Iron Law and Colonial Desire: Legality and Criminality in Paton's *Too Late the Phalarope*

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Summary

Too Late the Phalarope [1955]1971 provides an occasion to reflect on the relationship between colonialism, law and criminality. I argue that Paton indicts Afrikaner Christian nationalism by dramatising a paradox inherent in it. Afrikaner nationalism's uncompromisingly strict legality – both the normativity that regulates the behaviour of members of the Afrikaner community, and the strict enforcement of these norms – renders its members vulnerable to that which the community disavows and criminalises in the Immorality Act: the libidinal attraction to the Other manufactured by colonialism's "desiring machine". Moreover, by producing the conditions under which the "colonial desire" of the colonised – the desire for continued survival – cannot lawfully be fulfilled, colonial law is responsible for the criminality of the colonised.

Opsomming

Too Late the Phalarope [1955]1971 bied 'n geleentheid om na te dink oor die verhouding tussen kolonialisme, reg en misdadigheid. My argument is dat Paton die Afrikaner-nasionalisme aankla deur 'n dramatisering van die paradoks inherent daaraan. Hierdie nasionalisme word gekenmerk deur 'n streng, kompromislose klem op wet-likheid, sowel wat die normatiewe regulering van die gedrag van Afrikaners betref, as die streng toepassing van die betrokke norme. Hierdie wetlike klem maak lede van die Afrikaanse gemeenskap ontvanklik vir juis dit wat die gemeenskap kriminali-seer terwyl dit hom daarvan distansieer: die libidinale aangetrokkenheid tot die Ander, vervaardig deur die "begeerte-masjien" van kolonialisme. Deur toestande voort te bring waaronder die "koloniale" begeerte van die gekoloniseerdes – die begeerte vir voortgesette oorlewing – nie wettiglik vervul kan word nie, is die koloniale reg bowendien verantwoordelik vir die kriminaliteit van die gekoloniseerdes.

As an upholder of the British liberal tradition, Alan Paton was a passionate and lifelong supporter of the Rule of Law (Black 1992). His understanding of the Rule of Law as a principle designed to safeguard citizens against arbitrary governance resembles the formulation of that principle by the

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English constitutionalist A.V. Dicey: the rights of citizens are to be determined by legal rules rather than by arbitrary decisions of state officials; no punishment is legitimate other than that resulting from the decision of a court of law, and all individuals, regardless of rank and status, are subject to the law. Paton describes the Rule of Law as "the greatest political achievement of mankind" (1987: 283).

In his first novel, *Cry, the Beloved Country* ([1948]1958), written immediately before the National Party's ascent to power in 1948, Paton's support for the legal system as animated by the ideal of the Rule of Law is reflected in his reverential depiction of the figure of the judge and the courtroom. *Too Late the Phalarope*, written between 1951 and 1952, shortly after the National Party's election victory in 1948, does not reflect a similarly respectful attitude towards the legal system. It was becoming increasingly apparent to Paton that the National Party victory had inaugurated a period that he would come to characterise as "the grave erosion of the Rule of Law" (1987: 253). His second novel reflects his growing conviction that South African law's enforcement of the norms of Afrikaner Calvinism – what he would later refer to as "the monstrosity known as Christian Nationalism" (1987: 78) – generated an opposition between the legal system on the one hand and the Rule of Law on the other. Whereas the Rule of Law was intended to protect individual liberty, Paton realised that the National Party was intent on using law as an instrument to restrict individual liberty and instantiate racist ideology as state policy.

The central focus of *Too Late the Phalarope* is a breach of the Immorality Act of 1927, that "fierce and pitiless" (Paton 1988: 46) law that criminalised interracial sex in an effort to forestall racial fusion that, from the perspective of the colonial, threatened to bring about the decline of European civilisation.[1] Pieter van Vlaanderen, police lieutenant, rugby hero and figure of authority in the Afrikaner community, brings about his own imprisonment and the destruction of his own and his family's reputation by having sexual intercourse with Stephanie, a Coloured woman. The novel resembles, as John Jordan (1996: 694) has pointed out, less a tragedy than an "elegiac romance": a mourning of the fall of a hero who, in the words of the narrator, Tante Sophie, was "called to the high duty of the law and broke the law … moved in his soul by that which was holy and went reaching out for that which was vile" (Paton [1955]1971: 171).[2]

1. Although Paton does not explicitly date the events of the novel – does not specify, that is, whether it is set in the period immediately before or immediately after the 1948 National Party election victory – the events of the novel can be located with a fair degree of certainty in the period between 1946 and 1948. Pieter has returned from World War Two and there is evidence that the Smuts government is still in power (p. 132).

Too Late the Phalarope provides an occasion to reflect on the relationship between colonialism, law and criminality. Why is Pieter, outwardly an exemplary Afrikaner, attracted to Stephanie, despite his community's construal of interracial sex as deviant and sinful? Why is he unable to resist his desire for Stephanie despite his community's moral and legal proscription of interracial sex, despite his duty as a policeman to uphold the law, despite his duty of fidelity towards Nella, his wife, despite the risk of exposure and the danger to his family's reputation? Is he, in addition to his violation of the Act, perhaps also guilty of the crime of rape?

