The Men of *Blanket Boy’s Moon*: Repugnancy Clauses, Customary Law and Migrant Labour Sex

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This article analyses Peter Lanham and A.S. Mopeli-Paulus’s *Blanket Boy’s Moon* (1953) in the hope of opening up a space between ideas of legal and cultural determination in the “no homosexuality in African culture” debates of the last two decades. Through a consideration of the history of repugnancy clauses in British colonial customary law and a critique of contemporary theories of state sovereignty, the article disputes the universalist/cultural relativist, tradition/modernity dialectics that continue to frame the problem of African subjectivity and sovereignty. Repugnancy clauses represent a colonial version of Agamben’s argument about the relationship of sovereignty to the state of exception: indigenous sexual conduct was left to customary law except in instances when it was found to be repugnant to the gaze of the colonisers. South Africa is now the only country in the world to grant legal recognition to both polygamous and same-sex marriages, though the South African constitution asserts that customary law is only valid when in accordance with the equality clause. Increasingly, international human rights law in relation to a right to sexual orientation is engaging questions of tradition and indigeneity, thus revisiting some of the key questions that inher in the relationship between repugnancy clauses and colonial sovereignty. The novel under discussion broaches colonial imaginations of ritual murder, homoerotic attachments that do not produce identity and the colonial state’s claim to the monopoly of legal, lethal violence in the guise of an ethnographic murder mystery. It therefore allows for the theoretical questions of the essay to find representation in embodied and affectively charged form.

I. INTRODUCTION

In what is increasingly a global struggle between a set of universalising, liberal human rights ideologies and institutions and what could be called a global family values coalition, the question of indicatively male homosexuality in sub-Saharan Africa has become something of a player. I wish to focus on Peter Lanham and A.S. Mopeli-Paulus’s *Blanket Boy’s Moon*, a South African novel first published in London in 1953, in order to amplify a dissonance between the domains of culture and law on the terrain of what can be problematically shorthanded as ‘African homosexuality’. If I were to note a recent shift in the long

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geographically stratified debate on homosexuality in African cultures, it would be in terms of a turn to increasing legal determinations and/or legal sites from the heralded anti-discrimination on the grounds of the sexual orientation clause of the South African constitution of 1996 to the Ugandan Anti-homosexuality Bill of 2009/12.2

These legal sites are proliferating as I write. Two significant examples of such a proliferation would be recent U.N. resolutions containing sexual orientation as a protected category in anti-violence resolutions and the case the New York-based Center for Constitutional Rights (CCR) is currently bringing against Scott Lively on behalf of a consortium of lesbian and gay organizations in Uganda, under the U.S. Alien Torts Statute (Lively is one of the American evangelicals who helped draft the Ugandan Bill).3 There is increasing evidence of the significant role that U.S. based evangelicals have played in the drafting of ‘anti-gay’ legislation and the re-drafting of African constitutions.4 In other recent news, on the one hand, The Inter-American Commission on Human Rights is currently considering a petition filed on behalf of the Jamaica Forum for Lesbians, All Sexuals and Gays (J-FLAG) and Mr. Gareth Henry (a founder member of J-FLAG) to obtain a declaration from the Inter-American Commission that the maintenance and enforcement of certain laws by Jamaica in relation to private consensual sexual conduct by adult males violate Jamaica’s obligations under international law, specifically the American Convention on Human Rights and the

American Declaration on the Rights and Duties of Man, and that Jamaica has failed to protect the rights and well-being of its homosexual citizens.9

On the other hand, a Russian-sponsored resolution “Promoting human rights and fundamental freedoms through a better understanding of traditional values of humankind: Best Practices” was passed on October 4, 2012 by the United Nations Commission on Human Rights and was widely claimed as a setback to the international LGBTI human rights agenda.6 I strongly suspect that more such interventions are imminent on all sides as both national and international legal regimes, for a variety of reasons, claim jurisdiction over same-sex desiring African bodies.

As Marc Epprecht has shown, the fantasy of Africa as an imagined space free of homosexual desires and practices is an old one, though I would add that it is as old as the fantasy of Africa as a polymorphously perverse and hypersexualised space.7 The historiographic frames of the debate as well as its geographic locations are up for grabs. Rudi Bley’s suggests an eighteenth century origin in the writings of Gibbon.8 Others credit Sir Richard Francis Burton’s terminal essay to his 1886 translation of A Thousand and One Nights which posited a Sotadic Zone, where homosexual feelings and acts proliferate, which is all the world except for Northern Europe and sub-Saharan Africa.9

It is further possible to argue for determining power in the crises of colonial and postcolonial African masculinity and the uneven inheritances of missionary Christianity amongst African elites.10 Critics committed to an anti-homophobic politics who want to resist African nationalist arguments that homosexuality is a white man’s disease and a decadent Western import have been quick to point out that in many African countries sodomy laws form part of a colonial legal legacy. But some African countries have no such laws, and new proscriptive

laws and a selective resurgence in the attempted enforcement of laws of a colonial provenance have nearly always deployed some kind of cultural rationale.\textsuperscript{11} As the former colonial powers and their neo-imperial successors move from legal prohibition to legal recognition and protection of same-sex practices, identities and relationships, what might be the deep legal roots of certain postcolonial African regimes' moves in the opposite direction?

Questions of law have played a significant if under-acknowledged role in the long-term history of the debate in its colonial, postcolonial/national and increasingly international variants. Some scholars suggest a connection with the repugnancy clauses in relation to customary law under British policies of indirect rule as an alternate originary moment in the contest over African authenticity and homosexuality.\textsuperscript{12} In finding homosexuality repugnant, the repugnancy clause can emerge as a deep historic precedent for the U.S. evangelicals in contemporary Africa around sexuality issues.

