

Writing the history of sex in South Africa

Body Heat

In the early 1980s South Africa, a society in the midst of a huge socio-economic and political revolution, suddenly saw a striking number of films and books with central sexual themes being released for general or restricted consumption. The South African Union, and later Republic, formed in 1910 produced seventy years of state work around sex. The pervasive and extensive use of banning orders and other forms of legal, political, moral, social and discursive forms of control over sex and sexual expression, marked out the South African state from other regions of the world colonised by Anglo powers in the 17th to 19th centuries. I will argue that this feature of the South African state distinguished the country in relation to the ex-settler colonies of the USA, Canada, Australia and New Zealand, as well as the recently formed post 1979 state of Zimbabwe. Laws and official discourses about sexual themes and sex in post-Anglo independent states such as Ghana, Kenya, Nigeria and Malawi, and states on the borders of South Africa, such as Botswana and Mozambique, need more detailed treatment than they have received in scholarly literature, but in these societies the depth and tenacity of legislation and policing around sex never matched the purpose, dedicated resources, or ferocity of South Africa.¹ This feature of the state was intrinsic to its nervous conditions, its *raison d'être*, and its form of rule. It was an immensely fertile and productive project of state power, drawing in powerful patriarchal, normative, religious, cultural and medical domains of power with great persistence. It displayed both overt and furtive characteristics, and it produced and generated a myriad of intended and unintended perversions. It was a domain of state power less challenged and less resisted than many other areas of state power, and its discursive and lived legacies linger on in the pathologies and contradictions besetting South Africa today.

In 1982 South Africans who had the spare cash, and the time, went in numbers to see the film *Body Heat*, written and directed by Lawrence Kasdan, and a 1981 adaption of D H Lawrence's novel, once banned in South Africa, *Lady Chatterly's Lover*. Both of these films, as well as the 1980 James Michener novel, *The Covenant*, had been unbanned in 1982. These works of both lauded and dubious artistic merit were unbanned largely due to the strategic work of a professor of law (from 1971 to 1998), at the University of Pretoria, Kobus van Rooyen. In the midst of the 1970s he became deputy chair of the Publications Appeal Board, and in 1980 its chair. Van Rooyen's influence in South Africa lives on, as he chaired the Ministerial Task Group responsible for drafting the new Films and Publications Act from 1994 to 1996. After 1990, when his term as chair of the Appeal Board expired, he was elected as Chairman of the Press Council. A short while

¹This is a work very much still in progress. I invite and welcome criticism and collegial support. I am at work on a literature review of published work on this theme in texts about gender and sexuality in several African post colonies, as well as historical works about marriage, kinship, sexual morality and sexual expression in the late per-colonial and colonial era. If anyone has sources that could assist me please do email me. I am also interested in comparative work for the 20th century on Brazil, India, China and other southern states.

later he was appointed Chairman of the Broadcasting Complaints Commission, a position which he still holds.²

The publication arena was only one of a number of platforms for state sex work power. In this arena, as Carmel Rickard and others have shown, the determined and absurdly assured work of censorship by powerful organs of the South African state, resulted in more than seven decades of restrictions and proscriptions and the outlawing and banning of a myriad of forms of sexual expression and practice, sexual investigation and projects, sexual themes, sexual literatures, sexual bodies of knowledge, sexual arts and sexual productions.

In the early 1980s, when for the first time works on sex across the state's definitions of race and colour lines were allowed limited publication, it seemed to many commentators that a signal had been given of a shift in governmental ideas about sex and power. At the same time the Publications Appeal Board pressed with great force against the growing body of South African published work on injustice, oppression, exploitation and works about political liberation. Interviewed by Canadian-based *The Globe and Mail*, Mike Kirkwood, then director of Ravan Press, and Mthobi Mutloatse, then chair of the African Writers Association and editor of an anthology of black short stories, *Forced Landing* (which itself had just been removed from the banned list), said the apparent easing of censorship was merely an attempt to trick the local white public and international commentators. *The Globe and Mail* of **May 4 1982** quoted Mutloatse as saying:

The white public is falling for it. They think that because they can see Lady Chatterley's Lover, the Government is being more considerate. But they haven't checked the (government) Gazette every Friday morning to see how many books are banned. All those films have nothing to do with serious matters.

