What is criminology for?

Single and multiple perpetrator rape in South Africa

Empowering traffic officials to make discretionary decisions

Needs-based offender rehabilitation in South African prisons

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Die Vier Hoekie, Cell, Voorberg Prison, 2004
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EDITORIAL

Why are criminal acts in South Africa so violent? This is the question that Bill Dixon poses to criminologists in South Africa in this edition of *SA Crime Quarterly*. He also offers some insight into why it might be that South African academics and independent researchers have, on the whole, not focused on finding answers to this question – because instead they have tended to focus on how crime can be controlled by police. Dixon suggests that, for many cogent reasons, we have been distracted from trying to develop a better understanding of the context and motivation behind criminal violence because of a pre-occupation with policing.

That pre-occupation with policing as the answer to the problem of crime has long been the source of frustration to those who argue that placing policing in the centre of the response to violence is worse than futile. Indeed, South African criminologists (in the broadest sense of the term) appear to fall into two categories: those who take a public health approach to violence and whose work is informed by the World Health Organisation’s ecological model that provides a framework for understanding the risk and protective factors for violence; and those whose interest and focus is on the functioning of the criminal justice system.

The pre-occupation with, or focus on, policing as South Africa’s principal response to violent crime was exemplified on 20 September when the Minister of Police announced the 2010/11 crime statistics in Cape Town. The subtext of the event was that the police were solely responsible for the reductions in most categories of crime, and for fixing the problems that gave rise to the increases in other categories of crime. In response to questions about the persistently high rate of rape the Minister referred to the re-establishment of the Family Violence, Child Protection and Sexual Offences Unit, whose members are trained to respond to sexual offences. Yet, as you will read in the article by Jewkes et al, no amount of fixing the police and criminal justice system (however necessary and important that may be) will change the fact that most rapes are motivated by sexual entitlement and the desire for ‘entertainment’. How has rape become viewed by a significant number of men in South Africa as a source of entertainment? How and why has sexual entitlement become so entrenched? These are questions that will remain unanswered for now.

The Minister’s message was clear – we can expect more ‘war’ against crime – and against criminals. In a telling Freudian slip when referring to ‘increasing trends in child abuse’ he said “we will declare war on children”. And as the police increasingly become the frontline response of the ANC and government to violent public protests against a range of municipal inefficiencies, corruption and political party infighting; and as the casualties mount; we will no doubt find ourselves trapped in a rhetoric of war.

The front cover image for this edition of SACQ was kindly provided by Mikhael Subotsky from his collection titled ‘Die Vier Hoeke’.

Chandré Gould (Editor)
UNDERSTANDING ‘POINTY FACE’

What is criminology for?

BILL DIXON*

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A Country at War with Itself, Antony Altbeker’s book about ‘South Africa’s crisis of crime’, begins with the dramatic story of a robbery in which Altbeker himself was involved. One of the robbers is a man who Altbeker refers to only as ‘Pointy Face’. Beyond the unusual shape of his chin, his high cheekbones and the hardness of his muscles, readers are told nothing about ‘Pointy Face’. He is a man from nowhere, a man with no history, no life before or after the evening he confronted Altbeker and his companion as they sat in a Johannesburg fast-food joint eating steak rolls and slap chips. In the context of recent international debates about the purpose of criminology, this paper asks what criminology is for in a country like South Africa. After reviewing the development of criminology in South Africa over the last 25 years or so, it argues that important questions about why crime – and violent crime in particular – has remained so high in the post-apartheid era have not been either asked or answered. It suggests that an understandable concern with controlling crime more effectively has led to insufficient attention being paid to why it occurs in the first place. In the rush to make sure that ‘Pointy Face’ and people like him are caught, prosecuted and imprisoned, and lives and properties secured against their depredations, few serious attempts have been made to understand where the ‘Pointy Faces’ of contemporary South Africa come from and why they do what they do. The paper ends by suggesting some reasons why criminologists seem to have lost interest in understanding why crime happens and how researchers might begin to respond to this explanatory crisis.