Briefly and brutally, the emerging colonial apparatus in British sub-Saharan Africa had neither the will nor the capacity under policies of what came to be called Indirect Rule to implement its norms all the way through the social body of the societies it was colonising. Interested largely in the extraction of surplus value from these societies, first in terms of agricultural and then mine labour, matters of civil law were to be left to the customary law of these societies. If the customary law was too difficult to ascertain, it could be invented and often arbitrarily imposed.\textsuperscript{13} Either way, its codification represents an intervention. In South Africa, Theophilus Shepstone's drafting of an ordinance recognising Nguni customary law in 1849 can be imagined as a starting point.\textsuperscript{14} Indigenous sexual conduct was left to customary law except in instances where it was found to be repugnant to the gaze of the coloniser. These repugnancy clauses generally managed to ignore heterosexual so-

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\item[12.] Oliver Phillips, Zimbabwean Law and the Production of a White Man's Disease, 6(4) Soc. LEGAL STUD. 471-91 (December 1997).
\item[13.] Mahmood Mamdani argues for this bifurcated nature of colonial sovereignty, see MAHMOOD MAMDANI, CITIZEN AND SUBJECT: CONTEMPORARY AFRICA AND THE LEGACY OF LATE COLONIALISM 109-137 (1996).
\item[14.] THOMAS MCCLENDON, WHITE CHIEFS, BLACK LORDS: SHEPSTONE AND THE COLONIAL STATE IN NATAL, SOUTH AFRICA, 1845-1878 (2010).
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called offenses — pervasive pre-marital sex, polygamy (only occasionally subject to repugnancy clauses, but subject to other legal sanctions) and male circumcision practices — and in Southern Africa got worked up over what might be termed indigenous homosexual practices (particularly if a white person was involved as participant or witness) and in East Africa over female excision practices. In brief, a repugnancy clause was a blanket proviso that customary law would not be applied if it were to be found to be contrary to natural justice or public policy. All British colonies had some version of such a proviso and, while rarely invoked, female circumcision, slavery, trial by ordeal and occasionally homosexuality saw its application.¹⁵

Repugnancy clauses have also enjoyed something of a postcolonial after-life. As recently as 1974, the Nigerian High Court in the case of *Egwu v. Meribe* ruled that the custom of woman-to-woman marriage was morally repugnant and that Nigerian courts should only enforce customary rules that were not intrinsically immoral in terms of the conscience of the wider society.¹⁶ Only in 1998, with the Recognition of Customary Marriages Act did South Africa recognise customary polygynous marriages which had been refused recognition by Section 35 of the Black Administration Act of 1927, that only acknowledged "an association of a man and a woman in conjugal relationship according to black law and custom where neither the man nor the woman is party to subsisting marriage."¹⁷ South Africa still has not resolved the issue of state recognition of Muslim marriages.¹⁸ The 1996 national constitution asserts that in cases of conflict, the equality clause will trump customary and/or religious law.¹⁹ As the constitutional instrument for the legal suspension of customary law, the equality clause can equally be seen as a kind of legacy of the repugnancy clauses, as a re-setting of the colonial grounds of exception in a liberal, democratic register.

This problem in recognising African customary law in relation to questions of marriage and sexuality is embedded in South African colonial history, nascent in Shepstone's ordinance and elaborated in the controversy surrounding Bishop Colenso, who, in 1855, creates a not inconsiderable fracas with the publication of *Remarks on the Proper Treatment of Polygamy*. In this text, he makes powerful arguments for why

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the church in Natal should be willing to embrace people in polygamous marriages as full members of the church. He argues: "to require a polygamous catechumen to put aside all but one of his wives as a condition for baptism is theologically inconsistent for it is asking him to commit the sin of divorce." Colenso's position on the tolerance of polygamy was radical for its time. His assumptions and reasons make him more so. We are in a tricky moment in the history of the sovereignty of the emerging colonial state here. This de facto recognition was limited to the autochthonous peoples. Since British civil law at the time banned polygamy, a repugnancy clause could have been invoked but increasingly colonial magistrates presided over ukulobola (bride-price) disputes and after 1869, Zulu divorces. Nevertheless, in 1855, Colenso frames his argument in terms of the recognition of a pre-existing, borderline, illegal customary marriage. He also refused to preach that the unbaptised ancestors of his congregants were subject to eternal damnation. On the Proper Treatment of Polygamy makes the case that the church doctrine and practice need to develop modes of recognition that can respond to local custom, even as such customs begin to change under the not insignificant pressure of the colonial encounter. The relations between the domains and definitions of civil law, customary law, canon law, private law and common law are immensely complicated and varied in the implementation of colonial sovereignty.

Elizabeth Povinelli has written powerfully on how indigenous practices which could be coded as sexual by the colonial Australian state and its liberal democratic successor have been sustainedly found repugnant in the drama of creating the necessary forms of recognition for state-sanctioned multiculturalism as it unevenly embraces the customary. In a discussion of the Daly River case (1935), where a white peanut farmer could only look on as "a female was required to have sexual intercourse with all and sundry," Povinelli writes: "[...] the majority of white Australians understood sacred acts of bestiality, ritual masturbation, same sex and group sex as incommensurate with a modern civil society's understanding of sex and intimacy as a private, normatively monogamous heterosexual affair." She continues:

While most white Australians agreed that Aboriginal ritual sex defied the ideal of a normative national collective morality, they quarreled in administrative domains and in the critical public sphere about whether

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or not this moral judgment should invalidate normative notions of justice and right that ideally subsume state law and practice. On the other hand, the case raised the question not simply of how to administer law justly across maximally heterogeneous cultural fields, but whether there was any meaningful difference between indigenous and settler sexual morality and practice. The real problem that ritual sex posed to many settlers was not its transparent difference from white sexuality but the rendering of that difference.22