Although the novel is centrally concerned with the fall of Pieter, it is also, at least peripherally, Stephanie's story. Her trajectory is marginalised in the narrative: in contrast to the revelation of Pieter's interiority, only limited information is provided about her activities and no direct access is given to her state of mind, which we may infer only from occasional speech and characterisations of her behaviour. Yet the relegation of Stephanie to the periphery of the plot need not be construed as diminishing her significance in the novel as a whole.

If Pieter's criminality is motivated by sexual desire for a Coloured woman, Stephanie's is entirely pragmatic. There is no indication that she is attracted to Pieter: she breaches the Immorality Act to secure his assistance. Because she is prohibited by the law from brewing alcohol, an activity sanctioned in her community, and because she is threatened with the removal of her child by the law, she seeks employment as a domestic worker in the households of Afrikaners, who will themselves abide by the law only as far as it suits them. Unable to retain her employment for reasons beyond her control – her first employer fires her when she hears about her criminal past; the second dies – she is unable to support herself and her dependants. Faced with the choice between obeying the law and retaining her child, she "chooses" criminality: she resumes manufacturing liquor and has intercourse with Pieter in exchange for practical assistance.

To what extent is Stephanie's violation of the Immorality Act linked to colonial oppression? To what extent is her intercourse with Pieter a product of her agency? Should she be held morally responsible for her criminality? Should we hold Paton responsible for the relegation of Stephanie to the margins and for her silence?

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Certain critics have viewed Pieter's illicit intercourse with Stephanie as an act of rebellion against his father's dominion over his family (Thompson 1981: 44; Jordan 1996: 699). In this reading, Pieter is motivated to defy the

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2. All subsequent references to *Too Late the Phalarope* will be indicated by page number(s) only.

Immorality Act by his wish to revolt against the authority of Jakob (modelled to some extent on Paton's authoritarian father, James Paton (Alexander 1994: 10)). Pieter thus violates the Immorality Act, the "Law of the Fatherland", as a symbolic breach of the Act's domestic analogue, the "Law of the Father".

This reading derives support from Tante Sophie's description of both Jakob's despotic rule over his family and the Act as "iron law" (pp. 18, 21). Pieter's actions do not, however, constitute a conscious repudiation of Jakob's patriarchal tyranny. He does not appear to understand the nature of his desire for Stephanie (p. 123). Rather, his breach of the Immorality Act is akratic, a yielding to a desire for an activity that he hates (p. 64). As the narrative unfolds, his intentions are revealed as an ambivalent fluctuation between avowals and disavowals, "resolves and defeats" (p. 67) inconsistent with a conscious determination to transgress the "iron law" of his father. Moreover, he considers his desire a pathology that calls for the therapeutic intervention offered by confession.

Although Pieter's oedipal trauma is, as some critics have suggested, at least partly responsible for his violation of the Immorality Act, these critics have failed to fully recognise that Pieter's *desire for Stephanie* – his sexual attraction to a Coloured woman – rather than rebellion, is the primary motivation for his violating the Immorality Act. True, Pieter wonders whether his obedience to his father as a child, designed to win love and approval, might not have produced in him "some unknown rebellion" that does "harm to you" (p. 67). In fact, the "unknown rebellion" to which he refers corresponds to a distortion in the constitution of his subjectivity produced by unresolved oedipal trauma that makes his sexual attraction to Stephanie stronger, and his ability to resist it weaker, than it might otherwise be. Rather than being a further act of resistance to the authority of his father, his violation of the Immorality Act is, I shall argue, the result of a distorted subjectivity formed through extended oedipal trauma.

A passage in Herman Charles Bosman's novel *Willemsdorp*, written at around the same time as Paton wrote *Too Late the Phalarope*, in which the protagonist, like Pieter, violates the Immorality Act, describes the rural Afrikaner community of which Pieter and his family are members: "[t]hey were strongly attached to the Bible and their church. They were potential schizophrenics through generations of trying to adapt the rigid tenets of their Calvinistic creed to the spacious demands made by life on the African veld" (1998: 14). In the figure of Pieter, the potential for schizophrenia, in the vernacular sense of a split and splitting psyche, is realised.

As a child, Pieter's character and inclinations violate the inflexible rules and customs that govern Afrikaner masculinity, and which regulate all forms of being and activity ("We eat and drink by rule and custom" (p. 149)) in this restrictively juridical society. He embodies to a high degree values contained in the prevailing ideal of masculinity: he is an excellent marksman and rider of horses, an accomplished rugby player, a disting-

uished soldier and a policeman (at a time when the state portrayed the police as heroic defenders of civilised order). But other aspects of his personality are by the standards of prevailing gender classification considered feminine: he is sensitive, literary and appreciative of beauty (he picks flowers and collects stamps). These "feminine" qualities, which outside of this community would usually be considered valuable complements to "masculine" attributes, are considered an undesirable corruption of masculinity within rural Afrikaner communities in this period. In his description of the men's club in Willemsdorp, a town virtually indistinguishable from Venterspan, the town where Pieter's community is situated, Bosman mentions that "the fact that the literary, artistic, philosophical, musical side of human activity was not represented served only to impart a tone to the club" (1998: 87).