Later in his book, Altbeker has more to say about why South Africa produces so many men like ‘Pointy Face’ and what he believes should be done about them. I will come back to these points later.

Reading Altbeker’s portrait of ‘Pointy Face’, it is hard not to wonder what brought him, and a bungling teenage accomplice, to be emptying cash registers and wallets at gunpoint, prepared – or so it seemed to Altbeker – to kill anyone foolish enough to stand in his way. And what does this urgent acquisitiveness, and this readiness to use extreme violence, say about the South African condition, the structures and mores of post-apartheid society? As a criminologist I believe that these are exactly the kind of questions that criminologists should be trying to answer. What I want to argue in the rest of this paper is that, over the last 25 years or so, South African criminology

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Like most of the participants in the more recent debates about the scope and purposes of the discipline, Garland and Sparks were primarily concerned with criminology in the English-speaking countries of the global north. Among the few exceptions to this rule are Clifford Shearing and Monique Marks, who take up the Australian criminologist Chris Cunneen’s call for a postcolonial perspective. They suggest that the kind of questions a postcolonial criminology should try to answer in a place like South Africa differ from those asked in ‘western democracies.’

The first of these questions is: ‘Why are criminal acts so violent in nature?’ This of course is precisely the kind of question prompted by Antony Altbeker’s brush with the enigmatic ‘Pointy Face’. And answering it must be central to the purpose of any ‘organized [way] of thinking ... about crime [and] criminals’. But it is only one of an (admittedly non-exhaustive) list of seven questions put forward by Shearing and Marks, six of which are concerned not with crime or criminals but ways of controlling and responding to them. This is no great surprise, since the focus of their chapter is on the need for ethnographic research sensitive to the myriad arrangements that exist in South Africa ‘to govern crime and restore justice.’ But this absorption with control rather than crime, controllers instead of criminals, is very typical of South African criminology since the last, dark days of apartheid in the late 1980s. It is this feature of post-apartheid criminology, and its implications for the way in which we seek to understand and respond to the behaviour of people like 'Pointy Face', that I want to consider here.

UNDERSTANDING ‘POINTY FACE’: SOUTH AFRICAN CRIMINOLOGY SINCE 1985

There have been several attempts to trace the development of South African criminology over the last quarter of a century. With varying degrees of clarity, all of these discussions distinguish between three traditions: Afrikaner nationalist, legal reformist and, in Dirk van Zyl Smit’s original formulation, a ‘criminology for a new South Africa.’ They also assert, with equally varying degrees of conviction, the superiority of one
He explained how he had called together his relatives who had previously 'looked down at him and made him do hard manual labour before they were willing to give him and his orphan brother even a piece of bread' and shown them his five firearms 'to prove to them that he is now a man.' He described also how shocked they were and interpreted this to mean that they now respected him. Throughout my interaction with this young but hardened robber it became clear how the early death of his parents, the ensuing rejection and exploitation by his relatives, and a system that failed to help him and his brother, contributed to his becoming a criminal.18

There is more to this portrait of Zinn's 'professional shooter' than Altbeker's 'Pointy Face.' We get a sense of how his biography and the social context in which he grew up – his experiences of bereavement, emotional deprivation, physical hardship, uncaring public authorities, the premature assumption of responsibility for his younger sibling – may have played their part in the making of the man and the sense of desperation in his search for (self?)-respect. Yet his story, and the nature of the society that allows young lives to be distorted in this way, remain firmly in the background. The glare of Zinn's attention is concentrated not on him but on what he did and how he did it. He is interested in what householders can do to protect themselves and how the police can become more effective in keeping the 'professional shooter', and people like him, off the streets. Handicapped by this lack of curiosity in his sample of robbers as people with lives, emotions and a sense of self much like anyone else, Zinn is unable to explain why, despite having 'large amounts of money', they continue to 'commit serious and violent crime only to spend the proceeds on luxuries'.19

