Punishment, Forgiveness, and the Rule of Law: A Vision for Conflict Resolution in Alan Paton's *Too Late the Phalarope*

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PUNISHMENT, FORGIVENESS, AND THE RULE OF LAW: A VISION FOR CONFLICT RESOLUTION IN ALAN PATON’S TOO LATE THE PHALAROPE

INTRODUCTION

A high proportion of the conflicts in the world today (including, for example, several in the Middle East and in eastern Europe) have their roots in generations-old tensions between different cultural groups competing for status within the same geographical and political units. In the last century, one such conflict which reached a relatively successful entente was the conflict over apartheid in South Africa. Alan Paton (1903-1988), a South African prison reformer, political activist, and writer, presented in his 1953 novel Too Late the Phalarope a vision of how by incorporating possibilities of forgiveness with programs for punishment, the rule of law can help bring about some easing of such conflicts. Some of Paton’s ideas seem to have come to fruition in the work of the South African Truth and Reconciliation Commission, which arguably helped to avert grim results in the dismantling of the apartheid regime. With so many intracultural conflicts raging in the current century, authorities interested in effectuating conflict resolution through the rule of law might do well to revisit Paton’s insights.

Alan Paton was founder and president of the South African Liberal Party (1953-1968), and experienced harassment by his country’s conservative government (such as confiscation of his passport after a 1960 trip to New York) because of his anti-apartheid activities. Pa-
ton’s best-known work is *Cry, the Beloved Country*, a 1946 novel expressing hope for interracial cooperation in the developing South African society. *Too Late the Phalarope*, his second novel, took a grimmer perspective on South Africa’s future, reflecting Paton’s concern that the rule of law was eroding during the reign of the Nationalist Party. Combining his interests in literature and law with his personal religious background, Paton created a tragic novel which proposed a possibility of redemption for South Africa through humility and forgiveness. During his lifetime Paton’s activities were on the one hand banned by the Prohibition of Political Interference Bill (which outlawed the Liberal Party in 1968) and on the other hand “considered hopelessly inadequate by anti-apartheid activists.”1 But reading *Too Late the Phalarope* now, a half-century after its initial publication, one perceives that in it Paton was advocating an approach which has recently been taken—and which has in fact improved the chances for harmony in twenty-first century South Africa, and potentially elsewhere in the world.

*Too Late the Phalarope* presents the tragic story of a young Afrikaner policeman and his family in mid-twentieth-century South Africa, early in the flourishing of apartheid law. The work is troubling in many respects to readers who sympathize with the main characters and yet sense the inevitability of their suffering. Analysis of the story’s events according to theories of tragedy, punishment, forgiveness, and the rule of law yields understanding of how the novel’s conclusion, though somber, can be seen as a satisfying resolution of some of the problems it raises.

This paper will present background on Alan Paton, the Afrikaner culture, the law broken in the novel, and the novel as a whole. It will then explore how applying analytical principles from the study of classical tragedies and theories of punishment and forgiveness yields clarification of ideas Paton is expressing about his country. The novel shows Paton’s apprehension that an Afrikaner-ruled South Africa may self-destruct; but that apprehension is moderated by his hope that a combination of loving forgiveness and the rule of law may avert that tragedy. History shows that the large-scale tragedy for the nation does, in fact, seem to have been averted.

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I. BACKGROUND

A. Alan Paton

Alan Paton was born in 1903 in Natal, South Africa. His mother was of Afrikaner heritage and his father was a Scottish-born member of the fundamentalist Christadelphian sect, a group who regarded themselves as an elect. In college Paton became involved in writing and politics; after graduation he worked as a teacher and as principal of a reformatory for delinquent African youths, where he was appointed to supervise its transformation into a school. He was a political liberal (in South African terms) all of his life, believing that the various races (Afrikaner, English, Indian, African) in South Africa needed to be reconciled rather than kept separate for the good of the nation. Both in his reformatory work and in his political life, “Paton upheld an ideal of human freedom based on mutual trust and acceptance of personal responsibility,” asserting the need for each individual to “surmount the limitations of ignorance, illiteracy, or inbred prejudice so that he may develop his inherent human capacities.” Too Late the Phalarope contains many autobiographical elements. The time of its writing (shortly after the victory of the conservative Afrikaner Nationalist Party brought in the era of strengthened apartheid law and Paton’s increasing activity as a critic of that policy) emphasizes the novel’s suggestion that laws focussing on racial separation have great potential for destructiveness.

Beyond the issues of Paton’s personal history and South African politics which can be traced in the novel, there are more fundamental issues of the operation of law in human society—how the rule of law can moderate the harshest elements of vengeance in society, and how punishment and forgiveness work differently to restore the order which is disrupted by wrongdoing. The presentation of these elements is consistent with Paton’s personal inclination to “respect, almost revere, the law” but to challenge it when it “contravened a higher law of God.” The contrast between the social and the legal punishments for violation of apartheid law is strongly presented; a

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3 Id. at 8-9, 16-17.
4 Id. at 12.
5 Id. at 2.
8 Id. at 62.
third powerful element in the novel is the moral quality of forgiveness shown in the personal relationships among the characters, which was a central feature of Paton’s own interest in the story.9

B. The Novel

Too Late the Phalarope tells the story of the personal destruction of a father and son, which results when their fundamentally flawed relationship is exacerbated by the socio-political situation in South Africa. Jakob and Pieter van Vlaanderen are pillars of the Afrikaner (Protestants of Dutch descent) community in a conservative South African town in the mid-twentieth century. They have always had a difficult father-son relationship because Jakob, in his Calvinistic sternness understanding obedience better than love,10 could not fully approve of the gentle side of Pieter’s nature. This lack of approval contributes to Pieter’s emotional repression, which is partly responsible for Pieter’s later committing an offense against the Immorality Act (which forbids sexual contact between blacks and whites). The novel’s title comes from a scene, shortly before the catastrophe, in which Jakob takes Pieter on a bird-watching trip to show him the phalarope, a rare and shy South African bird which Jakob has seen frequenting his interior farmland, although the Birds of South Africa book Pieter has given him says the phalarope lives only along the coast. To show Pieter the bird, Jakob puts his hand on Pieter’s shoulder, an uncharacteristically affectionate gesture which brings tears to Pieter’s eyes. When his eyes clear, Pieter concedes that he does see the phalarope—and has often seen it before, but mistook it for the ruiterjie, a much more common bird.11

Pieter’s recognition of the phalarope, which clearly symbolizes his father’s reserved and seldom-expressed love for him, comes “too late” to change the course of events that lead to his downfall and complete alienation from his father. Paton’s use of that episode for his title shows that this failed relationship is a central concern of the novel. But Paton was also writing about the state of South African society in the apartheid era, as represented by the varying reactions to Pieter’s violation of the “iron law” of racial separation.

The story is told by Pieter’s maiden aunt Sophie, who begins by announcing that her family has been destroyed by Pieter’s offense, which she believes she should have tried harder to prevent. Sophie combines flashbacks to Pieter’s youth and to episodes in his more

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9 Id.
10 ALAN PATON, TOO LATE THE PHALAROPE 81-82 (1953) [hereinafter PHALAROPE].
11 Id. at 214.
recent past, with excerpts from Pieter's own private journal, explaining the inner struggle he endured in trying to resist the impulse which has ultimately destroyed him and his family. She describes Pieter's own gentleness in warning and forgiving his young rugby teammate Dick, whom he catches chasing a black girl early in the story. In counseling Dick, Pieter clearly explains that the offense against the Immorality Act would result in a prison sentence of a year or two, but "outside," that is, outside the official legal system and at the mercy of the conservative Afrikaner community, "it's a sentence for life."\textsuperscript{12} Pieter takes the part of Dick's judge and jury and forgives Dick; but when he tells his wife Nella what has happened, she says, "I'll not forgive him," and asks Pieter to see that if Dick comes to their house again he comes only into Pieter's study, "not in our other rooms."\textsuperscript{13}

This opening episode is just one revelation of the ingrained revulsion of the Afrikaners against the idea of physical contact with blacks. The strength of that revulsion is largely the measure of Pieter's suffering before he is charged, and of his punishment afterward. The reader's approval of the other characters depends mainly on how able they are to forgive Pieter for his transgression of the law. Yet even the most sympathetic characters do not directly question the law itself and Pieter's action is not defensible. Rather, the nature of the punishments meted out by society and by the law, along with the possibilities for forgiveness, is the subject for exploration.