In thinking about the modes of legal recognition and proscription across ‘maximally heterogeneous cultural fields’ on the contested domain of national sovereignty and international law, these repugnancy clauses can be made to speak, with some force, to current theories of sovereignty. Anticipating twentieth century theorists of sovereignty in the line from Carl Schmitt to Giorgio Agamben, these repugnancy clauses offer us literally the ‘state of exception’ as the ground of private and/or civil law in colonial contexts as well as possibly some kind of supplement to the scrupulous but exclusively European genealogy of “the state of exception as the paradigm of government” on issues of public law that Agamben theorises.23 While the claim of the emergence of the legal suspension of the law as the groundless ground of sovereignty has a long European legal history,24 more scholarly work is needed on the impact that colonial forms of sovereignty and their versions of states of exception like repugnancy clauses had on these increasingly hegemonic European ideas of sovereignty.

The traffic between metropolitan and colonial spheres is already reconfiguring the ways state violence in both its democratic and totalitarian guises can be thought. Many historians now note the connections in personnel, racial ideologies, ‘medical’ experimentation, extermination strategies etc. between the Herero and Namaqua genocides in German South-West Africa (1904-1907) and the Holocaust in Europe (1939-1945).25 While in Homo Sacer, Agamben credits Eugen Fischer as “responsible for the medical politics of the Reich,” and as player in giving “National Socialist biopolitics its fundamental conceptual structure,” he makes no mention of Fischer’s formative

24. Id. Giorgio Agamben scrupulously documents this European legal history. This is the argument of the whole book.
eugenic studies in German South-West Africa, which lead inter alia to the banning of all inter-racial marriage in the German colonies by 1912.\textsuperscript{26} It is my hope that attention to these kinds of colonial and postcolonial histories and the legal categories they both reveal and produce could re-centre problems of embodiment – racial, sexual, gendered – to current theoretical endeavours moving through the conceptions of biopolitics, "bare life," and "states of exception."\textsuperscript{27}

This excursus into some elided colonial roots and the supplementary relation they may have to contemporaneous theories of sovereignty can be brought to bear on the current impasse on the "No homosexuality in African culture" debates and their increasing legal determinations in the following ways:

1. The very idea of repugnancy exposes the affectively and religiously saturated social field that legal liberalism wishes to bracket in the name of tolerance.

2. The explosion of contestations around jurisdictional issues of legal sovereignty in our globalised present has a relation to colonial, particularly British, policies of Indirect Rule and the setting up of customary law.

3. A focus on repugnancy clauses can complicate the universalist/cultural relativist, tradition/modernity dialectics that continue to frame the problem of 'African homosexuality'.

It is clear that the South African constitutional clause, the Ugandan Bill, the U.N. resolutions and the CCR case are all events that break the national and continental frames of their places of occurrence and reveal continually re-negotiated historical legacies and uneven responses to present exigencies.

II. PRESENTIST STAKES

(Homo)sexualities

The much celebrated world historical South African constitutional clause has a history that is yet to be settled, with varying causal claims. On the one hand, the timing of South Africa's transition to democracy

\textsuperscript{26} Giorgio Agamben, Homo Sacer: Sovereign Power and Bare Life 144-146 (Daniel Heller-Roazen transl., 1998).

\textsuperscript{27} See Ann Laura Stoler, Race and the Education of Desire: Foucault's History of Sexuality and the Colonial Order of Things (1996); Ann Laura Stoler, Carnal Knowledge and Imperial Power: Race and the Intimate in Colonial Rule (2002). The work of Ann Laura Stoler remains the most powerful attempt to provide a critical colonial genealogy of Foucauldian ideas of biopolitics and the history of sexuality.
at a time when sexual orientation rights were on the agenda of major human rights initiatives and institutions, undoubtedly helped, though this relationship is clearly reciprocal with the South African constitutional clause giving a boost to international sexual orientation rights. There were also factors of an almost idiosyncratic provenance – the friendships between Cecil Williams, a white, gay Radical who was with Nelson Mandela when Mandela was arrested and then hid from the South African police in a gay bath-house in downtown Johannesburg for several days before being arrested himself, and the leadership of the ANC – which may also have been a contributing factor. The shared rhetorics of racial discrimination and discrimination on the basis of sexual orientation under apartheid era law is probably the widest discursive bridge, though there are also more cynical readings that the sexual orientation clause was designed to ensure that whites more generally would be made to feel safer, i.e. that even the most abject amongst them – white LGBTQ citizens – were to be protected under the new constitutional dispensation as well.

The historical, social and political forces that gave rise to the notorious Ugandan Bill of 2009-11, which initially called for the death sentence for homosexual activity and the criminalisation of citizens who fail to report such activity inter alia, is equally complicated. The Bill tries to circumscribe homosexual sexual activity, more long-term homosexual relationships and identities. Uganda, under the de facto dictatorship of Museveni has a civil war problem, a child soldier problem, a corruption in the face of international aid problem and the creation of a homosexual problem can be read as both smokescreen and scapegoat for all these other problems. Simultaneously, Uganda,

