no single authoritative interpretation of scripture. We view the Bible as God's living word. As such, it is capable of speaking afresh to humanity at different times and in different places and circumstances. The handful of passages most commonly read as condemnations of homosexuality were informed by the dominant understanding of human nature at the time they were written. They must be read and interpreted in their historical and cultural context. They should not be simplistically applied to contemporary society any more than ancient ways of explaining the natural world, also evident in scripture, should be used to dismiss the conclusions of centuries of scientific inquiry.

More importantly, our interpretations of these texts must be "checked" against the central messages that emerge clearly and powerfully from the Gospel: Christ's admonition to love God and to love one's neighbours, as well as his particular compassion for the poor, the marginalized and the oppressed.

### **Church and State have different responsibilities**

The Church must continue to wrestle with scripture to discern God's will with regard to the moral and theological questions associated with same-sex relationships, particularly as they affect questions of ordination and religious marriage. But the fact that most Christian denominations are not currently prepared to bless same-sex unions should not necessarily be a rationale for inaction by government. Government's responsibility, in a secular democracy, is not to interpret the Bible but the Constitution. It has a duty to test legislation against Constitutional principles and to protect the rights of all citizens equally. At the same time, the state must defend religious freedom by ensuring that churches retain control over decisions regarding religious rites and sacraments, including the religious aspects of marriage.

### **Ethical principles for equal marriage**

This is not to say that Christians (and other people of faith) have no role to play in building a national consensus on marriage. Our faith traditions provide us with moral insights on the role and significance of marriage that remain relevant to legislative reform. We understand religious marriage as a covenant that two people make publicly with God, a commitment to mutual sharing, caring, faithfulness and support. Good marriages benefit the community by creating stable and durable families that nurture both the partners and their children. They facilitate human development and social and economic participation, increasing individuals' capacity to contribute to the common good. We value these characteristics of religious marriage, regardless of the procreative capacity of the two individuals involved; we believe that the national interest is also served by enshrining these values in public policy governing civil unions.

Furthermore, we see our theological understanding of the equal dignity of all human beings being given secular expression in the equality clause of the Constitution and the principle of equal protection of human rights in terms of laws of general application. In the case of the revision of the Marriage Act, the challenge will be to keep an appropriate balance between the constitutional principles of freedom of religious expression and voluntary association on the one hand, while promoting a healthy coexistence with the equality clauses on the other.

This calls for creative thought and an appreciation of the benefits of protecting difference and diversity. Our national history illustrates all too painfully the folly and injustice of creating multiple legal and administrative mechanisms to perform essentially the same functions for different categories of people. Separate institutions are rarely, if ever, equal. Their chances of achieving equal impact are further reduced if they are embedded in a society that remains afflicted by prejudice and discrimination. Consequently, we believe that the State should craft a single legal framework capable of recognising and protecting the legal rights of all partners who wish to declare their commitment to each other, irrespective of their gender or the faith or cultural tradition in which their partnership is recognised or validated.

**Conclusion** In the light of these principles, we urge Parliament to act expeditiously to reconcile existing marriage legislation with the provisions of Section 9 of the Constitution within the timeframe designated by the Constitutional Court. We trust that, in so doing, Parliament will refrain from imposing any duty on faith communities that would inhibit them from celebrating and blessing partnerships in ways consistent with their respective beliefs. We stand ready to contribute constructively to this process by offering our own assessments of proposed legislation. September 2006<sup>34</sup>

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<sup>34</sup> "Open letter on Marriage" <http://www.sacc.org.za/news06/marriage.html>, 7 September 2006, accessed April 29 2007.