The plot which takes Pieter from an enviable position to one of total ostracism is fairly straightforward. The Van Vlaanderen family is socially prominent in their small conservative town. Jakob has been influential in the government; Pieter was an outstanding student and is a national-class rugby football player. As a child he was admired by both his white playmates and the black children on his father's farm, whose disputes he settled in ways that sent them away smiling.\textsuperscript{14} Pieter volunteered to serve in World War II (a decision disapproved by his father and other Afrikaners, who considered it an "English war") and came home with medals for Distinguished Service (which Jakob dismissed as "foreign trash").\textsuperscript{15} His military success earned him a promotion in the police force, so that he has the position of Lieutenant, supervising men older than himself.

Pieter is married and has two children, though the fact that his wife Nella is a "chaste country girl," who views their sexual relationship as largely a sacrifice she makes for the sake of the marriage, is a source

\textsuperscript{12} Id. at 16.
\textsuperscript{13} Id. at 19-20.
\textsuperscript{14} Id. at 22.
\textsuperscript{15} Id. at 33.
CASE WESTERN RESERVE LAW REVIEW

of difficulty introduced early in the story. Pieter tries to explain to his wife that her sexual coolness puts him in danger, but cannot bring himself to tell her explicitly that he is "tempted by what he hates"—that is, he is sexually attracted by a young black woman he encounters in his police work, even though he also shares the culturally conditioned rejection of the concept of black-white sexual contact.

Pieter has a somewhat volatile temper, and is sometimes cast into a "black mood" by a conflict with his father, a rejection by his wife, an incident at work, or some combination of such things. As the novel progresses, events seem to conspire against him so that, at vulnerable times, he succumbs to the temptation he hates not once but twice of his own will. After that, having been terrified that he would be caught, Pieter resolves not to fall again—but then still other forces come into play. Stephanie, the girl with whom he has been involved, is arrested for the twelfth time for selling illegal liquor, and Pieter's mother Mina, who is head of the Women's Welfare Committee for the town, reluctantly decides that Stephanie's illegitimate child should be taken from her and put in a more wholesome environment. Apparently to avenge herself on Mina by destroying Mina's child, Stephanie cooperates with Sergeant Steyn, an older subordinate of Pieter who resents Pieter's promotion above him, to entrap Pieter by seducing him a third time and planting Steyn's prepared evidence in Pieter's pocket. Pieter fails to resist Stephanie's will, and he is caught.

When Steyn brings a charge against Pieter and presents his evidence, Pieter's sympathetic supervisor Captain Massingham has no choice but to investigate the charge and arrest Pieter. When the captain goes to tell Pieter's family, Jakob crosses Pieter's name out of the family Bible and cuts him off from the family in every possible way. Jakob also orders that the entire family should withdraw from society; he himself retires to his study to read his Bible, and dies eight days later. After Jakob's death, Sophie and Mina and Nella (under Mina's influence) return to supporting Pieter, and attend his trial. At the novel's close, Sophie says that when Pieter's sentence is up, he and Nella and the children will go away to some other country to start over, but the rest of the family will apparently remain in their "destroyed" condition in South Africa.

C. The Afrikaner Culture

The plot and character dynamics of the novel are tied significantly to the history of the Afrikaner culture in South Africa, much of which
Sophie explains in the course of her narration. Settlers from the Netherlands, now known as Afrikaners, first came to Africa’s Cape of Good Hope in the 17th century. They subjugated the native population, established large plantations, and prospered. In the 18th century, English forces moved in temporarily as a result of political conflicts in Europe; in the 19th century, British colonizers came to stay. When slavery was abolished throughout the British Empire in 1834, many Afrikaner farmers (Boers) were ruined by the change. In 1836 they undertook the Great Trek through Bantu country to find a place to re-establish themselves free of British rule with “its laws that made a black man as good as his master.”16 The religion of this group was Dutch Reformed, closely related in its Calvinist background to American Puritanism. Like the American Puritans, the Afrikaners compared their situation to that of the Hebrews leaving Egypt, traveling through the desert to the Promised Land: they had trekked . . . into a continent, dangerous and trackless, where wild beasts and savage men, and grim and waterless plains, had given way before their fierce will to be separate and survive. Then out of the harsh world of rock and stone they had come to the grass country, all green and smiling, and had given to it the names of peace and thankfulness. They had built their houses and their churches; and as God had chosen them for a people, so did they choose him for their God, cherishing their separateness that was now His Will. They set their conquered enemies apart, ruling them with unsmiling justice, declaring “no equality in Church or State”, and making the iron law that no white man might touch a black woman, nor might any white woman be touched by a black man.17

The van Vlaanderens’ ancestors participated in the Great Trek, and Pieter’s father Jakob still reads from the family Bible which “our ancestor . . . brought from the Cape on the Great Trek of 1836 . . . .”18 This historical background helps to explain both the conflation of racism with religion in the Afrikaner culture and the hostility toward English South Africans displayed by many Afrikaner characters in the novel.

16 Id. at 16-17.
17 Id.
18 Id. at 30.
D. The Iron Law

At the time of the Great Trek, the Afrikaners established three new colonies, Natal, Orange Free State, and Transvaal, each of which was politically separate from the now-English Cape Colony. Over the last two-thirds of the nineteenth century, the British and Afrikaners struggled for control of the lands and their mineral wealth. This struggle broke into armed conflict in the Boer Wars of 1880-81 and 1899-1902, ending in victory for the English. In 1910, all four colonies joined together to become the Union of South Africa, a self-governing nation within the British Empire. The uneasy combination of English and Afrikaner whites maintained political power over the constitutionally subjugated indigenous Africans.

Paton refers in Too Late the Phalarope to Act 5 of 1927 as the “Immorality Act,” and the Afrikaner Nationalist Party passed in 1949 the Prohibition of Mixed Marriages Act; both of these statutes appear to be codifications of the “iron law” which Paton ascribes to the Afrikaners’ new settlements in the grass country. Among characters in the novel, it is clear that those of Afrikaner heritage have a much deeper cultural commitment to this law than do other South Africans. For breaking the law in Venterspan, “[t]he kind of small community that was . . . the heartland of apartheid support,”19 it is known (as Pieter warned Dick) that “the court may give you a year, two years. But outside [in terms of community acceptance] it’s a sentence for life.”20 Confirming this contrast in a conversation after Pieter’s violation has been revealed, Pieter’s father-in-law says to Captain Massingham, “[y]ou are an Englishman . . . . You do not understand these things.”21

E. Tragedy

It has been noted that Too Late the Phalarope employs some elements characteristic of classical Greek tragedies. Edward Callan points out that

Sophie’s view . . . [of] racial arrogance has affinities with the Greek concept of *hybris*—the special manifestation of pride that incurs tragic retribution. *Hybris* is the arrogation by men