30. For a first-hand account of the beginnings of the debates within the African National Congress about the constitutional clause to come, see Ruth Mompati, Foreword, in Sex & Politics in South Africa 7 (Neville Hood et. al. eds., 2005); See also Xavier Livernon, supra note 21.
31. Peter Eichstaedt, First Kill Your Family: CHILD SOLDIERS OF UGANDA AND THE LORD’S RESISTANCE ARMY (2009). The current media explosion over Invisible Children’s very belated exposure of Joseph Kony and the Lord’s Revolutionary Army and the irony of that organisation’s support of Museveni when the Ugandan army itself has deployed child soldiers participates precisely in these complicit global networks of solidarity tourism and moral outrage which willy-nilly invoke the racialised rhetorics of disgust and abhorrence that give rise to repugnancy clauses. The deployment of child soldiers by the Ugandan People’s Defence Force, the national army of Uganda, in both Uganda and the neighbouring Democratic Republic of the Congo has been well-documented by international human rights groups. See Child Soldiers: Global Report
like much of sub-Saharan Africa, has seen the rapid growth of a variety of religious fundamentalisms in the last decade, probably also as a response to the difficulties in the reproduction of social and intimate life under the conditions of postcolonial state failure and the inability of neoliberal development to make good on its promises over the last two and a half decades. These religious ideologies and institutions have not looked favourably on homosexuals and are decidedly international in character. There has been rampant speculation that prominent U.S.-based evangelicals were involved in the drafting of the bill – Scott Lively and Rick Warren _inter alia_. Lively has subsequently and half-heartedly back-pedalled, saying: “I agree with the general goal, but this law is far too harsh.” As mentioned earlier, attempts are now underway to hold Lively and the organisation he heads – Abiding Truth Ministries – accountable. The immediate run-up to the Bill may also have been affected by the events at the World Conference of Anglican Bishops at Lambeth in 1998, which saw all Ugandan bishops strongly opposed to resolutions calling for the ordination of openly lesbian and gay clergy and the authorising of Anglican clergy to officiate at same-sex marriage ceremonies. The Anglican communion nearly split over these issues and many individual, conservative U.S. parishes renounced their affiliations with the pro-homosexual U.S. Episcopalians. It is not uncommon to see an Anglican church sign, particularly in the U.S. South, proclaiming its membership in the diocese of Ruwenzori and the like. The current CCR case where a U.S. citizen is being charged in the U.S. by a Ugandan organisation reveals similar geographic complexities and ironies from the other side of the ‘African homosexuality’ debate.

It might be possible to argue that the figure/spectre/varied social lives – the right term eludes me – of homosexuality marks a limit in the contradictory relationships that postcolonial African nationalisms have with Euro-American discourses of modernity and development.
more generally, with an abistorical, imagined, authentically African nuclear family heterosexuality (with polygyny unevenly tolerated) becoming an identitarian marker of Africanness against the cultural and economic failures of the postcolonial state and related deprivations of globalisation in Africa. The presence of homosexuality in many African contexts is discursively uneven, moving in and out of legibility, in ways that sometimes, but not always, deeply affect same-sex practicing and sometimes same-sex identified people in various locales. Simultaneously, in the so-called West — if Jasbir Puar is right and I think she is — acceptance of LGBTQ people is becoming a litmus test to distinguish civilised nations from barbaric ones in the face of ‘the global war on terror’, where a phobic and monolithic construct of Islam rather than Christianity must be discursively and materially demonised in the name of liberal tolerance of a carefully delimited sexual diversity and brought into the fold of human rights arguments and practices.

Within histories of homosexualities in the North Atlantic world, the twentieth century is seen to be the era of what has come to be called ‘the medical model’ — in the weird doubling of a Foucauldian reverse discourse — self-naming into pathology into legally recognisable, sexual minoritarian, rights-bearing identity. It is very clear that this increasingly teleological history is not reproducing itself evenly elsewhere despite its move into universalising human rights claims.

It remains difficult to think through the relations of law, legitimacy and culture in both colonial and post-colonial contexts as ideas of sexuality, as the expression of essence and freedom compete with both ideas of sexuality as social reproduction and lineage consolidation and increasingly with notions of sexuality as a privileged marker of religious virtue; and legal measures seem logically contradictory in imposing the first, ineffectual in defending the second version, and in an era of rising fundamentalisms of all types, law and religion collapse into each other. Within this contestation where might we locate the problem of the cultural determinations of human sexuality, an idea of the ‘cultural’ promising a version of the intrinsic, the autochthonous and the local, even as it raids the universal first in the early twentieth-century idea of ‘the culture concept’ — the Boasian version of the world.

38. For the strongest critique of the pitfalls of sexual orientation as a universal human right, see Joseph Massad, Re-orienting Desire: The Gay International and the Arab World, in Public Culture 14(2) 361-85 (Spring 2002); See also Joseph Massad, Desiring Arabs (2007) (for a further elaboration).
as made up of distinct, equally valuable cultures, and the setting of it into international jurisprudence as the right to self-determination?

**Indigeneities**

Postcolonial Studies, for very good historical reasons, has struggled with questions of the autochthonous, and has in recent years been roundly criticised by scholars working in the burgeoning field of what could be called Comparative Indigenous Studies. The difficulties in the relation between the subject matter, methodologies and politics of these two areas/modes of inquiry are immensely complicated even as they oftentimes share an object of critique – the ongoing legacies of colonialism. To shorthand these vast and hugely important intellectual and political projects: much Native Studies necessarily focuses on the persistence of settler colonialism geographically, politically and epistemologically; there can be no ‘post’ in the postcolonial. I turn to the term ‘customary’ as something like weak theory in the hope of tentatively reconfiguring aspects of the above-mentioned contestations. I prefer ‘customary’ to the idea of ‘traditional’ found in both indigenous and postcolonial studies. ‘ Tradition’ is frequently and perhaps necessarily reified, if not essentialised, in much indigenous studies. It is repudiated as invented, romanticised, the product of salvage anthropology in much postcolonial studies.