Even when offenders rather than potential victims or crime controllers are the main focus of attention, the explanations offered for their behaviour tend to be unconvincing or remain unexplored. Having opened A Country at War with Itself with the apparently unfathomable behaviour of 'Pointy Face', Altbeker does eventually offer an
explanation for violent crime more generally. In doing so he quite rightly rejects the notion that it is explicable solely in terms of South Africa’s history and current socio-economic condition. Instead he suggests that crime is as ‘pervasive and violent as it is’ as the result of a chain reaction that has seen high levels of criminality lead ever more people copycatting others into crime. At first blush this is reminiscent of the great American criminologist, Edwin Sutherland’s, notion of differential association, but Altbeker leaves too many questions – how, where and under what circumstances does this ‘copycatting’ take place and what evidence is there that ‘Pointy Face’ and his ilk take to holding up fast food restaurants in response to environmental cues picked up from the behaviour of others – unanswered for this to be more than a superficially attractive, but empirically untested, hypothesis.

If Altbeker can be criticised for failing to provide an evidential base for his theory, the work of Breetzke and Horn on what they call the ‘spatial ecology of offending’ in the Tshwane municipality is a solid empirical study of the area of residence of offenders incarcerated in the city’s five correctional facilities. From this analysis they conclude that:

The location of offenders within Tshwane appears to be associated with the spatial incidence of four broad factors—low social status and income, a large and young family, unskilled earners and high residential mobility.

They take great care to deny any implication that these are ‘criminogenic risk factors’, preferring instead to suggest that they may ‘create a more favourable environment for offending, or increase probabilities associated with risk factors’.

Compared to Altbeker’s sweeping generalisations, this is a refreshingly circumspect conclusion. But it too leaves some vital questions unanswered: why do low income, low status neighbourhoods inhabited by transient populations of unskilled workers with large families tend to produce a disproportionate number of ‘Pointy Faces’? Might it simply be that the kinds of offences people from such areas commit are more likely to come to the attention of the police and/or that those accused of committing them are more likely to be convicted and imprisoned than residents of other, more stable and prosperous parts of Tshwane? And how do some (almost certainly most) people (women as well as men) in these deprived neighbourhoods, and exposed to the same environmental factors, seem to avoid becoming involved in crime? On closer examination then, Breetzke and Horn offer no more than some statistical evidence that ‘a definitive link’ exists ‘between the geographical distribution of offenders and social and economic deprivation in an urban context’. The precise nature of that link remains shrouded in mystery.

Over the last 25 years there have been some attempts to pierce this shroud and to exercise what C Wright Mills famously called a ‘sociological imagination’, ‘to grasp history and biography and the relations between the two within society’. None of these efforts matches the sheer scale of the work undertaken by the Centre for the Study of Violence and Reconciliation (CSVR) on behalf of the Justice, Crime Prevention and Security (JCPS) Sub-Committee of the Cabinet. This project consisted of six distinct components including an initial ‘concept paper’, four studies of particular aspects of violent crime and a final report summarising the main findings of these studies and making recommendations on addressing violent crime. It is impossible to do justice to the scale of this project here. All that can be done is to suggest why it gives such an important clue as to what criminology can and should be for in a country like South Africa, and how it may help us understand the likes of ‘Pointy Face’ and the ‘professional shooter’.

As far as ‘history’ and social structure are concerned, Component 4 of the project set out to discover ‘how inequality and exclusion drive South Africa’s problem of violence’.

The main author of the report on this Component was none other than Antony Altbeker, but the conclusion it reaches is rather different from the one arrived at in A Country at War with Itself. One key paragraph is worth quoting in full:

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Despite the fact that the international evidence doesn’t offer unambiguous support for the thesis that inequality is at the root of South Africa’s crime problems, we believe that this is, in fact, the case. This, we believe, is not just because the extent of the inequalities is as great as that of any country in the world, but because the character of inequality in South Africa – which is driven by the systematic exclusion of millions of people from participation in the labour market – has important effects on the way many millions of people interpret the gap between the implicit and explicit promise of equality, on the one hand, and the reality of deeply entrenched inequality on the other. This, we believe, drives crime in part by creating a set of incentives that lead some relatively poor people to choose a life of crime over the hard slog of trying to ‘stay straight’. More importantly, however, it drives crime through the psychosocial fallout of inequality. Obviously, the frustrations and grievances that result are magnified by the fact that they are based on exclusions, the roots of which lie in the injustices of the past and, for that reason, are even more likely to be seen as an affront to the human dignity of the poor.