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19 Black, *supra* note 7, at 62.
21 *Id.* at 265.
of attributes proper only to the [immortal] gods, and tragedy is the inevitable destruction meted out to hybris.\textsuperscript{22}

Both Pieter and Jakob have characteristics of the tragic hero as defined by Aristotle in his \textit{Poetics},\textsuperscript{23} and in its treatment of Pieter the novel "concentrates on the inner struggles in the soul of one man,"\textsuperscript{24} which is also typical of tragedy.\textsuperscript{25} Paton’s biographer suggests that this was a deliberate choice by the author:

\textit{Too Late the Phalarope} is an elaborately and consciously constructed novel, which moves to its conclusion with all the inevitability of a Greek tragedy. And, in fact, it shares a number of links with Greek tragedy, from the heroic protagonist who is brought down by a tragic flaw, to the use of a narrator who constantly comments on the action and predicts what is to come. Paton may have been given the idea of using the Greek model by Maxwell Anderson’s initial telegram proposing the transformation of \textit{Cry, the Beloved Country} into \textit{Lost in the Stars}: WOULD LIKE TO TRANSLATE INTO TERMS OF THE THEATRE AND . . . INTO TERMS OF GREEK TRAGEDY WITH EQUIVALENT OF A CHORUS. . . .\textsuperscript{26}

Indeed, analysis of the novel in terms of "the Greek model" offers explanations for the destruction both of Pieter and Jakob as individuals and of the house of van Vlaanderen, epitomizing the Afrikaner culture. The legends on which Greek tragic plots are based often include curses passed down over several generations after originating in some egregious offense against the gods, perhaps analogous to the Afrikaners’ subjugation and oppression of the African natives.\textsuperscript{27}

\textsuperscript{22} CALLAN, \textit{supra} note 2, at 69.

\textsuperscript{23} The classical tragic hero is a noble personage, a good though not perfect person, who generally falls from happiness to misery because of some bad act committed perhaps in ignorance of some material fact or even for a greater good, or (according to an arguably non-Aristotelian critical tradition) because of a "so-called tragic flaw—some fault of character such as inordinate ambition, quickness to anger, a tendency to jealousy, or overweening pride." \textsc{Perrine’s Literature: Structure, Sound and Sense} 1080-1081 (Thomas R. Arp ed., 8th ed. 2002).

\textsuperscript{24} CALLAN, \textit{supra} note 2, at 67.

\textsuperscript{25} \textsc{Perrine’s Literature: supra} note 23, at 1084.

\textsuperscript{26} \textsc{Alexander, supra} note 6, at 265-66.

\textsuperscript{27} The suffering of the house of Atreus, culminating in the events of the \textit{Oresteia}, is traced to a curse laid upon the seed of Atreus by his rival Thyestes after Atreus slaughtered Thyestes’ children and served them to him in a banquet, afterward showing Thyestes their bloody heads and feet and hands. The curse on the family of Oedipus (beginning with the oracle to Laios before Oedipus was conceived, and continuing through the deaths of Oedipus’ children Eteocles, Polynices, and Antigone), though not explained by an ancestor’s bad act, does go back to an oracle pronounced to Oedipus’ father before his conception. Robert Graves explains these
II. LAW, PUNISHMENT, AND FORGIVENESS: THE PUNISHMENTS FOR PIETER’S OFFENSE

Against this historical, political, and literary background, Too Late the Phalarope presents an argument that the just administration of the rule of law can moderate the harsh punishments meted out by a “fierce” society for violations of its norms. This argument emerges from the contrast between punishments of violations by the legal system (Pieter’s response to Dick and Massingham’s response to Pieter) and by the society in its many incarnations throughout the novel. Also, the novel argues that morality is an integral element of law, from the assignment of personal responsibility for violations (even of a bad law) to the possibility of forgiveness by the injured individual or group.

In a survey of the history of punishment, Graeme Newman asserts that “there has always been a tradition in punishment: an accepted way that ‘wrongs’ should be ‘righted,’ whether by the feud, legal trial, or religious inquisition. . . . The general point to note is that punishment . . . is the way to deal with wrongs.” Newman offers as a starting point a qualified version of H.L.A. Hart’s definition of punishment. According to this definition, punishment (1) must involve pain or other consequences normally considered to be unpleasant; (2) must be for an offense against a rule; (3) must be for an actual or supposed offender for his offense; (4) must be intentionally administered by human beings other than the offender; and (5) must be imposed and administered by an authority constituted by a legal system against which the offense is committed. Newman notes that this definition leaves out some traditional punishments which he considers in his survey, including those administered by medieval feuds and religious inquisitions, as well as “the traditional Christian conscience [which] is a kind of psychological societal punishment, in which the individual perceives ahead of time the threat of punishment and the threat itself becomes the punishment.” According to this proposed broad definition (adding to Hart’s five points the non-legal institutions and legends as representative of “the archaic conflict between the sacred king and his tanist [heir apparent].” ROBERT GRAVES, THE GREEK MYTHS 376, 379 (1957).

28 While he found the apartheid laws in general “fierce,” “Paton considered the enforcement of the Immorality Act . . . to be the most ‘fierce and pitiless’ of all.” Black, supra note 7, at 62 (quoting ALAN PATON, JOURNEY CONTINUED 46 (1988)).
30 Id. at 7-10 (citing H.L.A. HART, PUNISHMENT AND RESPONSIBILITY: ESSAYS IN THE PHILOSOPHY OF LAW 4-5 (1968)).
31 Id. at 9.
the self-administered punishments of conscience), both Pieter van Vlaanderen and his family are heavily punished as a result of Pieter's succumbing to his temptation.

Purposes for punishment have generally been discussed from two broad perspectives: the teleological, seeking a positive effect beyond itself—usually the reduction in some way of further wrongs; and the retributive, finding intrinsic value in the distribution of deserved suffering for wrongdoing. The punishments imposed for Pieter's violation of the Immorality Act by Afrikaner society as well as by the legal system of South Africa attempt to prevent future offenses through denunciation and deterrence, whereas those imposed by the society seem also to have a strong retributive element. By analyzing the novel's presentation of these punishments, this paper will show that Paton respects the society's right to enforce its laws through the strategies of denunciation and deterrence, even where he disapproves of the laws themselves as misguided or worse; but he presents the retributive responses as immoral and/or self-destructive. The most positive responses to wrongdoing in Paton's view are those which focus on the restoration of the offender through rehabilitation and forgiveness— the strategies which he implemented in his reformatory, but then saw revoked by the rise of the conservative Afrikaner Nationalist Party.

A. Punishments Imposed by Society

1. For Deterrence—Acculturation and Fear of Denunciation

The Afrikaner society enforces its people's maintenance of their separateness by an acculturation so thorough that it provides a built-in deterrent. In Pieter's journal when he writes of his temptation by Stephanie, he also recounts a story from his college days, of a dormitory bull session where the subject of "colour and race, and whether such feelings were born in us or made" was the subject:

Moffie told us the story of the accident in Cape Town, how the car crashed into the telephone box, and how he had gone rushing to help, and just when he got there the door of the car opened and a woman fell backwards into his arms. It nearly knocked him over, but he was able to hold her, and let her gently to the ground. And all the time the light was going off

33 CALLAN, supra note 2, at 38-40.
and on in the telephone box. And just when the light went on, he saw it was a Malay woman that he had in his arms, full of jewels and rings and blood. And he could not hold her any more; he let her go in horror, not even gently, he said, and even though a crowd was there. . . . For the touch of such a person was abhorrent to him, he said, and he did not think it was learned; he thought it was deep down in him, a part of his very nature. And many Afrikaners are the same.  

Pieter’s wife Nella seems to have a similar attitude, judging by her reaction to Pieter’s explanation to her of having caught Dick chasing Stephanie.