The report continued,

... more than 13,000 books, movies, records, posters and other items are still banned under the 1974 Publications Act. Among them are *The Hite Report on Male Sexuality*, the book and movie version of *Looking for Mr. Goodbar* and reggae records by Jimmy Cliff and Bob Marley. Works may be banned if any part is ruled obscene or harmful to public morals, blasphemous, a cause of ridicule or contempt to any social group, harmful to race relations or prejudicial to the safety of the state or peace and good order. Banning comes at two levels - against distribution or, more rarely, against possession.³

Some two years later, on 16 April 1985, the ANC's Radio Freedom, broadcasting from Addis Ababa, commented on the huge press coverage being given in South Africa and internationally to the growing rumour that the P W Botha regime would soon scrap the

²K.van Rooyen *A South African Censor's Tale* (Protea: Boekhuis, 2012) and see C. Rickard *Thank You, Judge Mostert* (Johannesburg: Penguin 2010); and see: <http://www.bccsa.co.za>, accessed June 20 2012.

³"South Africa sees Body Heat but not the end of censorship" *The Globe and Mail* May 4, 1982.

Immorality Act and the Prohibition of Mixed Marriages Act. Arguing along the same lines as Mutloatse and Kirkwood against this being a serious matter. The BBC quoted the newscast as saying the news was,

... "laughable" and that people were not sacrificing their lives so that "we should be allowed to have girlfriends across the colourlines". The radio said that the issue was "completely irrelevant at this stage".⁴

On the same day, April 16 1985, Reuters produced a widely circulated report on the announcement in parliament about the repeal of the Prohibition of Mixed Marriages Act and section 16 of the Immorality Act. This came after three years of wrangling, reports by a Committee of Investigation and from religious bodies. The announcement was made by the South African Home Affairs Minister, F W de Klerk. Papers across the world opined that the announcement was "a most significant reform in segregation policies since the National Party came to power in 1948". According to Reuters F.W. De Klerk told parliament:

'For many years this legislation was probably the most contentious on the South African statute books. . . . The Government is convinced that the relevant measures can and should be repealed.'

The report continued:

The Prohibition of Mixed Marriages Act and section 16 of the Immorality Act will be abolished within months, bringing relief to hundreds of mixed couples who feared midnight raids on their bedrooms by police. Mixed couples have been married overseas or in secret at home but their marriages were not legal.

Interviewing leaders of the United Democratic Front, the Black Sash and leading theologians, such as South African Council of Churches general secretary, Beyers Naude, the Reuters report cautioned that many progressives felt the timing was intended to lend credibility to the new segregated "tricameral" South African parliament that sought to involve South African people classified as Coloured and Indians, but exclude the black majority. Only the extreme right-wing Conservative Party declared that the end of the sex ban would "weaken white supremacy [and] said the ruling National Party had yielded to pressure from 'liberalists' and their associates in the Cabinet."⁵

Sex exceptionalism

Debates about exceptionalism and South African history usually take the form of analyses of racial capitalism, of race division and class formation, of infrastructure and

⁴ "ANC derides repeal of S African sex laws", BBC Summary of World Broadcasts April 19, 1985

⁵ "South African law banning mixed sex is to be repealed" Cape Town (Reuters) April 16 1985, carried in many newspapers such as *The Globe and Mail*, *The Guardian*, *New York Times*.

development, of violence and violent crime, of democratic struggle, and of the post 1994 egalitarian constitutional formation, and, more recently of state social entitlement and crucially the nature and form of the HIV epidemic. To my knowledge there are no detailed comparative histories of South African sex, outside of broad demographic surveys (for example the work of the Caldwells) and references in passing in the world of sex geographies and surveys of world sex and family (for example Goran Therborn). Yet current claims made about South African national sex exceptionalism are extensive.⁶

Placing South African sex history into the "historical exceptionalism debate" is thus one purpose of this paper and must needs be addressed to write a history of sex in South Africa.

Tunnelling in on the era from 1910 to 1948 this project hypothesises that a variety of forces (including Christian teachings and the life forms that grew around these, capitalism and the expansion of commercial agriculture, and biomedical institutions and practices), began to shape and pattern sexual decisions, sexual morality, and sexual discourses in South Africa before 1948. The eventual goal of this work is to trace and then compare the manner and timing of these shifts with other southern regions and influential historical work from the west. To this end I am interested in courtship, homo and heterosexual sociability, marriage, sexual intimacy, public sexual hygiene practices, and state regulation and legislation about sex in South Africa, between Union and 1950 and again between 1950 and the 2000s, in comparison with other societies. Framing questions include: what forms of sexual life survived from the era prior to colonial rule, and how do these compare with other regions in the British empire? How and with what form did settlers and migrants from Europe, the Americas, Asia and other parts of the continent rearrange, shape, or recombine intimacy and sexual life into the 20th century? How distinctively has male migrancy to the mining centres and the rise of South African cities shaped 20th century sexual lives, when we read the evidence from South Africa against a wider map? Did sexual life follow the lineaments of race, class or regional divisions, or were there formations of South African-wide shared sexual histories? How has sex, through time, worked to make South Africans?