For evidence of the ‘psychosocial fallout’ from these ‘frustrations and grievances’ and the multiple exclusions and deprivations that underlie them, we need look no further than the case studies of the perpetrators of violent crime discussed in Component 5 of the project, and the story of a man the report calls Mandla. At the time he was interviewed in Johannesburg Central Prison by researchers at the Human Sciences Research Council, 29 year-old Mandla was five years into a sentence of 10 to 15 years imprisonment for an attempted murder committed in the course of an armed robbery at a restaurant. Mandla could, in many ways, be ‘Pointy Face’.

Even in the necessarily abbreviated form set out in CSVR’s report, Mandla’s story is too complicated to rehearse in any detail here, but the impact of South Africa’s history and its current condition on his life is not hard to detect. Growing up in Orlando, Soweto, in the declining years of apartheid, one of three siblings each with a different father, he was aware of gangs ‘robbing and stabbing people’. He remembers ‘nice’ neighbours and a mother who ‘truly hated crime’. But, fatherless, he also felt cut off from his ‘cultural heritage and ancestry’ and unsure about how to ‘achieve success as a man’. After leaving an often violent home in his mid teens Mandla turned to alcohol, drugs and crime – ‘stealing, robbing and car theft’. Crime became both a way of supporting himself as well as a means of indulging his taste for ‘fashion’ and his need for respect among his male and female peers. As a teenager he and his friends targeted ‘amashangaans’, foreigners too fearful of deportation to report their victimisation to the police. In prison in his twenties, Mandla heard that one of his siblings, the mother of two young children, had died, ‘probably as a result of HIV/AIDS’. The early exposure to gangsterism, the fractured family structures and cultural dislocations characteristic of apartheid, the ruthless victimisation of the structurally disadvantaged and the loss of a sister to the AIDS pandemic connect Mandla’s life, and his behaviour, to South Africa’s present and its past. In the words of C Wright Mills they connect ‘the personal troubles of [his] milieu’ with the ‘public issues of social structure’. His taste for ‘fashion’ and need for respect go some way towards explaining why Zinn’s interviewees were not content merely to survive on the proceeds of their crimes but wanted to live a little too.

CRISIS OF UNDERSTANDING

In the CSVR study, then, we have a serious attempt to understand what makes and motivates people like ‘Pointy Face’ and the ‘professional shooter’, and what links social and economic deprivation and unstable families to high rates of violent offending. Yet, as David Bruce, the lead researcher on the project, has remarked, the government’s engagement with its findings has been ‘superficial’ and its reaction to the recommendations contained in the final report no more than lukewarm. Writing in the wake of the report’s presentation to the Portfolio Committee on Police in Parliament on 9th November 2010, Bruce noted how the Ministry and Secretariat concentrated on the limitations of the study.
Other official reactions have claimed that the study says 'nothing new,' and fails to deal with the fundamental issue of 'why crime [is] so violent.' Bruce attributes this distinctly unenthusiastic response not to the substance of its findings but to the 'palace coup' that took place within the ruling African National Congress (ANC), after the research was commissioned but before it was completed and presented to Parliament.