Pieter himself envies those who have such a built-in revulsion, even though he supposes there is “some shame in it,” for he knows that to be that fully committed to his society’s values would protect him from the temptation to violate them. But for those who are not fully acculturated, the society also provides a strong deterrent through the fear of its harsh denunciation of a violator. This deterrence is the strategy by which Pieter saves Dick. He warns the boy of the likelihood that he will be caught if he persists in following black girls, because “[t]he police have had instructions to enforce the Immorality Act without fear or favour.” But more than the “year, two years” sentence that the court would assign for such an offense, Pieter reminds Dick that “[y]ou know it would finish you for life. And kill your mother perhaps. And do God knows what to your sister.” To that dire prediction, Dick’s simple response is, “I know.” As far as the reader knows, this reminder is sufficient for Dick, who promises, “I’ll never do it again, lieutenant.” Pieter, of course, does not manage to heed his own warning.

The over-effectiveness of the fear of denunciation is illustrated by the story of the man Smith, who is so afraid of being discovered to have impregnated his black serving girl that he conspires with his wife to murder and behead the girl, hoping that by burying the head and body separately he will escape detection. Smith is executed for the murder, as Sophie intones that “the great machinery of the law, having found him, turned to its task of retribution.” The death sentence is for the murder, not for the Immorality Act violation, which

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34 PHALAROPE, supra note 10, at 125-126.
35 Id. at 126.
36 Id. at 13.
37 Id. at 15.
38 Id.
39 Id. at 39.
(as Pieter has told Dick) would draw a much lesser sentence under law; but the prospect of a "sentence for life" from his society was the terror which motivated the murder. This is an early illustration of the perceived harshness of society’s punishment for breaking the “iron law,” and though Sophie endorses the capital punishment of the man Smith, she also says, “I grieved for the man in my heart, that did such evil because he was in terror.” At the same time, the legal consequence of Smith’s action impresses the black servants “with a certain wonder and awe of this sudden manifestation of the certitude and majesty of the white man’s law,” and it is to some extent this certitude and majesty which allow the rule of law to constrain the harshest expressions of the society’s impulses to retribution, as will be discussed later.

It is in Pieter’s own inner struggle with his temptation and his fear of denunciation that the reader sees most of Pieter’s acting out of the fall of the tragic hero. On several occasions, Pieter realizes that he should try to talk to someone about his temptation in order to strengthen his resistance against it. When the new young dominee comes to Venterspan and preaches about how God will forgive one who has hidden and deceived others out of fear, Pieter writes in his journal:

I said to myself again, I could speak to this man.

Then when he came to me outside the church, as a boy comes to a man, calling me the Lion of the North, I knew I could not tell him. Then he fell in love with my sister, and from her he learned to hold me even in greater honour than before. By asking me to be a diaken in the church, he silenced me for ever.

For at this time I had but one thought in my mind, and that was to tell one human soul of the misery of my life, that I was tempted by what I hated, to seize something that could bring no joy. I would have humbled myself before him, as I made the boy Dick humble himself. I would have told him every thought of my mind, I would have prayed to the Lord to give him some deep knowledge, so that he could find me a salvation, and make me clean and sweet and at peace, like my own brother Frans, like my friends, like young Vorster, like the young dominee himself.

40 Id. at 40.
41 Id. at 39.
And yet, though my need was so great, I never spoke. Was it pride that prevented me? ... Then to be proud, I destroyed them all!  

Pieter tries to tell Nella of his trouble, saying to her that more of her love could keep him “safe,” but she can’t understand and he can’t bring himself to be more explicit. He plans to tell Kappie (Matthew Kaplan, his friend who shares his interest in music and stamps), and goes to him planning to do so, but cannot bring himself to speak; Kappie can sense that there is a problem, and that it is “some tragic trouble of the soul,” but Pieter’s failure to confide leaves Kappie unable to help him. Pieter also tries to confide in Captain Massingham one evening during the smallpox epidemic, but when the Captain tells him to go home first and rest, Pieter does not persist. Although the episode of the young dominee is the only one in which the novel explicitly blames Pieter’s silence on his pride, the same cause is implicated in his other failed attempts to ask for help.  

A corollary to the destructiveness of Pieter’s pride is the operation of the same character flaw in Sophie, who throughout her narration repeats that she feels she could have saved Pieter if she had spoken of the intuitive knowledge she had of his trouble. When she sees Stephanie look boldly at Pieter, and when she finds him praying by himself on the day of the picnic, she tries to get him to confide in her, but Pieter rejects her overtures, saying “In God’s name, have you no pride?”  

When Sophie is talking with Kappie about the stamps Jakob has bought for Pieter’s birthday, Kappie tells her that he senses Pieter has “a deep trouble,” and that Kappie feels he needs a few more “puzzle pieces” to be able to understand the problem. Sophie says,

And it was in my heart to tell him the one piece that I thought I knew, but I was afraid. And it was in my heart to tell him of the hard and bitter words that were spoken to me amongst the rocks of the krantz at Buitenverwagting [at the picnic], yet God forgive me, I pitied myself, and was ashamed that a man should think me a woman to whom such words could be spoken. So I was silent. ... And whether I could have saved him then, or whether if Kappie had known, he could have saved

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42 Id. at 80.
43 Id. at 129.
44 Id. at 215.
him then, or whether if the captain had been there, he could have saved him then, God knows, I do not know. 45

So Pieter’s impulses to ask for help are undercut by the combination of his fear of denunciation and his unwillingness to reveal his temptation to those who hold him in high respect—both variations on the sin of hubris. And Sophie’s impulse to confide in Kappie so that together they might save Pieter is stifled by her shame—the converse side of pride. The elements of tragedy are thus woven into Paton’s presentation of the operation of Afrikaner society’s enforcement of its iron law.

2. Denunciation for its Own Sake—Of Pieter and the House of van Vlaanderen

Beyond the fear of denunciation, the actual expression of the community’s condemnation is an essential ingredient in punishment. “It is the expression of the community’s hatred, fear, or contempt for the convict which alone characterizes physical hardship as punishment. . . . we can say readily enough [that] a ‘crime’ is . . . conduct which, if duly shown to have taken place, will incur . . . the moral condemnation of the community.” 46 The novel shows society’s actual denunciation of Pieter in a few incidents (since his actual fall occurs very near the end of the novel) and presents the concept more globally in Sophie’s account of the destruction of the family as a whole.

After the first time Pieter goes to Stephanie, when he has heard a twig crack and received a note which makes him think he was observed, he sees people reacting to him in ways he interprets as rejections because of his violation. Although the behaviors he observes turn out to have other explanations (young Vorster’s silence and withdrawal is due to obsession with his own debt problem, and Herman Geyer’s spitting and turning away is due to his anger at the neighbors and the police over the citation for his stables), 47 they reveal the treatment Pieter would expect from people who knew what he had done. And after he is charged and dismissed from the police, the contemptuous letter he receives from young Vorster with the repayment of his loan (using the familiar pronoun jou so as to express

45 Id. at 225-26.
47 PHALAROPE, supra note 10, at 188.
supreme contempt) is "beyond all reason," and sends Pieter to get his revolver and contemplate suicide.\textsuperscript{48}

A stronger sense of the denunciation punishment emerges from Sophie's continuous invocation of the destruction of the whole family as a result of Pieter's violation. This element of the story conveys the breadth and depth of the moral condemnation expressed by Afrikaner society for any violation of its self-preservative iron law. Although we may wonder why the whole family should suffer so drastically because of one member's misdeed, to some extent this can be seen as a logical reversal of the high social status the individual family members enjoyed simply by virtue of their membership in the family. The high position from which the family members fell, although not created by Pieter (since it was a position of several generations' standing), did at least take some of its glory from the honor he had brought to the name. It is Pieter who is viewed by the people as "some kind of a god," and when the new dominee meets the family, he is more impressed with Jakob after he learns that Jakob is Pieter's father. On the question of whether punishment inflicted for guilt may fall on family members of the guilty one, Friel's dissertation on Punishment in the Philosophy of St. Thomas Aquinas notes that if those relatives lose not something that is due to them, but rather something "that would otherwise [apart from his crime] have been due to [them], namely, a share in his ... name and estate, Saint Thomas denies that injury of this kind is punishment, strictly speaking."\textsuperscript{49} It might be argued, then, that the denunciation of the family, to the extent that it is punishment by society, is directed not at them but at Pieter—as indeed much of his agonizing in his journal is over the consequences he knows his crime will have for his family, so it is clear that his suffering is intensified by the fact that it encompasses his family.