While in the colonial context, the idea of the customary must bear the mark of its difference from imposed colonial legal regimes, it simultaneously gestures both backwards to the necessity of the grounding

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39. This is obviously a characterisation that is both broad and reductive and there are multiple nuances in this schematic distinction. Many Native scholars find postcolonial critiques of ethnonationalisms disempowering and politically useless. For an early and trenchant attack on postcolonial theory, see Elizabeth Cook-Lynn, *Who stole Native American Studies?* 12(1) WICAZO SA Rev. 9-28 (Sept., 1997). Simultaneously, postcolonial theory, with its political focus on the failures of decolonisation is committed to a critique of ideas of both identity and authenticity in order to continually run interference in claims and aspirations to cultural sovereignty. Joseph Massad’s essay “The Postcolonial Colony” remains for me a singular essay in the attempt analytically to bridge the categories of the settler-colonial and the postcolonial in the Palestinian case. See Joseph Massad, *The Postcolonial Colony; Time, Space and Bodies in Palestine/Israel, in The Preoccupation of Postcolonial Studies* 311-336 (Fawzia Afzal Khan and Kalpana Seshadri-Crooks eds, 2000).


42. The Invention of Tradition (Eric Hobsbawm and Terence Ranger eds., 1983) is the classic text that inaugurates this continuing argument.
of pre-colonial autonomy and forward to a political and ethical necessity of some idea of group self-determination. Mamdani makes a compelling historical case for the customary as almost exclusively abusive colonial imposition: “Customary Law as the theory of de-centralized Despotism.” 43 While I agree that historically in many instances he is correct, I wish to suggest that there might also be other potentialities in the idea of the customary not reducible to these historical deployments.

More dynamic than tradition, the customary’s self-referentiality suggests a movement through time under very difficult and sometimes genocidal histories. I hope to figure the customary as something less full of plenitude than Bhabha’s “third space” and mimicry of imagined past selves becomes just as important as mimicry of the colonisers. 44 I further have a hunch that attention to the framing of questions of sexuality and sovereignty through an idea of the customary may open up an interestingly compromised archive for subalternity, a category which definitionally disappears as it hits the possibility of recognition or representation. 45

Or perhaps more simply, I am just following recent historical developments in South Africa, the place where these issues are closest to me, wherein both the ‘Traditional Courts Bill’ of 2008 and the political and academic debates around it, language of the customary and customary law is being used to complicate ideas of tradition particularly in relation to questions of gender and sexuality. 46 I wish to suggest very cautiously that a rehabilitated notion of the customary, which itself may be at odds with ossified versions of customary law, even as customary law may, on occasion, tentatively archive the customary, needs to be able to understand local forms of sovereignty not just in the logic of the decentralisation along a spatial axis, and temporally, needs not to rise to the duration or the authority of tradition.

43. MAMDANI, supra note 13, at 109-38.
My next section deploys a weak theory of the customary to read the presence of something that can retroactively be read as 'African homosexuality' at the level of quotidian, even banal, practices that do not rise consistently to the level of legal sanction, protection or prescription, that occasionally bubble up from what John L. Comaroff and Simon Roberts termed "the undifferentiated repertoire of the normative" into the purview of the law: colonial law, apartheid law, customary law and their uneven concatenation, only to disappear again into the singular, the personal, the ordinary.  

II. AN HISTORICAL-LITERARY ELABORATION

In what follows, I hope, a little preposterously, to suggest that Peter Lanham and A.S. Mopeli-Paulus's 1953 novel Blanket Boy's Moon (henceforth BBM), stalks and straddles this complicated geographic, historical and conceptual terrain in the muddled genre of the ethnographic murder mystery, where readerly sympathies must lie with the murderer.

The authorship of the novel is disputed on the grounds of collaboration and appropriation. The novel has enjoyed a chequered publishing and marketing history. All this is covered in Hannah Jones's excellent article "A Co-Authored "Curio" from the Dark Continent: A.S. Mopeli-Paulus and Peter Lanham's Blanket Boy's Moon." I also think that the immediate international publishing context is significant in the writing of the novel. Cynically, I think BBM attempts to ride the coat-tails of the enormously successful 1948 novel, Alan Paton's Cry the Beloved Country (CBC), by far the best-selling and most celebrated South African novel of the twentieth century, itself mostly written while its author was travelling in the United States, which manages many of the same contradictions that BBM liberates through rendering Zulus Biblical in sonorous prose that can sustainedly produce capital as the enemy while forgetting that Christianity is equally the mark of colonial modernity par excellence.

In Cry the Beloved Country, it is prostitution that is the sexual problem in the figure of Reverend Khumalo's sister Gertrude. In BBM, it is homosexuality that double-crosses the modernity-tradition dyad. It is a modern murder – Khumalo's son kills a white man in Johannesburg in a robbery gone wrong – that drives the plot of CBC. In BBM, murder

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49. Alan Paton, Cry the Beloved Country (1948).
is fascinatingly traditionalised under the sign of the customary. CBC remains a perversely Arnoldian touchstone in South African letters as it inaugurates White liberal guilt as a kind of Raymond Williamsian ‘structure of feeling’ for thinking about race as a problem at the moment in 1948 when decolonisation arrives with real force in a global Anglphone imagination. After Chinua Achebe’s Things Fall Apart, CBC is the most likely ‘African’ novel to find itself on a high school curriculum in the English-speaking classroom. In the contemporary university classroom, J.M. Coetzee’s Disgrace is likely to take precedence, a novel that illustrates the intellectual and moral bankruptcy of White liberal guilt as the affective frame for thinking race in a post-apartheid world, which is not quite the same thing as a post-apartheid South Africa, but must risk racism and homophobia along the way. In Disgrace, it is the rape of Lucy, the protagonist’s white lesbian daughter on her farm that marks the novel’s definitive sexual transgression, David Lurie’s feeble career as a john notwithstanding. I turn to BBM because it contests, resists, complicates, and fails both Paton’s inaugural sermon and Coetzee’s devastating riposte.