This may well be true, but how do we explain the wider crisis in understanding evident in South African criminology: the reluctance to ask, and attempt to answer, questions about crime and why it is so violent; the tendency to focus on crime control rather than crime itself, the victim and the would-be crime controller instead of the criminal; and the failure to have the 'quality of mind essential to grasp the interplay of man and society, of biography and history, of self and world?' It has already been suggested why police reform was seen as a priority immediately before and after 1994 and it would be unwise to attempt a definitive answer here, but a number of other factors may also have combined to produce this reticence. To begin with there is the belief (shared by many if not all of those committed to the kind of broadly critical criminology that might have sought to explore these issues) that the end of apartheid and the institutionalisation of democratic values and practices would bring with it a sustained and observable reduction in levels of both political and interpersonal violence. Unfortunately democracy has not been the panacea that those committed to building a 'new' South Africa hoped for. Progress has undoubtedly been made, particularly when it comes to political violence; but, as Hein Marais notes in his magisterial survey of contemporary South Africa, fears about personal safety remain so ubiquitous that no less a figure than former President Thabo Mbeki was moved to say that:...

That criminologists personally committed to the cause of democracy have struggled to come to terms with this disappointment should come as no surprise. Sympathetic to the new ANC-led government elected in 1994 and (though perhaps with decreasing fervour) to its successors, their unwillingness to add fuel to the fires of afro-pessimism is all the more understandable when one considers the almost painful whiteness of South African criminology. This whiteness presents practical problems too. It is inherently more difficult for an Afrikaans or English-speaking researcher to do the kind of qualitative work needed to uncover the 'divergent meanings' that actors give to crime and violence, to understand why they do what they do, when those actors are not cops (or their allies) but robbers, not members of a disciplined organisation in search of respect and accustomed to using an accessible *lingua franca*, but freewheeling township-dwelling vernacular-speakers, wary of outsiders and with little or no interest in having their story told.

Finally, and this is a point emphasised by Loader and Sparks in the context of the global north, South African criminology exists, to use their expression, in a very hot climate indeed. Since 1994 violent crime has become one of the (if not the) most contentious issues in South African politics. Remember, for example, the late Steve Tshwete promising in 1999 as incoming Minister for Safety and Security that criminals would be treated 'in the same way a dog deals with a bone.' Or think of the Acting Commissioner of the South African Police Service (SAPS), Lieutenant General Nhlenhla Mkhwanazi, informing reporters twelve years later that his organisation would 'meet fire with fire.' As the rhetoric from politicians and policemen alike has become fierier it is easy to see why the cool, scholarly contemplation of the causes of crime and violence may have become increasingly difficult to sustain. At a time when the default response to criminality is ever more vigorous condemnation, it is hard to blame criminologists for either going along with the prevailing mood – take Altbeker’s call in *A Country at War with Itself* for ‘a criminal justice system that comes down like a ton of bricks on people who commit violent crimes’ for instance –
or attempting to moderate the more extreme measures proposed by the belligerents in government and the police. See, for example, Marks’ and Wood’s stout defence of a ‘minimal’ and ‘minimalist’ public police in the face of the incipient ‘remilitarisation’ of the SAPS in their *South African policing at a crossroads*. 51

**CONCLUSION**

What does South African criminology need to do in response to this explanatory crisis? What needs to happen if we are to develop a fuller understanding of men like ‘Pointy Face’ and ‘the professional shooter’? I would like to suggest that we need to reconnect the criminological enterprise with a more searching analysis of what Hein Marais calls ‘the political economy of change’ in post-apartheid South Africa. 52 At the same time we must also follow the lead provided by CSVR in their study of the perpetrators of violent crime. 53 But perhaps the best indication of the way forward is in Pumla Gobodo-Madikizela’s remarkable exploration of the life and times of Eugene de Kock, the man all too reassuringly written off as ‘Prime Evil’:

When, in addition to his own feelings of vulnerability, an individual is plunged into a system in which his career is defined by violence, then the issue of choice may not be as easy as it seems. Violent abuse damages – and, yes, even corrupts – the individual’s psyche. It intrudes upon and invades the victim’s unconsciousness so that, in an environment that rewards evil, there are few resources on which the person can draw to resist it. 54

Here, where history and structure meet biography and the human psyche lies the future of South African criminology.