Jakob is the epitome of the Calvinist Afrikaner patriarch. Chairman of the local constituency of the National Party (p. 48) (referred to in the novel as the "Nationalist Party"), his allegiance is exclusively to Afrikaner nationalism and the Bible. For him, "the point of living is to serve the Lord your God and uphold the honour of your church" (p. 72). He is a figure of absolute authority in his household, a patriarch who "believes that the husband is the head of the wife" (p. 35), "understands obedience better than love" (p. 65) and tyrannically opposes anything inconsistent with the rigid tenets of Calvinist Christianity and the purity of the Afrikaner nation.

The importance that Jakob places on conformity to even the most trivial "rules and customs"– he is disappointed that the young dominee does not smoke a pipe, for example (p. 57) – extends to gender roles within his family. His antipathy towards all forms of alterity leads him to resent Pieter's "feminine" attributes. Jakob feels towards him "the anger of a man cheated with a son" (p. 10).

His readiness to punish Pieter by prohibiting "feminine" activities for him exacerbates the strained relationship between them. His confiscation of Pieter's stamps when he falls below first in class is an unjust exercise of power against which Pieter rebels. When Jakob returns the stamps after Pieter has matriculated, Pieter refuses to express gratitude or delight (p. 28). Later Pieter decides to fight in World War Two on the British side and takes the "Red Oath", an act of defiance of his father, who considers World War Two an "English war" (p. 30). The struggle between father and son extends unresolved into Pieter's adulthood. When Jakob encounters Pieter negotiating with Kappie about the sale of stamps, he addresses them "as though he were talking to boys" (p. 29).

Oedipal conflict is the form of development through which males go to reach mental, sexual and social maturity. The son's real desire in this struggle for power is to break the "Law of the Father" in order to become a patriarchal authority himself. In cases where the oedipal conflict is smoothly resolved, the male subject moves unproblematically between patriarchal law

and paternalistic state law, in the process reconciling himself with both his father and the latter's social analogue and assuming a position of authority within the male social imaginary. In Pieter's case, however, the oedipal conflict has not been resolved.

Pieter experiences his attraction to Stephanie as a pathology, a "mad sickness" (pp. 46, 91), and is unable to understand why he desires to engage in an activity strongly prohibited by his religion and the law of his community. The most plausible explanation for this desire – the sexual desire of the white colonial man for the colonised woman – is that it is an instance of what Robert Young calls "colonial desire", the "ambivalent double gesture of repulsion and attraction that seems to lie at the heart of racism" (1995: 90) and more specifically "a compulsive libidinal attraction disavowed by an equal insistence on repulsion" (1995: 149). As Young, drawing on Stallybrass and White, notes, the identity of the civilised European male subject is constructed through exclusion of and opposition to an alterity that is itself constructed by the subject as debased and low at the social level. Yet he "includes that low symbolically, as a primary eroticized constituent of [his] own fantasy life" (Stallybrass & White 1986: 5). The colonised black woman represents for the white colonial man an alluring sexual exoticism that recognises no scruple or limit, that is literally outside of morality. Fanon observes that "[t]he civilized white man retains an irrational longing for unusual areas of sexual license, of orgiastic scenes, of unpunished rapes, of unrepressed incest …. Projecting his own desires onto the Negro, the white man behaves 'as if' the Negro really had them …. The Other will become the mainstay of his preoccupations and desires" (Fanon 1986: 165, 170).

In *Too Late the Phalarope*, Pieter represents himself as being "tempted by what [he] hated" (p. 64) and is described by the narrator as "reaching out for that which was vile" (p. 171). It is true that Pieter is appalled by his marital infidelity and his violation of the morality of his Calvinist faith, but more than this, he is aware that by the standards of his community and his religion his engaging in sex with Stephanie, a "savage" (p. 18), is vile and base. His characterisation of his actions is consistent with Young's articulation of "colonial desire" as the conflict between repugnance and attraction. Stephanie represents for Pieter a repressed or disavowed constituent of his fantasy life. As Alexander suggests, the novel reflects Paton's "fascination with the psychology of the white man, apparently a pillar of rectitude, wrestling with his overwhelming desire for a black woman" (1994: 106), a fascination which, Alexander speculates, may arise from his reflections on the libidinal proclivities of his own father (1994: 105-106). Paton draws attention to this form of sexual desire in his account of two other incidents. The first is Pieter's apprehension and interrogation of a white boy, Dick, who is chasing after Stephanie, presumably with the purpose of having intercourse with her (pp. 10-18). In a second incident, a white farmer, Smith, has made his black domestic worker pregnant.

As David Spurr notes, the relentless debasement of the racial Other in colonial discourse arises from a desire for that Other "which must be resisted" (1993: 80). The moral, legal and religious discourses of prohibition through which the colonial identity is constituted are usually successful in creating in white men a conscious revulsion against the "abject" colonised woman that precludes sexual attraction. Pieter recalls a friend, Moffie de Bruyn, recounting the way in which, having resolved to assist at the scene of a car accident, he notices that the victim is a Malay woman and is unable to touch her "for the touch of such a person was abhorrent to him" (p. 97).