The briefest of narrative summaries may be useful here: The central protagonist Monare leaves his village of Lomontso and his wife and young child in what is then Basotholand, now Lesotho, goes to Johannesburg where he becomes a tailor, falls in love with his Christian preacher’s daughter, Mary, and is jailed on trumped up charges of receiving stolen goods. Upon his release, he returns to Lomontso where he is compelled by his chief to participate in a ritual murder to found a new village. The murdered man turns out to be Koto, Monare’s boyhood friend/age mate. After the killing, Monare returns to Johannesburg and after a period of dissolution where he gets addicted to dagga (marijuana) and the attentions of young male hustlers, he flees to Durban where he saves an Indian family from Zulu attack in the Durban riots of 1949. He converts to Islam, and continually on the run from the South African and Basotholand police for his part in the ritual murder, flees to Mozambique, fighting a lion on the way. In Lourenco-Marques, he hears that his son is trapped in a mining accident. He returns to Johannesburg and rescues his son. His photograph appears in the newspaper. He is arrested, sent back to Basotholand, where he is convicted on the ritual murder charge and then executed by hanging.

50. See Raymond Williams, Marxism and Literature 128 (1977).
This account of a peripatetic life allows for multiple contextualising of Monare’s homo and hetero-erotic attractions, and for a fascinating evaluation of the intimate relations that are possible in the various locales – village, city, prison, the road – in terms of which indicate the corruptions induced by the colonial encounter and Christianity, the system of migrant labour, an imagined universal frailty of the flesh, Basotho customs themselves, the uneven imposition of colonial law, and the interactions between these various socially determining forces. Monare experiences ‘good’ and ‘bad’ prison homosexual sex, experiences something close to indigenous homosexual acts and relations in his time at the circumcision school, marries a woman in the countryside, falls in love with another woman in the city, performs ritual murder under the disappearing sanction of the customary, is executed for this murder by the higher authority of colonial law. These significant narrative events thus elaborate, while never resolving, the central issues of this essay: the place of raced, gendered and sexualised embodiment in legal regimes of sovereignty that rely on states of exception, like repugnancy clauses.

In its moment of writing, the novel brings into representation an altered version of what was arguably the most culturally prominent form of African same-sex sexual relations in the South Africa of the 1940s: short-term age-and role-differentiated quasi-contractual marriages between rural migrant mine workers in the large single sex compounds they lived in near the mines, which while arguably customary, never rise to the recognition of customary law, which remains largely rural in its reach. Monare is not a miner, but he is a migrant. T. Dunbar Moodie and Vivienne Ndtashe provide an unsurpassed historical and ethnographic analysis of the experience of these men in Going for Gold: Men, Mines and Migration. These same-sex sexual relations are understood as functioning within highly compromised resistances to proletarianisation by the miners, who are compelled to migrate to the mines for contracts of varying lengths in order to make money to establish independent homesteads in their rural places of origin and to pay taxes. Many of them were married to women in the countryside, under customary law, if monogamous, outside it, if not. Intimacy, sexual and/ or romantic with ‘town’ women was perceived as both financially and morally perilous. A younger male miner was a safer and more attractive proposition. In certain ways this looks like a classic account of what has been termed ‘contingent homosexuality’.

54. Sigmund Freud defines contingent homosexuals as people who “under certain external
However, Moodie establishes the equally historically contingent nature of these miners’ heterosexual relations with the changing patterns of migration over the decades. Gradually, as mine wages rise, contract terms lengthen and the rural regions can no longer bear reproductive labour costs, the miners marry town women or bring their rural wives to the mine. The circumstances which made a ‘customary’ marriage to a young male miner attractive to the older rural migrant miner fade in the face of galloping proletarianisation and attendant heterosexualisation of these miner’s relationships in the peri-urban location of the mines.

These mine marriages have been put to polemical use on both sides of the ‘no homosexuality in African culture’ debates. In a review of Moodie and Ndatshe, Zackie Achmat notes the lack of attention to the affective dimension of these relationships – the fact that these men may have loved each other – is elided in Moodie’s account. While I think Achmat is probably historically correct, the claim that these mine marriages carry the intimate experiences of something like companionate marriage, no matter how temporarily, marks a homonormative claim to recognition in the run up to the South African constitutional clause, that they can be genealogically linked to contemporary political and legal agitations around ‘gay marriage’. In Moodie and Ndatshe’s account, the forms of both homosexuality and heterosexuality emerge as de-naturalised and historically contingent. The campaign for gay marriage in post-apartheid South Africa took on the slogan ‘Recognise our Relationships’. Ideologies of romantic love are a key component in establishing the worthiness of relationships and the miners can become retroactively, albeit temporarily, gay in the genealogy of a right to sexual orientation and the conferral of the benefits of equal marriage. To shift Povinelli’s terms slightly (or radically, depending on your position): we get a version of mine-marriages a little closer to “a modern civil society’s understanding of sex and intimacy as a private, normatively monogamous heterosexual (or increasingly also homosexual) affair.”