To comment on this article visit http://www.issafrica.org/sacq.php

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44. Bruce, Does anyone in charge care about violence? It is possible that Bruce’s initial assessment was unduly pessimistic since the CSVR study has subsequently been cited, with apparent approval, by the National Planning Commission in the course of its ‘diagnostic’ work leading to the publication of the National Development Plan. http://www.npc.gov.za/pebble.asp?relid=144 (last accessed 15th August 2012).
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WHAT WE KNOW – AND WHAT WE DON’T

Single and multiple perpetrator rape in South Africa

RACHEL JEWKES, LISA VETTEN, RUXANA JINA, NICOLA CHRISTOFIDES, ROMI SIGSWORTH & LIZLE LOOTS

This article offers an analysis of 1 886 rape dockets opened at 70 police stations in Gauteng Province in 2003. Multiple perpetrator rape (‘gang rape’) constituted 16% of all cases. Most of these incidents started when the victim was outdoors, either alone or accompanied, and occurred in the open or in a public space. In contrast, single perpetrator rape mostly occurs in a home. A key finding was that fewer than 40% of victims of either single or multiple perpetrator rape indicated that they had verbally or physically resisted the attacker. Yet in most cases perpetrators were not armed. Further, an analysis of J88 forms showed many victims had no injuries other than genital or anal injury. Injuries to other parts of the body were only found in 27% of single and 35% of multiple perpetrator rape victims. Although most victims reported to the police within 72 hours of the rape, the arrest rate was low, particularly for multiple perpetrator rapes (39%). The study showed that there are very important differences between single perpetrator and multiple perpetrator rape. It also points to a mismatch between perpetrators’ accounts and police case reports, suggesting differences in under-reporting between these two types of rapes. Improvement of DNA testing and rape case arrests of multiple perpetrator rapes are matters of urgency, and reasons for differences in low arrest rates should be the next step in the examination of multiple rape cases.

South Africa is often labelled the rape capital of the world. The prevalence of rape, and particularly multiple perpetrator rape (i.e. coerced sex where two or more men sexually penetrate), is unusually high. The proportion of adult men from the general population who have raped is between 28-37%, and 7-9% have engaged in multiple perpetrator rape. This compares with 24% of men in India and 9% in Chile and Rwanda who disclosed in research that they had raped, and 15% of rural Bangladeshi men. In those countries, the proportion of men disclosing multiple perpetrator rape is 2% or less.

In South Africa qualitative research highlights three key contexts in which multiple perpetrator rape occurs. The first is when a group of young men roam town or open land looking for someone
to rape as entertainment; the second is when a girlfriend is delivered by her partner for rape, usually to punish infidelity; and the third is rape of drunk or drugged women. Research shows that punishment is the motivation in about one third of cases, and in a little less than one in five cases, the victim is found inebriated. The great majority of cases of multiple perpetrator rape are committed for entertainment.5

Research increasingly highlights under-reporting of cases to the police. The extent of the difference in under-reporting of single vs multiple perpetrator rape is however unknown. We also do not know to what degree reporting of multiple perpetrator rape is biased – that is, whether there are specific types of rape that are less likely to be reported than others. Analysis of police dockets is essential to gain a proper understanding of rape cases presented to the criminal justice system and of the way in which they are processed through the system. The aim of this paper is to compare the characteristics of cases of single perpetrator rape and multiple perpetrator rape, as reported to Gauteng police in 2003. It considers the circumstances of the rape, the progression of cases and their legal outcomes.

METHODOLOGY

This study was conducted on legally defined rapes occurring in 2003. At the time, in terms of South African law, rape was defined as occurring when a man had “intentional and unlawful vaginal sex with a woman without consent.”6 This study is based on a provincially representative sample of cases of rape and attempted rape opened at Gauteng police stations between 00:00 hrs on 1 January 2003 and 23:59 hrs on 31 December 2003. These cases had been closed by the police at the time of data collection in 2006.7

A total of 11 926 rapes were reported at the 128 police stations in the province that year. A sample was drawn for the study, using a two-stage procedure. The first stage drew a random sample of 70 police stations, using probability proportional to size, where size was based on the number of rape cases that year. Within each police station all the closed rape cases for the year were identified and a systematic sample of 30 dockets was selected (or all cases were taken if the number was less than 30). If selected dockets were not available, they were not replaced. The proportion of dockets available from the sample was 70.1%. We were not able to ascertain how many dockets were unavailable because they were still open, and how many were missing for other reasons. This procedure provided a sample of 2 068 cases for the study. If cases went to court, we obtained court records from both High Courts in the province, as well as all 30 magistrates’ courts.