The wider project must draw on secondary work as well as archival material (in missionary, state and medical records). It forms part of a wider project on sex history that will take the form of oral histories with octogenarians in the latter part of 2012 and into 2014 and beyond starting with the region known as the city of Johannesburg.

Urgency

A project on the sex history of South Africans over the 20th century was inconceivable in previous decades. New urgency, occasioned by *dis-ease* with sexual practice, by new legal frameworks addressing sexuality, and by new medical and moral debates, have all made this possible and urgent.

⁶See Hoosen Coodavdia *et al*, August 2009 LANCET special edition on South Africa as exemplary.

In contemporary South Africa experts and ordinary citizens are engaged in unprecedented discussions about sex and sexual behaviour. The HIV/AIDS epidemic, high rates of sexual violence, and the public debates and controversies over same-sex relationships, decriminalisation of sex work, termination of pregnancy and pornography, have flooded the public domain through wide ranging and accessible media. Medical experts, from general practitioners to academics involved in clinical trial research, are regular participants on the nation's airwaves discussing the shape and form of the epidemic.⁷ Their contributions to popular and rigorous scientific debates are crucial, and have been so since the early 1990s. The themes of sex practices, sex ideologies, sex education and safe sex ebbs and flows through their analysis and commentary.⁸ Yet this audible presence of medical expertise and commentary around sex practice and sexuality is a recent phenomenon.

During Apartheid the discussion of sex and sexuality in the public sphere was taboo.⁹ Following South Africa's first democratic elections the new government came into office with radical new policies and commitments, including the articulation of sexual and reproductive health rights in the Reconstruction and Development Programme (RDP) which was launched to redress the inequalities of the previous regime.¹⁰ By the start of the new millennium South Africans were grappling with the physical and social consequences of sexually transmitted infections. Experts and ordinary citizens engaged in unprecedented discussions about sex.¹¹ Debates about the meaning, context, form and practices of sexuality were legitimised and enabled by their connection with public health debates about prevention, treatment and safety in sexual life. The practice and authority of medicine and related sciences was openly yoked to discussions of sex, sexual desire, fertility and sexual intimacy.¹² Most people in the region were unaware that, starting from

⁷N. Ford, A. Gray, and F. Venter, "Tough choices: tenofovir, tenders and treatment" (2008); R. Bayer and G.M. Oppenheimer, *AIDS Doctors: voices from the epidemic: an oral history* (Oxford Univ Pr on Demand, 2002); W.T. Branch et al., "Teaching medicine as a human experience: a patient-doctor relationship course for faculty and first-year medical students," *Annals of Internal Medicine* 114, no. 6 (1991): 482–489; J. D'emilio and E.B. Freedman, *Intimate matters: A history of sexuality in America* (Univ of Chicago Pr, 1988); M. Foucault, "The History of Sexuality, vol. 1, An Introduction, trans," Robert Hurley (New York: Vintage Books, 1980) 139 (1978); L. Foxhall, "Pandora unbound: a feminist critique of Foucault's History of Sexuality," *Dislocating masculinity* (1994): 133–146.

⁸D Fassin and H Schneider "The Politics of AIDA in South Africa: beyond the controversies" *BMJ* 2003;326:495; H Schneider, D Blaauw, (et al) "Health Systems and Access to Antiretroviral Drugs for HIV in Southern Africa: Service Delivery and Human Resources Challenges" *RHM* 14:27, 12-23.

⁹C. Burns "Pubic Publics: The Zuma Trial and the history of Sex in South Africa. *History and African Studies Seminar Series*, May 30, 2007.

¹⁰A. Ramkissoo et al., "Sexual and reproductive health and rights: reflections on the Millennium Development Goals" (2010).

¹¹D. Posel, "The scandal of manhood: unmaking secrets of sexual violence in post-apartheid South Africa," in *Sex and Secrecy Conference, University of the Witwatersrand, Johannesburg, 2003, 22–25*; D. Posel, "'Getting the nation talking about sex': reflections on the discursive constitution of sexuality in South Africa since 1994," *Agenda* 18, no. 62 (2004): 53–63; D. Posel, "Sex, Death and the Fate of the Nation: Reflections on the Politicization of Sexuality in Post-Apartheid South," *Africa* 75, no. 2 (2005): 125–153. Also D. Fassin "Embodied History: Uniqueness and Exemplarity of South African AIDS" in *African Journal of Aids Research*, 2002: , 63-68; and S. Hassim, 'Democracy's 'Shadows: Sexual Rights and Gender Politics in the Rape Trial of Jacob Zuma'. *African Studies* (68: 1, 2009) pp. 57-77.