Yet the colonial subject is constantly menaced by the threat of the collapse of his revulsion against the black woman into attraction. As Zakes Mda observes, transgressive acts of "perverse desire" occur from the inception of colonialism in South Africa, "even before laws were enacted in Parliament to curb it. It became a pastime the very first day the explorers' ships weighed anchor at the Cape Peninsula centuries ago, and saw the yellow body parts of the Khoikhoi women" (2002: 93-94).

Colonial desire and the transgression of its legal interdiction feature prominently in South African literature. In his autobiography, *Blame Me on History*, Bloke Modisane notes that "some of the country's most respected citizens [came] to court on charges of committing an offence under the Act by having carnal intercourse with black women; highly placed citizens like a prime minister's private secretary and a few dominees of the Dutch Reformed Church" ([1963]1986: 215). Examples of the transgressions to which Modisane refers occur in Bosman's *Willemsdorp* and Zakes Mda's *The Madonna of Excelsior*. In *Willemsdorp*, Charlie Hendricks, the editor of the eponymous town's newspaper, has intercourse with a Coloured girl, Marjorie, while the local police sergeant, Brits, recalls an unsuccessful attempt to apprehend *in flagrante* a town councillor who is sleeping with a Coloured woman (1998: 153-154). And in *The Madonna of Excelsior*, Mda's fictionalised account of the 1971 case in which nineteen citizens of Excelsior, a Free State town, were charged with contravening the Immorality Act, five white Afrikaner men, including Stephanus Cronje, the mayor of Excelsior, and the Reverend François Bornman, a Dutch Reformed minister, have intercourse with five black women in a barn. Mda's depiction of the orgy closely resembles the colonial sexual fantasy: a tableau of frenzied copulation in which "[e]verybody [is] lost in a dizzying world of partner-swapping" (2002: 54). These black women offer the white men sex that lies outside the realm of social order which commands the observance of sexual fidelity, "genital potency beyond all moralities and prohibitions", as Fanon puts it (1986: 177).

Pieter's trajectory is tragic because his actions, unlike those of the Afrikaner men in Mda's novel, are not autonomous. According to Tante Sophie, after the first occasion when he has sex with Stephanie, he regards himself as "a man, who knowing the laws and commandments, had, *of his*

own free choice and will, defied them" (p. 117; my italics). The narrator likewise describes his second transgression as being "of his own will and choice" (p. 150). But his actions are freely willed only in the sense that he is not coerced by an agency external to him. What distinguishes his acts of transgression from those depicted in *The Madonna of Excelsior* (apart from the fact that he does not engage in the kind of debauched orgy that Mda depicts) is that he presents himself in his journal and is portrayed by the narrator as wrestling with his desire. His autonomy is curtailed to the point of alienation, in the sense in which Joseph Raz observes that "[a] person who feels driven by forces which he disowns but cannot control, who hates or detests the desires which motivate him or the aims that he is pursuing, does not lead an autonomous life. He is thoroughly alienated from it" (Raz 1986: 382).

By contrast, the white men who violate the Immorality Act in *The Madonna of Excelsior* are shamelessly exploiting black women over whom they wield great power. It is true that one of the Afrikaner men, Johannes Smit, is described as being "a slave to his secret desires" (2002: 22), but in the context of the novel as a whole this description is ironic: his intercourse with black women represents, Mda suggests, the consummation of his autonomy. The Reverend Bornman's attempt at self-exculpation by attributing his breach of the Immorality Act to "the work of the devil" misrepresents his motivation (2002: 87-88).

Why is colonial desire so irresistible for Pieter, given the interdictions of law and religious morality which, despite his transgressions, he feels obligated to obey? The answer lies in the fact that his oedipal struggle has not been successfully resolved. The linkage between home and state is in Pieter's case a site of subject disfiguration, a diseased space of alienation. His subjectivity is fragmented and split: his social status is that of a figure of authority, but he is, at the same time, subject to his father's strict authority. His identity is characterised by outwardly directed aggression (his "enmity" towards Sergeant Steyn during their inspection of the cells (pp. 29-31)) and inwardly destructive self-doubt and ambivalence (p. 67).

Pieter's sexual attraction to Stephanie is irresistible because it offers him an escape, however temporary, from his bifurcated subjectivity. Sexual intercourse with a black woman represents for the colonial subject a "loss of individuation … the death of the human subject through the transgression of the boundaries by which it is defined" (Spurr 1993: 182). Attached to sex with Stephanie is the promise of "the destruction, the dissolution of [his] being on a sexual level" (Fanon 1986: 171). It offers him a release from his fractured identity, doubly constructed as it is by the "Iron Cage of Legality" (Comaroff & Comaroff 2006: 2) that his father's authoritarianism represents and his attempts to escape it.