3. Retribution

Taken together, teleological punishments (deterrence through acculturation and through fear of denunciation, along with the actual denunciation following the offense) can be seen as fairly harsh measures taken by Afrikaner society to enforce the iron law. Still harsher, however, are the retributive punishments suggested or carried out in the name of the society. These include Jakob's casting Pieter out of the family, Nella's father's suggestion that Pieter should be shot, and

\textsuperscript{48} Id. at 258-259.
\textsuperscript{49} GEORGE QUENTIN FRIEL, PUNISHMENT IN THE PHILOSOPHY OF SAINT THOMAS AQUINAS AND AMONG SOME PRIMITIVE PEOPLES 100 (1939).
the varying degrees of isolation experienced by different members of the family.

a. Jakob’s Casting out of Pieter

The most salient feature of Jakob van Vlaanderen’s character is his expectation of obedience from his inferiors—which includes most people he knows. Sophie notes that at church when the dominee speaks of the importance of obedience to God, “at the sound of the word obedience, my brother, who had been grim and silent all the day, was suddenly alive, for this was a word he understood, better than he understood the word of love.” Graeme Newman asserts that “the maintenance of obedience has been the primary function of punishment in the major spheres of life: crime, family, slavery, military, religion,” and that “[t]he prototype for the obedience model was punishment used within the . . . family.” The occasions when we see Jakob punish Pieter represent not episodes of direct disobedience by Pieter of an instruction from Jakob, but rather Pieter’s indirect disobedience by failure to live up to Jakob’s proud Afrikaner philosophy: “the point of living is to serve the Lord your God, and to uphold the honour of your church and language and people . . . .”

The first punishment Sophie recounts is Jakob’s taking away Pieter’s beloved stamp collection when at age fourteen for “the first time he had not come top in his class,” and Jakob decided the stamps were “interfering with the boy’s education.” This episode stands as a barrier between the two for the rest of Jakob’s life; when he returns the stamps three years later, after Pieter passes first-class in the Matriculation Examination, Pieter shows no reaction, and in later years the mention of stamps between them is enough to throw Pieter into a “black mood.” Jakob’s rigidity is shown in the original punishment, for when Mina points out that Pieter’s recent illness probably affected his school work, Jakob merely repeats, “I said put them away.”

The second punishment of Pieter by Jakob results from Pieter’s decision to volunteer for service in World War II, for “the red oath, to those who would not take it, meant only one thing, that the [taker] of it was . . . a traitor to the language and struggle of the Afrikaner people . . . fighting in an English war that no true Afrikaner would take

50 PHALAROPE, supra note 10, at 81-82.
51 NEWMAN, supra note 29, at 271.
52 Id. at 53.
53 PHALAROPE, supra note 10, at 92.
54 Id. at 29.
55 Id. at 30.
part in."\textsuperscript{56} For taking this oath of service, then, Pieter is for the first time cast totally out of his father’s favor:

And when his son Pieter took the red oath and had gone to the war, he would bear no mention of his name, but had restored him to favour when Holland fell, not because he had any special love for Holland, but because it was a small nation, as the Transvaal had been in 1899. This act of restoration he had set down on paper, in language stiff and proper, made still more stiff and proper by the language of Holland itself, which they had taught when he was at school. But he made it clear in his letter that this was a change of circumstance and not of heart. [Jakob had not stopped resenting the English, but he would tolerate his son’s fighting in defense of Holland.] \textsuperscript{57}

These first two punishments of Pieter by Jakob can be seen as teleological—the first clearly meant to improve Pieter’s school performance, and the second possibly to preserve in some general way the family’s loyalty to the Afrikaner culture. But Jakob’s response to the news of Pieter’s violation of the Immorality Act seems purely retributive.

When Captain Massingham tells him that Pieter has confessed to the violation, Jakob calls for the family Bible and crosses out Pieter’s name, “not once but many times,” and instructs Sophie to take “everything that the man ever gave to me, and every likeness of him, and everything in this house that has anything to do with him, and . . . burn and destroy them all.”\textsuperscript{58} Then, after changing his will so that Pieter’s younger brother gets the elder son’s share and Pieter’s wife and children get the second share “on condition that neither she nor they ever again had any commerce with the man,” Jakob reads from the Bible the Hundred and Ninth Psalm, which Sophie says “are the most terrible words that man has ever written, and should not be in any holy book.”\textsuperscript{59} The verses Jakob reads are:

\begin{quote}
When he shall be judged, let him be condemned; and let his prayer become sin.

Let his days be few; and let another take his office.

Let his children be fatherless, and his wife a widow.
\end{quote}

\textsuperscript{56} Id. at 32-33.  
\textsuperscript{57} Id. at 92.  
\textsuperscript{58} Id. at 250-51.  
\textsuperscript{59} Id. at 252.
Let his children be continually vagabonds, and beg; and let them seek their bread also out of their desolated places.

Let the extortioner catch all that he hath; and let the strangers spoil his labour.

Let there be none to extend mercy unto him; neither let there be any to favor his fatherless children.

Let his posterity be cut off; and in the generation following let their name be blotted out.

Let the iniquity of his fathers be remembered with the Lord; and let not the sin of his mother be blotted out.

Let them be before the Lord continually, that he may cut off the memory of them from the earth.

Because that he remembered not to show mercy, but persecuted the poor and needy man, that he might even slay the broken in heart.  

This seems to be the judgment Jakob is calling down upon Pieter; but after reading it, he bows over the book and says “in a voice of agony, I shall not pray.” Whether Jakob recognizes this himself or not, the reader is invited to realize that the man who “remembered not to show mercy” is not Pieter but Jakob. His total commitment to the preservation of the Afrikaner culture makes him an extremist in his punishment of what he sees as an attack on its purity.

b. Other Retributive Results

Another individual expression of the Afrikaner society’s retributive response to Pieter’s offense is made by Nella’s father, who hears the story from Captain Massingham after the Captain and Sophie have left Pieter with Kappie.

To him the captain told the story of all, and when he had finished, the fierce old man struck the arm of his chair and said, I would shoot him like a dog.

Then because no one spoke, he said to the captain, wouldn’t you?

60 Id. at 252-253.
61 Id. at 253.
And the captain said, No.

--You wouldn't?

--No.

--But he has offended against the race.

Then the captain said trembling, Meneer, as a policeman I know an offence against the law, and as a Christian I know an offence against God; but I do not know an offence against the race.62

The reaction of Nella's father represents society's punishment response as "irrational, unthinking emotion fixed by a sense of the sacred and its violation . . . [which] provokes a sense of outrage, anger, indignation, and a passionate desire for vengeance."63 As will be discussed later, Captain Massingham's response to Nella's father is an important expression of the mitigating influence of the Rule of Law over the harshness of society's retributive emotions.