¹²P. Denis "Sexuality and AIDS in South Africa" *Journal of Theology for Southern Africa* 115 (March 2003), 63-77.

the early 20th century, medical experts and their associated therapeutic, educational, sociological and anthropological colleagues, (mainly trained in Europe) interrogated human sexuality in South Africa.¹³ Their efforts -- motivated by a range of objectives and shaped by prevailing ideologies -- left a body of archival and textual material, and shaped legal and educational policies over the century. But this data was largely unavailable to people outside of the scholarly literatures of medical and public health related social science. In the early 21st century public health experts began to comb the past for material about sexuality in the region over time.

The greatest lacunae exists around evidence of the experiences of ordinary people in their words. And this is where the helpful patterning as well as discredited stereotypes and interventions of the Caldwells, and even the work of Coovadia and Venter and other leading HIV scientists whose work has been so influential, will need to begin to be unpacked. This is where, to dig down into the exceptionalism argument, new evidence and analysis will need to begin to be created and explored.

Sexuality, desire, fertility, intimacy and marriage-forms are each central areas of human experience and of the history of any society, but they remain relatively absent from the historical record in this region. It is generally acknowledged by the current historical authorities that our understanding of contemporary sexuality suffers from an impoverished historical perspective: the polarised stereotypes of Victorian 'repression' versus 'modern' permissiveness.¹⁴ This is partly because of the paucity of high quality information from individuals of a more than anecdotal and accidental provenance. The exception to this are the works of medical practitioners in journals and medical publications—and these require special reading and their impact and audiences are yet to be fully understood. The narrative form that patient histories take, and the special place of sex histories in this, is a vast subject but needs to be analysed in relation to the South African material. Work around the history of medical practitioners' understandings of sexually transmitted infections in relation to migration, class and ethnicity in South Africa, has begun and monographs by South African doctors on the theme of sex and society will provide valuable foundations for new research.¹⁵ This narrative aspect of

¹³C. Burns, "Controlling Birth: Johannesburg, 1920–1960," *South African Historical Journal* 50, no. 1 (2004): 170–198.

¹⁴M. Foucault, "The History of Sexuality, vol. 1, An Introduction, trans"; L. Jordanova, *Sexual visions: Images of gender in science and medicine between the eighteenth and twentieth centuries* (Univ of Wisconsin Pr, 1993).

¹⁵R. Charon, "Narrative medicine," *JAMA: the journal of the American Medical Association* 286, no. 15 (2001): 1897; R. Charon and M. Montello, *Stories matter: The role of narrative in medical ethics* (Brunner-Routledge, 2002); S. Friedman and G. Harrison, "Sexual histories, attitudes, and behavior of schizophrenic and 'normal' women," *Archives of Sexual Behavior* 13, no. 6 (1984): 555–567; T. Greenhalgh, "Narrative based medicine in an evidence based world," *BMJ* 318, no. 7179 (1999): 323–325; K.M. Hunter, *Doctors' stories: The narrative structure of medical knowledge* (Princeton Univ Pr, 1993); JD Kark and JH Abramson, "Sidney Kark's contributions to epidemiology and community medicine," *International journal of epidemiology* 32, no. 5 (2003): 882; S.L. Kark, "The social pathology of syphilis in Africans," *International journal of epidemiology* 32, no. 2 (2003): 181–186; S.L. Kark and G.W. Steuart, *A practice of social medicine: A South African team's experiences in different African communities* (E. & S. Livingstone, 1962); S. Marks, "An epidemic waiting to happen? The spread of HIV/AIDS in South Africa in social and historical perspective," *African Studies* 61, no. 1 (2002): 13–26; R. Porter, *Disease, medicine, and society in England, 1550-1860*, vol. 3 (Cambridge Univ Pr, 1995); D. Porter and R. Porter, *Patient's*

clinical medical practice and the "sex histories" taken of patients in the past and especially into the present offer a site of intersection for oral historians. It is striking that there has been little sustained effort to remedy the broader evidential dearth of sex histories through the investigative methodology of oral history. In Southern Africa, and the rest of the world, oral history has proved an indispensable tool for salvaging historical evidence where otherwise little would exist, such as histories of struggle against colonial and oppressive rule, histories of working-class communities, histories of stigmatised experience, histories of violence and war-experiences, and histories of women and children.¹⁶

The long term research project, of which this paper is a part, aims to produce substantial evidence about the history of sexual ideas, practices and behaviour in individual life journeys and as part of a range of intimate and married relationships in South Africa in the twentieth century.¹⁷ The primary objective of the research project, therefore, is to gather and archive historical information upon which the study of sexuality can proceed in a more rigorous, discriminating and empirically-based direction, constantly animated by the "exceptionalism" question but not blinded by it. Before they are lost to posterity, I would argue, elderly people, in their seventies and eighties, represent the main source of such information.