On the other hand, the mine marriages could be deployed as powerful evidence in the claim that African homosexuality was a result of colonialism and apartheid’s deformation of an idealised, ahistorical

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56. **Povinelli, supra note 22 at 136.**
African family. Let us imagine how an anti-apartheid nationalist might characterise these mine marriages. Migrant labour, although it could be subjectively experienced by the miners themselves as something in their interests, was and remains a super-exploitative system of labour. The mining houses relied on the rural homestead to cover many of the reproductive labour costs and thus did not have to pay a living wage. Migrancy separated husbands and wives, children and fathers for extensive periods of time. Migrancy prevented Africans from accessing the socially sanctioned experiences of intimacy that can somewhat polemically be coded as White and middle-class. 57

Miners with strongest rural links were more likely to continue the custom of male marriage. As the rural areas from which the miners were recruited changed, the custom became more ethnically marked – Mpondo, Shangaan, Sotho. Anti-apartheid nationalism in South Africa needed to downplay ethnic differences. As I have argued elsewhere:

In a project of nation-building, the miners who tended to engage in same-sex marriages would have been a particularly reactionary component: more interested in getting back to their rural homes than organizing on the mines, invested in the institution of migrant labor, traditionalist with strong ethnic identifications. 58

Our protagonist Monare, in contrast, suggests a much wider range of human, intimate and sexual possibilities in what could still be termed migrant labour sexuality. The novel inevitably takes moral positions on all of Monare’s sexual practices and feelings but some of these moral positions complicate any assessment of the ongoing discursive, affective and political problem of homosexualities in African cultures, putting both ‘homosexuality’ and ‘cultures’ under not insignificant conceptual pressure. Instead of the dangers of town women, we have the dangers of town boys. There is both good and bad prison homosexual sex. Both Basotho custom and the law of the White man make homosexual

57. The discourse of a certain kind of bourgeois respectability on sexual matters continues to haunt South African nationalism in both its anti and post-apartheid iterations. I have suggested elsewhere that this haunting helps to account for former President Thabo Mbeki’s controversial AIDS denialism. Glen Elder, in documenting the violence between township and hostel dwellers in the final years of white rule, notes homosexual imputations to the hostel dwellers as a contributing factor to the violence. Mark Hunter argues for the refusal to acknowledge the prevalence of transactional sex/intimacy, and an attachment to migrant labour as the prime mover of the HIV/AIDS pandemic as a significant factor in the failures to address the pandemic in South Africa effectively; See Neville Hoad, African Intimacies: Race, Homosexuality and Globalization (2007); Glen Elder, Hostels, Sexuality and the Apartheid Legacy: Malevolent Geographies (2003); Mark Hunter, Love in the Time of AIDS: Inequality, Gender and Rights in South Africa (2010).

behaviour attractive if not inevitable by inhibiting a putatively natural heterosexuality. There appears to be customarily sanctioned homosexual behaviour in the village.

Let me now map a typology of male touch across law and culture over the course of the novel, a novel ever attuned to the erotics of touch. When Monare is grabbed by a white policeman upon his arrival in South Africa to take the train to Johannesburg, the narrative comments:

Never before had a man laid hands on him except in friendship or enmity – this roughness – instead of courtesy – displayed to a stranger, distressed Monare greatly, for he was a simple man.  

In prison, the following exchanges take place:

Monare lay there in violent fear, until his cell-mate sat beside him and soothed him with kind words and cunning caresses which quietened the nerves around his wounds and stimulated others, thus helping after a while to forget his pain.

The same man says to Monare:

Man, talk to me rather of beer drinks and women, or even – if your fancy lies that way – of handsome boys. A flush of shame mounted within Monare’s heart, for, in truth, he had found much comfort in the ministrations of his companion’s hands. And in his eagerness to relate his story had not rebuffed those hands when they had strayed.

Male same-sex sexual contact offers not only comfort in the prison but is also open to abuse:

Monare’s eyes were opened to much that was wicked and sordid, for there were all sorts of men in the prison. Monare had heard of, and indeed, to some extent known that friendship of men which is born of a great love, much as marriage springs from a great love of woman, but what he saw here filled him with disgust and dismay. Older vicious prisoners took the younger innocent ones to their own uses, and here there was no thought of affection or love – bestial lust dictated their actions. Such men, he felt, could not blame prison for their depravity, for they would obviously behave with the same wickedness outside its walls.

“...Yes, boys, or the friendship of the hand – these are what many of us Africans are reduced to. Yet the truth is that this friendship of boys leads

59. LANHAM & MOPELLI-PALUS, supra note 1 at 31.
60. Id. at 28.
61. Id. at 35.
62. Id. at 77.
one to a lonely path at the end. There is little chance of living in such a manner in the homeland.”

His cell-mate laughed again.

“Women, boys – I have tried them all […] But this companionship of boys is against the white man’s law. Should you see your Orlando Moruti again, ask him how the white men can condemn us for a crime which they themselves have forced on us by separating us from our families. What that other Moruti – the Moruti Lefa in your village – said about the brewing of beer is also true. How can the white man hold us guilty of drunkenness when he will not permit the brewing of home-made kaffir beer?”

It is the white man’s law that prohibits the companionship of boys even as it is the white man’s rule that facilitates it. Just when it would appear that we are in ‘the modernity as the agent of corruption in the form of homosexuality’ narrative – the figuration of homosexuality as the white man’s disease, an exchange between Monarc and his friend and Christian pastor, the Moruti Lefa runs as follows:

“You know that as a Christian, your son should not be circumcised?”

“I know but I hold to the old customs. My father was circumcised, my grandfather was circumcised, and I am circumcised.”

“Christians should not be circumcised.”

“Tell me why not, O Moruti Lefa.”

“Monare, think back on your own circumcision rites.”

“Father, I was taught to be strong, to fight, to work, to be a man.”

“What else were you taught, Monare?”

“What else, Moruti?”

“Do not blush the blush of shame – it is your Moruti you are speaking to. I repeat Monare, what else, were you taught?”

“I was taught how to take a woman, Moruti.”

“Nature and love, Monare, should teach Christians such things. It should not be for the hand of man to caress the manhood of another to make it flower. That is why Christians should not attend the Mountain School.”