If the sexual desire for the Other is stronger in Pieter's case than in most, his capacity to resist the desire appears weaker. His prayers for strength to resist his sexual desire and his plan to ask his friend, Kappie, for a rule that

is external to the normativity of his community that will restrain him, "some rule, that I can follow, something known only to you and me" (p. 98), suggest that moral and legal norms that would typically operate as a restraint are for him weakened. Although it is true that after having transgressed, Pieter, unlike the exploitative Afrikaner men in *The Madonna of Excelsior*, reproaches himself – he regards himself as "evil" (p. 155) and "abject" (p. 171) – prevailing moral rules are insufficient to restrain him from refraining from the activity they forbid.

According to Freud, the superego, which bears the "functions of self-observation, of conscience and of [maintaining] the ideal" and is "representative for us of every moral restriction, the advocate of a striving towards perfection" (1973: 98), is "a successful instance of identification with the parental agency … most intimately linked with the destiny of the Oedipus complex" (1973: 95). Unsuccessful resolution of the oedipal complex results in a damaging of the superego: "the super-ego is stunted in its strength and growth if the surmounting of the Oedipus complex is only incompletely successful" (1973: 96). It is possible that Pieter's akrasia – the weakening of his resolve to resist his desire for Stephanie – may be attributable to a corruption of his superego, which fails to provide a sufficiently resilient barrier to his acting "sinfully", as it would for many other white men.

It is, of course, possible that Pieter's actions are more autonomous than either he or Sophie would care to admit. As Jordan reminds us, events in the novel, including Pieter's state of mind, are "filtered through Sophie's narration, which in turn draws most of its information from Pieter's diaries, so there is at least a double distortion in the representation" (1996: 690). In the course of an analysis that reads Sophie's narrative "against the grain", Jordan argues that her love for Pieter blinds her to his shortcomings and that she overestimates his virtues and plays down his faults (1996: 696). Read in this way, the portrayal of the alienated Pieter struggling to resist sexual desire might represent a falsifying attempt by him and Sophie to mitigate his moral culpability. Finally, we cannot know whether or not this is the case, since it is impossible to determine the full extent of the distortions produced by the mediation.

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Critics have argued that Pieter's desire for Stephanie is generated by his wife's (Nella's) reluctance to accede to his sexual demands. The narrator too suggests that Pieter would not have had intercourse with Stephanie had Nella been willing to engage with less reservation in passionate intercourse. She is portrayed as a "country girl, quiet and shy and chaste" and as "frightened of the evil things that men and women do" so that "when [Pieter] in his extremity asked for more love, she shrank from him, thinking

it was the coarseness of a man" (p. 39). Her sexual repression is captured by Foucault's consideration of an imperative to subject sexuality "to the law … not only will you submit your sexuality to the law, but you will have no sexuality except by submitting yourself to the law" (1990: 128). Sex is for Nella dangerous and degenerate unless it is located – in the sense that it has a "place where it stayed" (p. 70) – and "deployed" within a strictly utilitarian economy of reproduction, in which desire and pleasure are subordinated to the maintenance of the family structure. She responds to Pieter's demand for increased physical intimacy by referring to their children as proof of her sexual adequacy (p. 105).

Pieter believes that if Nella satisfied his sexual demands he would "be safe" (p. 69) – able to resist his desire for Stephanie – and Sophie agrees, adding that she would have satisfied Pieter sexually by loving him "without rule or custom" (p. 148). Yet while Pieter and Sophie may well be right that he would not have had sex with Stephanie if he had been sexually satisfied by his wife, Nella's coldness and Pieter's sexual frustrations with his own marriage (which Paton had experienced in his own first marriage (Alexander 1994: 266)) cannot account for Pieter's desire for intercourse with a Coloured woman.

Nella's "chastity" carries the same causal status as Pieter's being deprived of the opportunity to confess to harbouring a "perverse desire". When he wishes to confess to the young dominee Vos, he is stymied by the dominee's respect for him as a rugby hero. As Foucault observes, confession is "a ritual that unfolds within a power relationship, for one does not confess without the presence (or virtual presence) of a partner who is not simply an interlocutor but the authority who … intervenes in order to judge, punish, forgive, console and reconcile" (1990: 61-62). The only other option available to Pieter is to confess to the police captain, Massingham, but his attempt to do so is frustrated by the captain's attention being at the relevant moment focused on work (pp. 158-159).

It is probably fair to say that had Nella offered her body more readily and with greater abandon or had Pieter felt able to confess, the house of van Vlaanderen would not have been destroyed. I nevertheless want to resist the idea that Pieter has sex with Stephanie because this is his only option. Pieter has an opportunity to have intercourse with Anna, who flirts with him while his wife and children are visiting her parents, suggesting that she would welcome an advance (pp. 113-115). He lacks the disposition to take advantage of this opportunity, perhaps because she is a family member, but principally because she does not attract him sexually. But even apart from Anna, I am inclined to think (although the novel does not explicitly deal with this) that since Pieter is an accomplished rugby player and a war hero he could, if he wished, find a willing white woman and that he chooses to have sex with Stephanie because he considers the idea of sex with her excitingly transgressive.