Producing sex an object of study and governance while making it taboo: the South African Background

Sexuality was throughout the first half of the twentieth century in South Africa and the wider world an *almost* absolute taboo area in public discourse.¹⁸ Even after the 1950s and 1960s, when the taboo-status became more relative, it has remained a field of research with disreputable overtones, especially among professional historians and even demographers. A principal methodological reason for reticence in sex research has

progress: doctors and doctoring in eighteenth-century England (Stanford Univ Pr, 1989); D. Yach and S.M. Tollman, "Public health initiatives in South Africa in the 1940s and 1950s: lessons for a post-apartheid era.," *American journal of public health* 83, no. 7 (1993): 1043; L.F. Freed, *The problem of European prostitution in Johannesburg: a sociological survey* (Juta, 1949); L.F. Freed, *Crime in South Africa: an integralist approach* (Juta, 1963).

¹⁶E. Roberts, *A woman's place: an oral history of working-class women 1890-1940* (B. Blackwell, 1984); J. Sangster, "Telling our stories: Feminist debates and the use of oral history," *Women's History Review* 3, no. 1 (1994): 5–28; G. Smith, A. Bartlett, and M. King, "Treatments of homosexuality in Britain since the 1950s—an oral history: the experience of patients," *BMJ* 328, no. 7437 (2004): 427; C. Burns, "Sex lessons from the post?," *Agenda* 12, no. 29 (1996): 79–91; P.R. Thompson, *The voice of the past: Oral history* (Oxford University Press, USA, 2000).

¹⁷B. Bozzoli and M. Nkotsie, *Women of Phokeng: consciousness, life strategy, and migrancy in South Africa, 1900-1983* (James Currey, 1991); I. Hofmeyr and A. Hofmeyr, "We spend our years as a tale that is told": *Oral Historical Narrative in a South African Chiefdom* (Heinemann Portsmouth, NH, 1994). P. Dennis *Never too small to remember. Memory Work and Resilience in Times of AIDS*. (Pietermaritzburg: Cluster Publications, 2005).

¹⁸T. Nhlapo, "African customary law in the interim Constitution," *The Constitution of South Africa from a Gender Perspective*. Cape Town: Community Law Centre, University of the Western Cape (1995): 157–66; T. Nhlapo, "Women's rights and the family in traditional and customary law," *Putting women on the agenda* 111 (1991): 116; T.R. Nhlapo, "African Family and Women's Rights: Friends or Foes, The," *Acta Juridica* (1991): 135.

always been the notion that the South African public would not answer such prying questions. In the past researchers were also aware that the legal framework around 'vice and immorality' and associated laws was very wide and racially, as well as culturally, heavily loaded in South Africa. Indeed the racialisation of sexual mores and cultures, and the heavy hand of Christian Nationalism in the South African state apparatus between 1948 and 1994, would have entailed unacceptable risks for subjects of this form of research.¹⁹ Since the 1990s, however, the public health crises created by HIV/AIDS, and the regular appearance of government ministers, religious leaders and experts appearing in newspapers, radios and on state television, talking about sex and sexuality as part of, for example, national campaigns for 'safe sex', has contributed to a certain degree of 'maturing and 'normalisation' in the public discourse on sex. This has accompanied an entirely new constitutional framework around sexual rights and sexual identities. To a considerable extent the popular perception of the subject's clandestine, private and taboo character has been re-evaluated over the last ten years.