A prominent feature of Sophie's narration of the story is her emphasis on the fact that it is "the story of our destruction."64 It has been noted above that one explanation for the destruction of the house of van Vlaanderen is that Pieter's fear of just such an event should have acted as a deterrent to his committing the violation in the first place, and that to the extent that their fall from high station is mainly a loss of reflected glory from him, it may be interpreted as not being, "strictly speaking," a punishment for them. However, in another sense their destruction does appear to be a retributive result. The suffering of individual members of the van Vlaanderen family corresponds approximately to the degree of their investment in what Paton called "the heresy that a man's greatest glory is to be the member of a volk."65 It is, therefore, a kind of self-destruction, inflicted upon them by their own overbearing belief in the importance of racial purity.

Jakob suffers the greatest self-punishment. He casts Pieter out and closes up the house, refuses Captain Massingham's offer of help, and tells both Mina and Sophie that if they leave to see Pieter they may not return. Then after changing his will and resigning from all of his positions, Jakob withdraws to his study to read the Bible. Jakob

62 Id. at 265.
64 PHALAROPE, supra note 10, at 3.
65 Black, supra note 7, at 8 (quoting ALAN PATON, SAVE THE BELOVED COUNTRY 78).
dies eight days later, and his wife finds him bent over the Book of Job. The story of Job concerns a man who suffers without understanding why, and demands an explanation from God; after realizing how presumptuous such a demand is, and repenting of it, Job is restored. Jakob had previously read from Job on the birthday when Pieter gave him the book of South African birds—the book which prompted the outing on which Jakob showed Pieter the phalarope. Perhaps Jakob thought at that point his son had been restored to him—but the revelation to Pieter of Jakob's love had come “too late,” and the relationship is again lost. Therefore Jakob returns to the Book of Job, looking for an explanation.

Jakob's casting out of Pieter is an act in which he puts his certainty of Afrikaner supremacy above any other value. In describing Jakob's death Sophie remembers his previous confidence about the purpose of living, and realizes that “now he had no answer, and sought hungrily in the Book. Therefore I wrote truly when I said he was destroyed.”

Jakob is the most completely destroyed because he is the most completely representative of the Afrikaner hubris which enforces its pitiless laws out of pride and fear for dilution of its power, rather than for reasons of justice in the interest of all people.

Other members of the family also suffer, though the degrees of their destruction are not as completely drawn out by Paton as is that of Jakob, largely because the novel focuses on Jakob and Pieter. But a rough proportionality seems to exist between the individual's degree of suffering and the degree of his or her investment in Jakob's Afrikaner worldview. The child who is closest to Jakob is the youngest sister Martha, who breaks her engagement to the young dominee and says that “never again would she leave the house, not because of her father's will, but of her own.” Sophie says she understands this response of the girl, for whom “[t]he truth is her grief and shame were greater than her love.”

Martha's destruction, like Jakob's, is very great and largely self-inflicted as a retributive response to Pieter's violation of the cultural norm.

The other sisters, who are married and live in other towns, are mentioned in passing when Sophie says they will hope “that none would remember their unmarried names.” Pieter's brother Frans and his family will live a solitary life, because they “would not leave the shelter of Buitenverwagting,” the family farm. These siblings have lost their family-related social status—which of course was

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66 PHALAROPE, supra note 10, at 270.
67 Id. at 267.
68 Id. at 268-269.
69 Id. at 267.
originally founded on the Afrikaner structure, and therefore is logically taken away by Pieter’s violation of the structure. But to some extent it is, as Aquinas said of some family-related sufferings, “not punishment strictly speaking,”\textsuperscript{70} and the choice of how to deal with the change of status is their own—so if they remained “destroyed,” it will be at least partly a self-punishment.

For Mina and for Sophie and Nella, who follow Mina’s lead, the destruction which follows Pieter’s arrest is outweighed by the force of love with which they meet it. Mina does stay in the house with Jakob during the eight days before his death, seeing her first duty to her husband. But she articulates her value of love over social condemnation as she sends her message with Sophie to Pieter:

> God is both Lover and Judge of men, and it is His commandment that we join Him in loving, but to judge we are forbidden. . . . And you will say to my son . . . that though he may suffer under the law, there is no law that can cut him off from our love, nor from the love of his friends.\textsuperscript{71}

When Jakob dies, Mina goes to the country house and brings back Pieter’s wife and children, and reopens the front door and windows of her house, saying “something must go out of this house.”\textsuperscript{72} She has already resigned her office as President of the Women’s Welfare Committee, but she rejoins the group—Sophie explains that “she and I no longer hid ourselves, because of her will.”\textsuperscript{75} It is true that the members of the Women’s Welfare Committee do not re-elect Mina as President—the stigma is not inoperative—but the harm of that decision will apparently fall on the committee, since they chose instead “Elisabet Wagenaar, who is surely one of the world’s most stupid women.”\textsuperscript{74} This last remark by Sophie brings a smile to the reader, lightening the book’s ending slightly, but it also reveals that Sophie’s feistiness has made something of a recovery. At the outset of the story, even when introducing the story of the family’s being “struck down,” Sophie identifies herself as one who is, “as the world sees it, myself destroyed.”\textsuperscript{75} The phrase “as the world sees it” offers the possibility that she herself realizes that her destruction has not been com-

\\textsuperscript{70} FRIEL, supra note 49 at 100.
\textsuperscript{71} PHALAROPE, supra note 10, at 255.
\textsuperscript{72} Id. at 271.
\textsuperscript{73} Id.
\textsuperscript{74} Id.
\textsuperscript{75} Id. at 4.
plete, in contrast to that of Jakob, about whom "I wrote truly when I said he was destroyed."76

Thus, it seems that the members of the van Vlaanderen family share in Pieter's punishment for violating the iron law largely to the extent that they shared in the community's belief in that law and the apartheid system it represented; and to a significant degree, their suffering appears to be self-inflicted retribution for failure to uphold Afrikaner cultural norms. The novel does not develop the issue of whether Mina's loving response to all of their troubles can succeed in rescuing other members of the family from society's retributive destruction. Sophie's solemn diction over all suggests some continued suffering, but what each individual's reaction to society's denunciation may be is left unexplored. Sophie's closing statement, as noted below, does place much hope in the redeeming power of love.

B. Punishment by the Rule of Law

The rule of law in Too Late the Phalarope is represented, somewhat ironically, by Pieter himself in his role as police lieutenant, and also by Captain Massingham. Pieter's remark to Dick that the police "have had instructions to enforce the Immorality Act without fear or favour"77 may suggest Paton's sense that under the Afrikaner Nationalist regime the beneficial rule of law was being "governmentally eroded all around him"78 by increasingly authoritarian policies. But in general, Paton felt that "[t]he Rule of Law is the greatest political achievement of humankind. . . . it is nothing less than man protecting himself against his own cruelty and selfishness."79 He believed that "[b]y consenting to the rule of law [man] ensured that the baser instincts and impulses of his own nature would be continually held in check by the higher."80 Thus, Pieter protects Dick against his own "baser instincts and impulses" by apprehending Dick and moderating the application of the law in his case.