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Is Pieter guilty of crimes other than violating the Immorality Act? Although his adultery clearly constitutes a moral offence, the Dutch law declaring it a criminal offence had in 1914 been declared obsolete by the Appellate Division in *Green v Fitzgerald*. Is Pieter perhaps guilty of rape? Evidence available to the reader suggests that Stephanie consents to have sex with Pieter. There is no mention of his resorting to violence or coercion. Jordan, however, suggests that a properly suspicious reading both of Pieter's diary entries and Sophie's narration should cause us to question the accuracy of their accounts, skewed as they may be by the attempt to obscure the true nature of these events and to conceal the most culpable aspects of Pieter's acts. He concedes that legal prosecution of Pieter for rape would fail by reason of epistemic uncertainty, but nevertheless asserts that "hints that Pieter may be a rapist hover on the margins of Sophie's narrative in the form of other rape stories that she tells" (1996: 690).

As I have mentioned, the novel begins with Pieter's apprehension of the white boy Dick who has been chasing Stephanie. Jordan reads Dick's pursuit of Stephanie as an unsuccessful rape that invites speculation about the possibility that Pieter is a rapist. There is also the story of the farmer, Smith, who makes his black domestic servant pregnant and who, with the assistance of his wife, murders her and disposes of the body to avoid detection. Jordan contends that "although Sophie elides the information that would enable us to identify this as a case of rape, the difference in power between the white man and the black woman makes it difficult to believe otherwise" (p. 691). He asserts that this story "inadvertently links Pieter to a white man who rapes a black woman", strongly suggesting that Pieter himself is a rapist.

Conceding that there is insufficient evidence to convict Pieter of rape in a court of law, can we, as Jordan seems to suggest, convict him in a more evidentially receptive – literary – forum? Acting on his desire for Stephanie, Pieter is aware of the massive disparity in social status between him and Stephanie: he is white, a man and a policeman; she is black, a woman and a petty criminal "well known to the police and the courts" (p. 12). But are we entitled to conclude from the difference in power between the white man and the Coloured woman, as Jordan does in his analysis of the story of Smith, that it is difficult to believe that this is not an instance of rape?

Jordan's claim that we may reasonably draw such an inference appears to be informed by a radical feminist account of rape such as Catherine Mackinnon's. Against the legal definition, which defines rape as non-consensual intercourse, Mackinnon holds that in view of the unequal power between men and women – women's inferior social status and their social and economic dependence on men – rape is not an exception to heterosexual sex as currently constituted but is rather continuous with or a variation on normal heterosexual activity and cannot be distinguished from it by reference to coercion or violence. As Mackinnon puts it, "[i]f sexuality is

central to women's definition and forced sex is central to sexuality, rape is indigenous, not exceptional, to women's social condition" (1989: 172). Mackinnon adds that "the questionable starting point has been that rape is defined as distinct from intercourse, while for women it is difficult to distinguish the two under conditions of male dominance" (1989: 174).

Although MacKinnon is correct that power relations may to some degree undermine female consent to sex by constituting a form of coercion, in most cases, women can distinguish without difficulty between instances of rape and consensual intercourse (Cahill 2001: 43). Her account rests, moreover, on a theory of power that excludes the possibility of female sexual agency.[3] Mda illustrates the difference between rape and consensual sex through women's sexual agency in *The Madonna of Excelsior*. Early in the novel, Niki and two friends, young black women, are collecting cow-dung in the fields when they are accosted by a white farmer, Smit, who hands them each money in exchange for which he demands sex from Niki. What renders the resultant intercourse a brutal rape (or would do if Smit's premature ejaculation did not render him incapable of penetration) is not simply the presence of force but also the absence of consent on Niki's part. He grabs her and drags her into the sunflower field. She attempts to resist: "Smit pulled off Niki's Terylene skirt. She tried to hold on to it but he had the strength of ten demons. He threw her on the damp ground. Then he pulled down her panties and took them off" (2002: 16).

Subsequently, Niki has sex with Stephanus Cronje as an act of revenge against his wife, Cornelia: "She did not see a boss or a lover. She saw Madam Cornelia's husband. And he was inside her. She was gobbling up Madam Cornelia's husband, with the emphasis on *Madam*. And she had him entirely in her power" (Mda 2002: 50). Intercourse here certainly takes place in the absence of sexual desire or pleasure on her part and within a context of colonial power relations. Yet this appears as an instance in which sex is used to resist colonial power relations. Niki's deployment of sex to strike back at her white female oppressor suggests agency on her part: she is "using [her body] consciously to get what she want[s]" (2002: 53).

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3. Even the absence of agency on the part of the woman may not be an indication of rape. In *Disgrace*, David Lurie arrives at the flat of his Coloured student, Melanie Isaacs, and has intercourse with her: "She does not resist. All she does is avert herself: avert her lips; avert her eyes. She lets him lay her out on the bed and undress her: she even helps him, raising her arms and then her hips …. Not rape, not quite that, but undesired nevertheless, undesired to the core" (Coetzee 1999: 25). Lurie certainly exploits the unequal power relationship between lecturer and student, but this power relationship does not completely vitiate her consent. The nature of their relationship puts pressure on her to consent, but her consent is not an act produced by the absence of viable alternatives: it is realistically possible for Melanie to refuse David, but she elects not to do so.