The police dockets included the witness statements, police investigation diary, the form on which the findings of the medical examination were documented by the medical examiner (J88), and other reports, including any available reports from the Forensic Science Laboratory. Data were abstracted by a team of trained fieldworkers using a standardised data coding sheet. Information gathered included the details of the complainant (age, race, occupation, and in the case of children, the carer), the circumstances of the rape (when it occurred, where, what the victim was doing, use of weapons, victim responses after the rape), information on the suspect (age and relationship to victim), and on the case outcome. Information on the circumstances of rape was abstracted from the victim statements verbatim on to the data capture sheet and were post-coded. Medico-legal forms found in dockets were copied verbatim on to a blank form in the data capture sheet by the fieldworker, while those found in court records were photocopied. The information from these forms was abstracted on to a form for data entry by health professionals on the study team.

Permission to review closed rape dockets was obtained from the police nationally, provincially and at the stations. Court documents are a matter of public record. No identifying information related to rape victims was collected during fieldwork, and any found on photocopied documents was erased.
Ethics approval for the study was given by the University of Witwatersrand, Faculty of Health Sciences Ethics Committee.

**DATA ANALYSIS**

The analysis used the sub-sample of completed rapes (n=1886). Sixty-eight cases were dropped due to missing data and 114 because they were attempted rapes. The main outcome was based on the number of perpetrators involved in the rape (one versus more than one). There were 1 558 single perpetrator rapes and 328 multiple perpetrator rapes. The analysis of medico-legal findings was based on the sub-sample of cases (n=1480) with a medico-legal form, 1 208 single perpetrator rape cases and 272 multiple perpetrator rape cases. The main reasons for missing medico-legal forms included having no medical examination (50% of missing forms, 250 cases), the form destroyed with court records (3 cases), and reason unknown (252 cases).

**RESULTS**

**Victim characteristics**

The average victim age was 21.8 and ranged between 1 and 89 years. Multiple perpetrator rape cases involving victims of all ages were reported to the police, but in these cases the victims were much less likely to be under 12 years old, compared to single perpetrator rapes (Table 1). In the great majority of cases, victims were over 18 years old.

Most of the victims were unemployed and were black Africans (Table 1). The pattern of rape did not differ by racial group, but the overall pattern of reported cases by racial group was significantly different from the population demographics. The 2001 census found 73% of the province’s population to be African and 21% to be white. This study found 87% of multiple perpetrator rape cases victims to be African and 4.3% to be white.