“But my father, and my grandfather –”

63. Id. at 36.
"And your son, Libe – what of him? Does not the thought of a stranger’s hands wandering over your son’s slim body cause you shame?"

"But, Moruti, they are the hands of the lawfully-appointed Teacher."

"Teacher or not, Monare, he is but human like yourself and has the same weaknesses. This is a great sin for a Christian."

Monare’s thoughts were troubled; he recalled his own months at the circumcision school. He felt again the first touch of another’s hands on him.64

The lawfully appointed teacher, the white man’s law, the Christian doctrine of the Moruti compete for moral authority over what Monare may or may not do with his body. An editorialising moment in the narrative attempts a bizarre synthesis:

It can perhaps be said that the circumcision of women not only denies the girl great pleasure and joy in the sexual act, but must in consequence the happiness and exultation of the man, and thus shut out any upliftment of the spirit – lying with a woman then, becomes a selfish, rather than a mutual pleasure. Here in the very homeland, in this circumcision of women, lie the seeds of the physical love of man for man, which is brought to flower by the living conditions imposed on African workers by the white man.65

Indigenous cultural practices combine with current living conditions imposed by the White man to produce the flowering of the physical love of man for man. Tradition and modernity conspire rather than conflict. We are in the idea of ‘companionsate marriage’, which is, at least, explicitly sexualised here as the ‘sacred cow’ of modernity, and let us ponder the multiple ironies of the colonial origins of the phrase ‘sacred cow’ as the way I have chosen to formulate this problem. David Eng in The Feeling of Kinship explores the racial underpinnings of companionsate marriage as it hits the homonormative in U.S. jurisprudence66. Is companionsate marriage – heterosexual or homosexual – an ethical good we want to refuse even as we note its costs, its imperial histories, its very unAfricanness, even?

But this is a just one view of many in the novel. If both male and female circumcision are customary and legal in the world of the novel, the ritual murder at the centre of the novel is arguably neither. Chris Dunton notes a drastic increase in the number of such murders in the

64. Id. at 90.
65. Id. at 93.
period of 1943-9, where 62 such murders are recorded. Between 1895 and 1942, about 30 incidents make it into British records. It initially appears that there is a re-invention of a sparsely used old tradition in the face of the loss of chiefly power and prestige due in no small part to British attempts to reform the chieftaincy system through in part the 1938 Native Administration proclamation.67 Yet we are also in the colonial imagining of a practice here. There is strong historical evidence to suggest that no such murders occurred. The novel may participate in a particularly disturbing fantasy of native sovereignty as definitionally murderous.68 That Koto – Monare’s boyhood friend and lover – is selected as the sacrificial victim is no doubt intended to heighten the sense of outrage at the crime and help the novel argue for the abolition of the imagined resurgent custom. Yet certain allegorical readings may also suggest themselves. Why must the protagonist’s first homosexual love object be killed in order to accommodate a repugnancy clause and what strange kinship is reasserted between the morally repugnant Basotho custom and British law when Monare is sacrificed to the white man’s law at the novel’s close? The latter privileges justice as punitive over ritual as generative. And the novel, at least, has the courage to ask the question of why the British colonial legal killing of Monare is any better than the Basotho chief’s customary communal killing of Koto. The colonial state needs to assert its monopoly over the legal use of violence, by turning a customary ritual killing into a murder while its own killing of Monare is rendered lawful.

III. CONCLUSION

Much has changed and much has not in the 70 odd years since the events the novel recounts. Customary law and national law are still in play in the post-apartheid era and questions of homosexuality remain a central terrain for this playing out. South Africa is the only country in the world in which both gay marriage and polygamous marriage have legal status.69 The recent fracas over the restoration of ‘sexual orientation’ to a UN anti-violence resolution and the December 2010 speech supporting gay rights by UN Secretary-General Ban Ki-moon mark an increasing

68 These murders in the 1940s have been extensively studied and documented though they remain to some extent controversial. See Colin Murray & Peter Sanders, Medicine Murder in Colonial Lesotho: The Anatomy of a Moral Crisis (2005).
sense that international law is becoming an additional site for the
contestation of sovereignty over questions of sexuality and violence.  

The novel is irrecuperable for either side in the ‘no Homosexuality in
African cultures’ debate. For a position that desires an African normative
homosexuality, the novel, which kills Monare’s first love and suggests that
the protagonist’s homosexual encounters are improvisatory, contingently
pleasurable or not, and do not give rise to a sexual minoritarian identity,
could be called ‘homophobic’. I do not think it is. For a position that
suggests all homosexual activity is alien to African culture, the novel
is equally untenable, bringing a variety of male same-sex sexual
encounters into novelistic representation in spaces coded as modern and
traditional. Instead, the novel invites readers to re-think questions of law
and sovereignty, repugnancy clauses and states of exception, rights and
sexual desires.

Looking back at Blanket Boy’s Moon to track its articulation of law and
culture on the terrain of male homosexuality is a useful reminder of
how much everyday life is lived under the radar of the law and that
crises in social reproduction, particularly the reproduction of authority,
can reinvigorate old customs. Monare can teach us that the forms of
intimacy of both modernity and tradition and their mutual implication
in a contested idea of the customary can be multifarious, changing,
deeply felt and historically contingent – then and all at once.

Rev.1 (June 15, 2011). See also Secretary-General Ban Ki-moon pledges support for
decriminalisation of homosexuality, United Nations Office of the High Commissioner for
Human Rights, (December 21, 2010), http://www.ohchr.org/EN/NewsEvents/Pages/
Stgpledgessupportfordecriminalizationhomosexuality.aspx (the Secretary-General has
maintained this position over the last 18 months). African Union: Ban Ki-moon urges
africa-16780079.