In both instances when Niki has sex, intercourse takes place within a matrix of colonial and patriarchal power relations and in both cases the intercourse is thoroughly undesired on the part of the black woman. Yet there is a world of difference between the two cases: to describe the second case as rape is mistaken, since Niki is a willing participant. In *Too Late the Phalarope*, Stephanie appears to offer sex in exchange for assistance with employment and with her struggle to retain custody of her child, whom the legal officials are threatening to remove. Indeed, she invites Pieter to meet her after work (p. 95). Pieter records the final occasion on which they have sex on the vacant ground as being at her rather than his instigation (p. 170). Later it is revealed that Stephanie has acted on that occasion in collaboration with Sergeant Steyn to plant evidence that will secure Pieter's conviction under the Immorality Act.

There is no evidence that Pieter forces Stephanie to have sex; the pressure placed on her to engage in undesired intercourse is indirect, rather than exerted by him: it is the legal system that imprisons her for brewing beer, the magistrate who threatens to remove her child, and her employers who fire her. In this context, it is useful to invoke the distinction between rape and undesired sex to which a woman consents. Pieter is certainly "exploiting someone weaker than himself, disadvantaged and voiceless" (Hooper 1989: 59) – his behaviour is unethical – but it is not rape. To the extent that the accounts provided by Pieter and Stephanie are distorted by ideological colouring and agenda, as Jordan plausibly suggests they may be, the reader encounters the problem of paucity of evidence: finally, we cannot know whether Stephanie on one or more occasions withholds her consent. But the evidence suggests that Pieter is not guilty of rape, legal or otherwise.

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If Pieter's violation of the Act is motivated by sexual desire produced by the conditions of colonialism, this is no less true for Stephanie, although the "colonial desire" that brings her to violate the iron law is of a different kind. Colonial law is imperiously "jurispathic" (1983: 40) in Robert Cover's sense: to the extent that the regime of regulation that obtains in the African community – according to which brewing and selling beer is a sanctioned occupation – diverges from colonial law, colonial law overrides it. Fanon remarks on this propensity of law in the colonial context: "Colonial domination … very soon manages to disrupt in spectacular fashion the cultural life of the conquered people. This cultural obliteration is made possible … by new legal relations introduced by the occupying power" (1967: 190).

Modisane explains that "shebeen queens" in Sophiatown "chose this life and accommodated the hazards, my mother wanted a better life for her

children, a kind of insurance against poverty … and if necessary would go to jail while doing it" (1986: 38). Stephanie is in much the same position, although the novel suggests that her ambition is limited to providing subsistence for her dependants rather than a "better life". The threat of imprisonment provides no deterrent: "she had been often enough to prison, and no one had died of it" (p. 14). As in the case of the shebeen queens of Sophiatown, "going to jail carried very little social stigma; it was rather a social institution, something to be expected" (Modisane 1986: 38).

When she is sentenced for the illegal brewing of liquor, in addition to imposing the standard punishment of imprisonment, the magistrate threatens to remove her child and place the child in the custody of the state. This legal coercion, which is added to punishment, which has proved ineffective, is intended to force Stephanie to comply with exploitative colonial labour relations. That the law operates to enforce the subjection of blacks is further revealed when Stephanie is fired by her employers when the "madam" is told about Stephanie's criminal record: "they paid her only for the days she worked, which is against the law; but it is a safe thing to do in Venterspan, where the blacks are humble and obedient and do not know their rights" (pp. 93-94).

Stephanie has little choice but to return to the illegal brewing and sale of liquor. She appears before the magistrate once more, and he, on the advice of Pieter's mother, President of the Women's Welfare Society, orders that her child be placed in the custody of the state. Sophie's characterisation of her sister-in-law's decision as a "gentle sentence" (p. 166) shows that she herself is not the voice of moral authority, but is judging on the basis of ideological beliefs that differ from Paton's. Paton cannot fail to register the iniquity of rupturing the relationship between mother and child under these circumstances and to appreciate that, as Robert Cover notes, such sentences "signal and occasion the imposition of violence upon others" (1986: 1601).

Since both the Immorality Act and the liquor laws are instruments of colonial power, it is inapposite to hold Stephanie morally responsible for her criminal transgressions. The legal system that Paton depicts operates on the assumption that people are responsible for their own choices and that those who are disposed to criminality are individuals with bad characters. *Too Late the Phalarope* reveals this assumption as false in the colonial context. As Fanon observes, the logic of moral responsibility as applied to the colonised is undermined by the principal desire of the colonised to continue to live despite economic and psychological degradation inflicted under colonialism: "For a colonized man, living does not mean embodying moral values or taking his place in the coherent and fruitful development of the world. To live means to keep on existing" (1967: 249). In such a context, the criminality of the colonised is "not the consequence of the organization of his nervous system nor of a particular trait in his character, but the direct product of the colonial situation" (1967: 250). Jordan contends that Stephanie's "motives, insofar as they are accessible to us, remain largely

obscure" (1996: 702). In fact, however, it is perfectly clear that Stephanie is motivated by a "colonial desire" that she and her dependants "keep on existing" (and existing as a family unit).