Researchers and educators have found that South Africans are often astounded that experiences of intimacy and sexual passion, and the energy of youthful love, were part of their great grandparent's lives and captured by some exemplary medico-anthropological monographs and studies in the 1920 to 1950s era. There is a wide spread popular discourse, circulated and elaborated upon in HIV/AIDS course materials, thousands of curricula and programmes and interventions and public health papers, that expressive sexual consciousness and experience in young people is something new, part of our post-1960s world.²⁰ In South Africa this discourse is often straight-jacketed into the era of HIV/AIDS.²¹

In the past decade South African people have come to absorb an increasing array of messages about sexuality, sexuality, contraception, and the hazards of what is termed 'unsafe sexual practices' from media, corporations, the state, and peer groups. Media archives are replete with examples of commentators such as trade unionists, youth leaders, cultural and sports figures, but also ministers of Cabinet and party political

¹⁹S. Dubow, *Scientific racism in modern South Africa* (Cambridge Univ Pr, 1995); A. Whiteside and C. Sunter, *AIDS: the challenge for South Africa* (Human & Rosseau, 2000); C. Walker, *Women and resistance in South Africa* (David Philip Publishers, 1991); H.J. Simons, *African women: Their legal status in South Africa* (Northwestern University Press Evanston, IL, 1968); D. Posel, "Race as common sense: racial classification in twentieth-century South Africa," *African Studies Review* (2001): 87–113; T. Leggett, *Rainbow Vice: The drugs and sex industries in the new South Africa* (New Africa Books, 2001); F. Kaganas and C. Murray, "Law, women and the family: the question of polygyny in a new South Africa," *Acta Juridica* (1991): 116; J.W. Fedderke, RH de Kadt, and JM Luiz, "Indicators of political liberty, property rights and political instability in South Africa: 1935-97," *International Review of Law and Economics* 21 (2001): 103–134; O. Chimere-Dan, "Population Policy in South Africa," *Studies in Family Planning* (1993): 31–39.

²⁰Burns, "Sex lessons from the post?" *Agenda* 29:1996, 79-91.

²¹M. Hunter, "The materiality of everyday sex: thinking beyond prostitution," *African studies* 61, no. 1 (2002): 99–120; M. Hunter, "Cultural politics and masculinities: Multiple-partners in historical perspective in KwaZulu-Natal," *Culture, health & sexuality* 7, no. 4 (2005): 389–403; L.M. Thomas, "The modern girl and racial respectability in 1930s South Africa," *The Journal of African History* 47, no. 3 (2006): 461–490; L. Thomas, "Love, Sex, and the Modern Girl in 1930s Southern Africa," *Love in Africa* (2009): 31–57. Burns "Interest and Emotion: Monica Hunter Wilson, Sex and Love in South African historical prose" *History and African Studies Seminar Series* September 2008, 1 – 22.

officials, berate the new in the form of 'the promiscuousness of today's youth'. This censoriousness is held in tension with other felt and expressed experiences of 'the new'. For example many South Africans tell researchers, talk show hosts, and magazines that they feel liberated by the greater openness and detail of readily available sexual information we are all receiving these days.²² In these discussions and debates both popular and academic discourses do a very great disservice to knowledge by cultivating a view of 'the modern' as concerned with sexuality, sex practice, sexual pleasure, and the pitfalls and dangers associated with sexual practice, as opposed to something, constructed through these dichotomies as 'the traditional', and depicted as a space in which sexual tension, pleasure, and desire were suppressed by naiveté, convention, ignorance or incivility. An area where historical evidence is more nuanced in South African research is that which concerns a comparison between the past high marriage rates and the dropping rates of cohabitation of couples today as well as rates of customary or civil marriages as well as small pocket of work on sexuality in the lives of male migrants to the gold mining sector. Discussions of these issues rarely pay any attention to sexuality, and sexual intimacy research rarely heeds the issue of cohabitation or life-partnership.

To move the debate forward a wide array of sources will need to be mined. I hypothesise that the oral information on sexual memories and past experiences gleaned through oral history (using both in-depth interviews and focus groups with elderly people), will provide much richer data than the existing written accounts concerning childhood and awakening sexual identity, adolescence, intimacy and courtship, birth and fertility decisions, ageing and sexuality, pain and pleasure in sexual life. But there is also the need at the very same time to work on the *de jure* and powerful web of laws and discursive fields of power that enmeshed South African people. And it is to this that I will now turn.

1927

In late 1927 a new Immorality Act for the Union laid the *de jure* foundations for the public, perhaps also *pubic*, life of 20th 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, these same experts opined that in the hurly-burly of South Africa 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, Nhlophe, Cousins, Hughes, Mokoena 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.