Pieter's own case is more difficult. Michael Black points out that Pieter "himself as a policeman is a great believer in the Law," and that "[i]mmediately after his second offence, but before he has been charged, he feels an 'abject creature' that was 'called upon to the high duty of the law and broke the law.'" In Black's analysis,

76 Id. at 270.
77 Id. at 13.
78 Black, supra note 7, at 61.
79 Id. at 54-55 (quoting ALAN PATON, SAVE THE BELOVED COUNTRY 283).
80 Id. at 55 (quoting ALAN PATON, SAVE THE BELOVED COUNTRY 238).
The ambiguity of this statement is one of the novel’s triumphs. Does he mean he has broken his marriage vows, or does he mean he has broken the Immorality Act? Is he talking of Christian law or legal law? The ambiguity is important because the spirit of Afrikaner nationalism is portrayed as one that seeks to build its legal law on the Christian. And yet, so far as Paton is concerned, the result of this attempt is something totally unforgiving and thoroughly un-Christian.81

Black overstates the ambiguity, since it seems fairly clear that the “high duty of the law” to which Pieter was “called” is the legal more than the Christian law—his “calling” being his profession, since he has not been specially “called” to a Christian vocation—and so it is the Immorality Act he is conscious of having broken.82 The retributive fusing of religious with legal rules appears as a feature of the Afrikaner society’s punishment of Pieter’s deed (discussed above), as distinct from that imposed by the rule of law. In addition to Pieter’s suspension of punishment for Dick, Captain Massingham’s response to Pieter’s offense clarifies this distinction.

Massingham takes a mentoring role with Pieter early in the story, advising him to keep his emotions in check when dealing with Sergeant Steyn, the older officer over whom Pieter was promoted because of his war service: “[a] word from you is twice as severe because it comes from you. . . . Therefore . . . you could say half what you mean. . . . I’m not reprimanding you . . . I’m telling you.”83 Thus Massingham tries to protect Pieter against his own weaker characteristics. Still more indicative of this role is the fact that when he has spoken to Pieter and ascertained that the Immorality Act charge is genuine, Massingham asks Pieter, “why didn’t you tell me all this?” And when Pieter reminds him of his attempt to do so which the captain brushed off, he responds, “[m]y God, my God.”84 Massingham clearly would have tried to save Pieter as Pieter saved Dick.

Massingham does articulate many of Paton’s moral judgments on events near the close of the story, so it is clear that the moral/religious element is not divorced from the rule of law in Paton’s view—but Massingham’s principles mitigate rather than exacerbate the effect of legal sanction. Leaving the Police Station to deliver the news of

81 Id. at 64.
82 It is indeed a remarkable feature of the novel that the wrongness of Pieter’s infidelity to Nella is never focused on—it is the disgrace of being “tempted by what he hates” (the contact with a black woman) which obsesses both Pieter and his punishers.
83 PHALAROPE, supra note 10, at 35.
84 Id. at 244-245.
Pieter's violation to his family, Massingham passes by the desk of Sergeant Steyn, who entrapped and charged Pieter, and says to him, "may God forgive you for an evil deed." He thus expresses the wrongness of using the law for the purpose of vengeful destruction. It is Massingham who contradicts Nella's father's assertion that Pieter should be shot, and who says that he does not recognize "an offence against the race," again denying the validity of the harshly retributive Afrikaner response. Massingham tells Jakob that he will stand by Pieter when it is clear Jakob will not, and he offers his help to Mina and Sophie although Jakob declines it on their behalf.

Finally, Massingham says both to Sophie and to Nella's father that "if man takes unto himself God's right to punish, then he must also take upon himself God's promise to restore." He maintains the necessary element to represent the rule of law, for he says, "an offender must be punished, mejuffrou, I don't argue about that. But to punish and not to restore, that is the greatest of all offences." These ideas reflect Paton's own practices in his work as a reformatory supervisor, in which he moved over time "to replace external, enforced discipline of fences, guards, and brutality, with internal discipline, a self-discipline of trust and mutual respect, encouraged by a firm but enlightened Principal" and to work for "the integration into a common society of a group which had been despised and set apart . . . ."

Pieter's actual sentencing at the hands of the Rule of Law expresses the denunciation of the society, as the court declares "that a man had been unfaithful to his trust, unfit for his position, unworthy of the love of wife and children." The prison sentence, which the reader infers will be the "year, two years" that Pieter predicted for Dick, probably has a mainly retributive function. But it is a very muted sentence compared to the harshness of the Afrikaner society's reaction, and thus can be seen as indeed an attempt to protect man "against his own cruelty and selfishness" while working to keep the "baser instincts and impulses . . . in check." Jeffrie G. Murphy, among others, has pointed out that "[i]n the Oresteia, Athena rightly made an honorable home for the Furies (representatives of the vindictive passions)—so constraining their excess by due process and the rule of law that they became the Eumenides (the Kindly Ones), pro-

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85 Id. at 246.
86 Id. at 265.
87 Id.
88 Id. at 264.
89 ALEXANDER, supra note 6, at 141-142.
90 PHALAROPE, supra note 10, at 271.
91 Black, supra note 7, at 55.
tectors of law and social stability.”\textsuperscript{92} The legal punishment meted out to Pieter allows for the protection of social stability (even if the apartheid order is an unjust form of social stability), while restraining the excessive response of the Afrikaner culture.

\section*{C. The Role of Forgiveness}

\subsection*{1. Forgiveness by the Wronged Individual}

It is an interesting question whether forgiveness has a role in the legal response to wrongdoing. Martha Minow asserts that “[f]orgiveness operates interpersonally; the legal system operates impersonally. Through forgiveness I forgo my anger and hatred towards someone who has harmed me, but I do not and cannot alter the requirements of just desserts [sic].”\textsuperscript{93}

However, it is important to consider the role of forgiveness in \textit{Too Late the Phalarope}, because it was an important element in Paton’s conception of the story. Michael Black sets forth this basic idea in his chapter on \textit{Alan Paton and the Rule of Law}:

what fascinates Paton in \textit{Too Late the Phalarope} is not so much the ‘iron law’ itself, but the ‘moral quality’ of forgiveness he found in the novel’s genesis, a newspaper report on an Immorality Act trial:

The story itself was not unusual. What moved me deeply was that the policeman’s wife sat in court throughout the trial, and by her demeanour showed she had forgiven [her husband]. . . . Acts of infidelity are as common in South Africa as in any country in the world, and such acts of forgiveness are also not unknown. But the forgiving of a white man—especially an Afrikaner—by his wife when the act of infidelity had been committed with a black woman has an emotional and moral quality about it that is unknown in any other country in the world.

\begin{footnotesize}
\begin{footnotes}{92}{Jeffrie G. Murphy, \textit{Forgiveness, Reconciliation and Responding to Evil}, 27 \textit{FORDHAM URB. L. J.} 1353, 1360 (2000).}
\begin{footnotes}{93}{Martha Minow, \textit{Forgiveness and the Law}, 27 \textit{FORDHAM URB. L. J.} 1394, 1398 (2000).}
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Faced with ‘fierce laws,’ forgiveness and the Law was to be a theme that would pre-occupy Paton for the rest of his life.\(^94\)

The reference in Paton’s newspaper source is clearly to Nella’s forgiveness of Pieter; but the story also shows the operation of forgiveness by Sophie, Mina, Kappie, and Captain Massingham, and relates them to the possibility of Pieter’s survival as an individual. How each of these relates to the rule of law, and how forgiveness in combination with law relates to the recovery of South Africa from the apartheid era are questions which may illuminate the ideas presented in Paton’s work.