M.J. Hooper and Margaret Lenta (1996) tax Paton with depriving Stephanie of a voice: "Paton neither makes Stephanie speak, nor speaks to any great extent on her behalf" (Hooper 1989: 62). Hooper and Lenta must be construed as claiming that we have no *direct* access to Stephanie's state of mind: the only sources from which we are entitled to draw inferences about her mental state are occasional exchanges between her and Pieter and her and the magistrate, as well as Tante Sophie's characterisation of her actions (all of which amount to not much more than an indication that Stephanie has a strong maternal attachment to her child and is resistant to the law's determination to separate them).

So although it is not literally true that Stephanie is silenced, there is certainly a paucity of evidence from which we could assess her mental state and this represents a marginalisation of Stephanie in the novel. As Jordan has pointed out, however, it is Sophie, motivated by her love for Pieter, who silences and marginalises Stephanie in her narration in an attempt to conceal whatever incriminating evidence against Pieter might be revealed by permitting her to speak (1996: 691). Jordan argues compellingly that although Stephanie is marginalised throughout at the level of plot, Paton's true attitude towards Stephanie is discernible at the level of form, where she embodies "a principle of deviance or excess that runs counter to the orderly, overdetermined social and narrative structures with which she appears. She breaks the law; she violates codes of behaviour; and this transgressive energy gives her a freedom of movement that no other figure in the book has" (1996: 702).

Stephanie's persistent "smiling and frowning" (pp. 13, 45, 52, 91) serves as an example. At the level of emplotment, this vacillation is produced by colonial domination. Fanon quotes the anthropologist Geoffrey Gorer: "[t]he blacks are kept in their obsequious attitude by the extreme penalties of fear and force … the whites demand that blacks be always smiling, attentive, and friendly in all their relationships with them" (Fanon 1986: 49-50). Stephanie is also (and at the same time) expected to display respect for the authority of whites and for the colonial legal system: "then she would think it not right to smile, or perhaps her smile had at some time angered someone in authority, for she would frown as though by that she would show respect for the law and the court, and would show that she was not careless and indifferent" (pp. 52). Similarly, in *Willemsdorp*, the Coloured prostitute, Marjorie, oscillates between smiling and frowning in Charlie's company: "Smiling seemed to come facilely to Marjorie's lips and eyes. So would she frown effortlessly, also" (1998: 83).

At the level of form, however, the vacillation in Stephanie's facial expression is an indeterminacy that escapes the closure of colonial legality

(what Paton refers to as "the certitude … of the white man's law" (p. 35)). Jordan notes that she dances as she walks down the street, does not lower her eyes when she speaks to Pieter, and resists the determination of colonial law by calling it into question (after her final appearance before the magistrate, she leaves the court "not like one on whom sentence is passed, but like one who passes it" (p. 169)) and by pursuing by any means available to her an appeal against the magistrate's decision. Her promiscuity and repeated violation of the Immorality Act represent a marked contrast to Nella's law-abidingly chaste abstention from sexual transgression. As Jordan observes, "[a]s the sign of strangeness or difference in the text, [Stephanie] stands finally as the novel's figure for everything that refuses to be accommodated within the existing social order" (pp. 702-703).

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In *Too Late the Phalarope* Paton indicts Afrikaner Christian Nationalism by dramatising a paradox inherent in it. Afrikaner Nationalism's uncompromisingly strict legality – both the normativity that regulates the behaviour of members of the Afrikaner community, and the enforcement of these norms, the "iron law" that Pieter's father epitomises – renders its members vulnerable to that which the community disavows and criminalises in "the greatest and holiest" (p. 94) of its laws: the libidinal attraction to the Other, manufactured by colonialism's "desiring machine" (Young 1995: 98). It is, Paton shows, the liberty-restricting legality which gives effect to Afrikaner nationalism – more particularly, its neurotic obsession with excluding, excising and deprecating all alterity, all forms of difference – that is at least partly responsible for the embracing of that which Afrikaner Nationalism deems criminal.[4]

Colonial law, Paton implicitly suggests, radically undercuts the ethical promise of the liberal Rule of Law ideal. Whereas the latter is intended to safeguard the liberty of all individuals, Paton demonstrates the former to be, in Gary Boire's chiasmus, "a form of violence that legalizes, a form of legality that imposes violence" (1999: 588) in its consequences for both the colonial and the colonised. Paton invites us to consider law as an instrument of colonial power intended to subjugate the colonised. By producing the conditions under which the "colonial" desire of the colonised – Stephanie's desire that she and her dependents should continue to survive – cannot be

4. Although *Too Late the Phalarope* is not concerned with English liberalism – here are no English liberal characters in it – it is worth recording for the sake of even-handedness that English liberalism is far from innocent and that the complicity of English liberals with apartheid was real and strongly resented by blacks: Modisane's indictment of English liberals in *Blame Me on History* serves as an example.

lawfully fulfilled, colonial law is, paradoxically, responsible for the criminality of the colonised.

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