²²<http://www.lovelife.org.za/research/index.php> accessed December 2 2011

Most historical work on this theme hitherto has been unable to conjoin research on women and men termed "Coloured", with "Native", "African", "Asian", "Indian", "European", "Afrikaner" and "white", except in analyses of health sanitation segregation, where the meeting together of these simultaneous constructions is impossible to disentangle.²³ Instead, the focus of most scholarly work has been to parse the histories of South African women and men as if they really could only be studied or understood inside of racialized categorisations. This has had the effect of solidifying popular convictions of "really existing", distinct and separate "cultures and races" into the present. And in the arena of sexual practices, sexuality and desire, sexual knowledge and sexual expression these categories gleaned and produced salience. Despite the challenges of writing about these phenomena in chords, historians and sociologists such as Walker and others, have been able to show that South African state forms of 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.²⁴ This place of the sex work being done by the state and people in its various organs, and the push-back against, and co-responsibility with the state's agenda (from faith collectives, social formations outside the state, experts and people of all sorts and types), needs to be parsed.

It seems from a close reading of the extant data that special precautions and practices were needed to guard the sexual cultures of people who found themselves in Southern African in 1910, to prop them up and to underpin them. Women's bodies then, and now, formed instruments for specific assertions and utterances by powerful men. Between 1910 and 1996 it seems clear that 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. Through many decades of statehood men spoke on behalf of women, and justified their actions as protecting "women's interests". Since men could not bear children, women's conceptive powers, 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

²³ 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 "White women 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). T Nhlophe Nhlapo, "Women's Rights and the Family in Traditional and Customary Law", in Susan Bazilli (ed.), *Putting Women on the Agenda*. (Johannesburg: Ravan Press: 1991) pp. 111-23.

See Bazilli *Putting Women on the Agenda* For Hyslop and Cousins see later references.

²⁴ C. Walker "Women and Migrant Labour" in *Women and Gender in Southern Africa to 1945* (Cape Town: David Philip, 1990).

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 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 politics of South Africa throughout the 20th century.²⁵

But this Politics of the Womb only touched one side of South African Sex 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 which 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.²⁶

As Croucher, Wojcicki, Ratele, Forman, Gevisser, Cameron, Epprecht, Reddy and others have shown²⁷ unlike "miscegenation", "homophobia", while not yet named in South

²⁵ 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).

²⁶ 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.

²⁷ 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, 1994-2000", *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 Inquiry". *The International Journal of African Historical Studies*, (34:1 2001), V. Reddy, " Homophobia,

Africa, was present in law, in policing, in education, in health, in working life and many other spaces through the later 19th and 20th centuries. Hatred of homo sex, as Unnatural and Immoral, was emerging with energy and evolving into recurring powerful political force. The right to "sexual orientation", a concept only named in the last part of the 20th 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 by all racially classified groupings over the past 100 years to define and prop up "cross-racial" sex, "homo sex" and "unnatural sex" laws, so after 1994 "Our Culture" 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.²⁸

Yes, but is the history of South African sex exceptional?

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 (for example: 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.²⁹

Here 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 physically involved, but where they have been implicated.

In this sense Sex is not necessarily about what people actually do, but about what they must needs always "do" in "the light of" the implications of and insistences of body politics. I hope this is not too deterministic, as I mean but this a 'Sex charged field' around the populous.

human rights, and gay and lesbian equality in Africa", *Agenda*, 50, *African Feminism 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.

²⁸ 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.

²⁹ 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 were passed into law. These combined with 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 capacities in mind. Very few commentators on South Africa bring this aspect of South African state formation to the foreground of the history of racial law making. But, without classifying the fruits of wombs, this entire edifice would have been impossible to construct. 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 styled 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 "pubic 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 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.³⁰

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).³¹

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.

³⁰J. 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. 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 Accessed 5/50/2007.

As Jeremy Martens and others have shown in work on Natal,³² 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, much 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.³³

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".³⁴

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 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.

³² 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.

³³ 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).

³⁴ *South African House of Assembly Debates HANSARD* (Government Printer: Pretoria) p. 26, p. 36. and 1927, p.37.

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.

Major symbolic opponents in the 1930s anxiety around this arena of 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 hierarchy. 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 Gujarati 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.³⁵

After the War, the National Party's slim victory at the polls encouraged every effort at shoring up support. 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.³⁶

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

³⁵ Hyslop, "White working class" p. 68.

³⁶ Hyslop, "White working class" p. 80.

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 Africa.

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.³⁷ Constructing and maintaining hegemony requires dedicated conscious thought and praxis and these labours leave scratches and marks in the many archives of the past.

Marriage law was, and remains, a specially fraught site. In this domain Sex was worked into legitimating frames carrying enormous social and political weight. 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.³⁸ 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.³⁹ 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.⁴⁰

³⁷ 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.

³⁸ 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).

³⁹ 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).