The novel tells little about Nella’s forgiveness of Pieter except that after Jakob’s death Mina went to see Nella, taking Pieter’s journal, and “the girl came back, silent but steadfast, borne on the strong deep river of [Mina’s] love, that sustained us all.” \(^95\) Earlier Sophie had described how “quiet and shy and chaste” Nella was, and how she was frightened and unable to understand Pieter’s needs, but Sophie also noted that “the hard hand of Fate struck her across the face, and shocked her into knowledge, but only after we had been destroyed.” \(^96\)

After Pieter’s arrest, Mina tells Sophie that she has always worried about Pieter’s hidden troubles (knowing they existed, but not what they were), and has long been aware that he had hidden them also from Nella, “so that the girl Nella had married a stranger, whom the oldest and wisest could neither help nor understand. And she said to me, she has no blame, let the whole world know it. . . . who will dare to judge her? Neither you nor I.” \(^97\) Nella is present at Pieter’s sentencing along with Mina and Sophie, “all of us thinking that to be our duty.” \(^98\) Sophie says “what is yet to come I do not know, except that they will go to some other country, far from us all. I trust they will find some peace there, even if he is to be for ever so silent and so grave.” \(^99\) The reader knows from these passages only that Nella has returned, convinced by experience and by Mina that she has a duty to do so. But how are we to understand the source and special “moral quality” of her forgiveness?

Captain Massingham expresses conviction that Nella’s forgiveness is essential to Pieter’s recovery. After Pieter has been arrested and

\(^94\) Black, supra note 7, at 62-63.
\(^95\) PHALAROPE, supra note 10, at 270.
\(^96\) Id. at 45.
\(^97\) Id. at 255.
\(^98\) Id. at 271.
\(^99\) Id.
Jakob has sent Nella and the children away, Massingham urges Sophie to take the journal to Nella as soon as possible, because “if she doesn’t come back, nothing will help at all. You surely don’t think, mejuffrou, that some other woman could save him? And if you are thinking, she couldn’t help before, don’t you see this is quite another man?” Massingham further explains that he is also concerned with Nella’s own welfare: “[t]here’s a hard law, mejuffrou, that when a deep injury is done to us, we never recover until we forgive.”

But what is the special nature of the injury that has been done to Nella, which for Paton sets it apart from the injury done by unfaithful spouses “in any other country in the world?” It must be related to the cultural assumption that the Afrikaners are a chosen people, and Pieter’s violation must seem to reject his relationship with Nella as a satisfying part of his life within their culture. Philosopher Jeffrie G. Murphy points out the dilemma of a person like Nella: “[h]ow are we to reap the blessings of forgiveness without sacrificing our self respect or our respect for the moral order in the process?” This dilemma is softened somewhat by “sincere repentance on the part of the wrongdoer,” since

[w]hen I am wronged by another, a great part of the injury . . . is the insulting or degrading message that has been given to me . . . that I am less worthy than he is, so unworthy that he may use me merely as a means or object in service to his desires and projects. . . . If the wrongdoer sincerely repents, however, he now joins me in repudiating the degrading and insulting message—allowing me to relate to him (his new self) as an equal without fear . . . .

Thus, the combination of the blow from “the hard hand of Fate . . . shocking her into knowledge” with the understanding via Pieter’s journal of his suffering and repentance could allow Nella to relate to Pieter’s “new self” in a different way, apart from the underlying racist assumption of their previous relationship. It is not that the iron law is repudiated by her forgiveness—Pieter’s punishment by the legal establishment for that violation is not inconsistent with forgiveness, as we shall see. Through her new knowledge of Pieter’s temptation and his suffering, however, Nella transcends the constraints of the iron law, which may be what Paton sensed as an exceptional moral achievement.

100 Id. at 266.
101 Murphy, supra note 92, at 1362.
102 Id.
2. Forgiveness by Other Individuals

The forgiveness of Pieter by other characters than Nella must be viewed differently, since in one prominent view, "[f]orgiveness is and must remain the exclusive prerogative of the wronged individual."\(^1\) The others who forgive are not so directly injured by Pieter’s offense; Nella is the only victim of his adultery. Mina and Sophie forgive Pieter because they love him more than the law he broke or the status they lost as a result of it. Kappie continues to respect Pieter, and talks Pieter out of his suicidal moment, and speaks to him “about no one deserving to suffer for ever . . .”\(^2\) Kappie, being Jewish, is a marginal character in the Afrikaner community and therefore has still another perspective on Pieter’s offense.

Finally, Pieter is forgiven by Captain Massingham, who represents the constraining power of the rule of law. It is important to repeat here Massingham’s statement to Sophie after they leave Pieter with Kappie: “an offender must be punished, mejuffrou, I don’t argue about that. But to punish and not to restore, that is the greatest of all offences.”\(^3\) This remark raises a question addressed by Professor Minow in her consideration of Forgiveness and the Law. “Perhaps the law can promote a sensibility of repair and restoration. But can it do so co-existing with what has to remain the crucial domain of law, that of enforcement, neutrality, objectivity?”\(^4\) Some thinkers believe that it can: “[f]orgiveness is to be distinguished from the acts of pardoning an offender or granting amnesty. . . . Forgiveness is at once more and less. . . . Forgiveness looks evil in the eye, condemns it, but still permits one who meets the forgiver’s criteria, to start anew.”\(^5\) Thus it seems that Paton presents forgiveness as an important element of the response to Pieter van Vlaanderen by his friends and loved ones and by the rule of law—although not by the conservative Afrikaner culture whose ascendancy Paton viewed with concern.

3. Forgiveness as part of South Africa’s recovery from apartheid

In the years since the dismantling of the apartheid regime in South Africa, the role of forgiveness in the rule of law has been explored in a different way. The Truth and Reconciliation Commission,\(^6\) which

\(^{103}\) Minow, supra note 93, at 1401.

\(^{104}\) Phalarope, supra note 10, at 260.

\(^{105}\) Id. at 264.

\(^{106}\) Minow, supra note 93, at 1404.


\(^{108}\) Set up by the Government of National Unity based on the Promotion of National Unity
has worked to "help restore the dignity of those who were violated" by apartheid, has been characterized by its Chair, Archbishop Desmond Tutu, as "an institutional enabling of forgiveness." This Commission accepted applications for amnesty, requiring full disclosure of the facts of each individual's violations of human rights, and received 9000 such applications from people on all sides of the conflict. This process "was the chief [political] condition for peaceful transition to democratic rule," but "amnesty hearings also adhered to the rule-of-law commitments to factual predicates, treating likes alike and predictable decision making." Some of the confrontations engendered by this process yielded forgiveness, "but there were at least as many situations where there was no exchange of apology or forgiveness at all." In assessing this process Professor Minow concludes that "[t]hus, forgiveness can operate when individuals leave law's operations intact. . . . Something different from forgiveness and the rule of law, but something harmonious with it occurred with the TRC, as it tried to create a predicate for establishing the rule of law."

III. CONCLUSION: SOPHIE'S MUTED HOPE VINDICATED

When Paton wrote Too Late the Phalarope in the early 1950's, he was concerned about the erosion of the rule of law by the ascendancy of Afrikaner Nationalism. His belief in the necessity of restoration of offenders, which was an important element of his reformatory work, was also "at the heart of his objection to Afrikaner Nationalism." At the close of the novel, when Sophie expresses once more her grief for Pieter and his family and "the nation which gave him birth," she also expresses some hope and wish for the future. She prays "we shall not walk arrogant, remembering Herod whom an Angel of the Lord struck down, for that he made himself a god," thus reiterating Paton's theme of the tragic fall of the house of van Vlaanderen and suggesting that the same fate could swallow up all of white South Africa. And she wishes that Mina could have written the story, "for maybe of the power of her love that never sought itself, men would
have turned to the holy task of pardon . . . and virtue come of our of-
fences. To some extent, the historical development of South Af-
rica in the end of the twentieth century vindicated Sophie’s hopes for
it; and that seems to have happened partly through combining the rule
of law with opportunities for forgiveness and restoration, as Paton’s
life work advocated. It is a combination which deserves to be tried in
other areas of the world where longstanding conflicts threaten to
swallow up whole cultures if some accommodation is not reached.

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† Id.

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