⁴⁰ 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.⁴¹

A few months before Honoré's review, across the international public sphere, South Africa's newest forms of Sex-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".⁴² Here story after story, while purporting to unmask the hypocrisy behind white sex-political 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. Patrick Furlong's masters thesis, and then

⁴¹A. 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.

⁴² 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*.

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.⁴³

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, where the author is seemingly unaware of USA legislation based on similarly absurd but powerful assertions:

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."⁴⁴

Documented in the pages each year of the excellent annual *South African Institute of Race Relations* publications, in which the numbers and kinds of persons charged and

⁴³ 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.

⁴⁴ *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

found guilty under both the Immorality Act and the Prohibition of Mixed Marriages Acts are to be found until their repeal in the mid 1980s, 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.⁴⁵

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 Sex 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, Christopher Hope 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 public 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.

In July 1984 the South African government granted a parliamentary select committee, established in 1983, to consider ways to change the Immorality Act and the Prohibition of Mixed Marriages Act, new powers to study the feasibility of scrapping the laws altogether. The committee was dominated by National Party members and was chaired by the deputy minister of internal affairs, Piet Badenhorst. The committee told the government that they would argue for "the desirability of the repeal of the two measures as they cannot be justified on scriptural or other grounds."⁴⁶

The argument of the Cape Synod of the Dutch Reformed Church in 1982, which held for the first time that laws against interracial sex and marriage were "in conflict" with scriptures, has been analysed in detail by theologians and social thinkers. And its ruling and authority played a distinctive role in pushing wavering cabinet members especially P W Botha. The potential ripple effect of these laws has not been fully worked through,

⁴⁵ See the work here of sociologist, Yvonne Erasmus, on the history of the Racial Classification Board in South Africa where appeals were made for "re classification". Her U of London PhD on this subject and several key papers as well as "Negotiating racial boundaries: Dialectic strategies of apartheid's Supreme Court" a paper presented at HASS UKZN 2007 need full referencing here.

⁴⁶ "South Africa considers interracial marriage" *Christian Science Monitor* July 12, 1984.

nor their connection to the publication and censorship shifts of the previous four years. Gradually the media inside South Africa and abroad began to argue that if whites and blacks were allowed to express mutual desire, practice sexual relations and were deemed able to marry, all the other related laws that segregated residential communities, divided educational and health and other public institutions, and argued for separate citizenship based on incommensurate and natural difference would have to be dropped or amended. *The Guardian* commentators predicted this when, in 1984, the paper led with the headline "Sex across Pretoria's lines / Possible changes to South Africa's colour bar in sexual relations":

The breezes of change blow unpredictably. Consider for instance the new request by a South African - parliamentary select committee for an alteration in its terms of reference - both a significant admission of defeat and a salutary warning of an impending clash between the new constitution and the ideology of apartheid. The committee was set up a year ago to consider 'the necessity, the possibility and the desirability of amending' the notorious Prohibition of Mixed Marriages Act of 1949 and the equally repugnant section 16 of the Immorality Act of 1957. These laws respectively prohibit marriage and sexual relations between white and non-white and have until very recently been regarded as indispensable pillars of apartheid. They are understandably regarded by non-whites as among the most offensive and demeaning laws on the statute book. Now, by seeking (and even more interestingly obtaining) government permission to recommend their repeal, the committee has effectively acknowledged that there is no point in amending these laws; they can only be retained or abolished.

The Mixed Marriages Act was one of the first laws enacted by the then new Afrikaaner nationalist, white majority which has held power from 1948 until today. But until the Immorality Act was passed, miscegenation outside marriage remained legal whereas within marriage it was against the law. This absurd anomaly has made it clear to all concerned that both laws must stand or fall together. If, as now seems on the cards, they are to be scrapped, then the Group Areas Act of 1966, which decrees where people live according to their race, can hardly be retained in its present form because it would make it illegal for the partners in an inter-racial marriage to live together, with or without their racially mixed children.

A non conclusion

The part of this paper that is yet to be written is the part that links this moment with the 1996 new Constitution. In that decade I want to know the forces and powers that maintained and loosened the claims of 80 years and more, claims about nature and culture, and where and how desire in South Africa opened and deviated. 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.

Many questions remain:

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.

Just as in 1927 a new Immorality Act for the Union laid the *de jure* foundations for the public public life of 20th 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 2006 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 startling series of events and enactments repudiated entirely the edifice of Immorality and Prohibition of Mixed Marriages Acts underpinning 20th century South Africa, and suggested that "Zuma-culture", as much as racist and misogynistic "Segregationalist" and "Apartheid cultures", can be challenged and perhaps unseated in this new and fragile democracy.