**Table 1: Characteristics of victims of single and multiple perpetrator rape**

<table>
<thead>
<tr>
<th>Victim characteristics</th>
<th>Single perpetrator rape</th>
<th>Multiple perpetrator rape</th>
</tr>
</thead>
<tbody>
<tr>
<td>N=1 558</td>
<td>%</td>
<td>N=328</td>
</tr>
<tr>
<td>Mean age</td>
<td>21.6</td>
<td>23.4</td>
</tr>
<tr>
<td>Age: 0-11 years</td>
<td>15.1</td>
<td>6.4</td>
</tr>
<tr>
<td>12-17 years</td>
<td>25.7</td>
<td>23.0 **</td>
</tr>
<tr>
<td>18+ years</td>
<td>59.2</td>
<td>70.6 ***</td>
</tr>
<tr>
<td>Race: African</td>
<td>88.8</td>
<td>86.9</td>
</tr>
<tr>
<td>Coloured</td>
<td>4.2</td>
<td>6.4</td>
</tr>
<tr>
<td>White</td>
<td>4.5</td>
<td>4.3</td>
</tr>
<tr>
<td>Indian</td>
<td>0.8</td>
<td>1.2</td>
</tr>
<tr>
<td>Unknown</td>
<td>1.7</td>
<td>1.2</td>
</tr>
<tr>
<td>Employment of women over 18: none</td>
<td>57.8</td>
<td>59.0</td>
</tr>
<tr>
<td>Professional</td>
<td>1.7</td>
<td>1.3</td>
</tr>
<tr>
<td>White collar</td>
<td>3.4</td>
<td>2.2</td>
</tr>
<tr>
<td>Blue collar</td>
<td>7.8</td>
<td>8.4</td>
</tr>
<tr>
<td>Sex work</td>
<td>0.4</td>
<td>0</td>
</tr>
<tr>
<td>Domestic work</td>
<td>9.2</td>
<td>9.3</td>
</tr>
<tr>
<td>Student</td>
<td>9.2</td>
<td>10.1</td>
</tr>
<tr>
<td>Unknown/other</td>
<td>9.7</td>
<td>9.7</td>
</tr>
<tr>
<td>Victim perpetrator relationship: any relative</td>
<td>12.0</td>
<td>1.9</td>
</tr>
<tr>
<td>current or ex-partner</td>
<td>17.3</td>
<td>2.8</td>
</tr>
<tr>
<td>stranger/ man known by sight</td>
<td>28.5</td>
<td>65.9 ***</td>
</tr>
<tr>
<td>friend/acquaintance/neighbour</td>
<td>37.6</td>
<td>27.1</td>
</tr>
<tr>
<td>person just met</td>
<td>4.6</td>
<td>2.2</td>
</tr>
</tbody>
</table>

P-values from age adjusted logistic regression
* * p = 0.05   ** p = 0.01   *** p = 0.0001
There were substantial differences between single and multiple perpetrator rape pertaining to the victim perpetrator relationship. Multiple perpetrator rapes were overwhelmingly perpetrated by men or boys known just by sight or by strangers (65.9%), or by friends, acquaintances or neighbours (27.1%). This differs from single perpetrator rapes, where many of the rapes were perpetrated by relatives (12%), or by current or ex-partners (17.3%).

This finding is somewhat at odds with qualitative research conducted among men in the rural Eastern Cape province of South Africa, who themselves describe having perpetrated multiple perpetrator rape, notably girlfriend rape. It’s possible that there are inter-provincial differences, but it is also likely that cases where boyfriends are involved are less likely to be reported to the police. This may be due to girlfriends being disinclined to cause harm to their boyfriends or exes, but it is also likely to be related to the risk of reputational damage if a case goes to court. Multiple perpetrator rape is highly stigmatised and victims are often accused of promiscuity and being inebriated.

There is substantial under-reporting of all rapes to the police. Research conducted in Gauteng in 2010 found that only one in 25 women interviewed who had been raped had reported it, and only one in 13 of these women reported rapes not involving an intimate partner.

**Circumstances of the rape**

Most commonly the victims of multiple perpetrator rape were approached when outdoors. In 25.7% of cases, victims were approached when out alone, and in 21.7% of cases when accompanied by friends or others (Table 2). The odds of being raped by multiple perpetrators while in the company of others was double that of single perpetrator rape. This scenario resonates with the accounts of men who describe being bored and seeking entertainment through gang rape with their friends.

The third most common multiple perpetrator rape scenario (13.6% of these rapes) was being raped when at home, with the perpetrator gaining access either through breaking and entry, or trickery, such as pretending to be a meter reader. The fourth most common scenario was for the victim to be raped after accepting an offer of accompaniment or asking to be accompanied (5.6%). However, in these two scenarios (at home and being accompanied) the rape was as likely to be committed by a single perpetrator. Other circumstances of rape are presented in Table 2. In 5% of multiple perpetrator rapes the circumstances were not recorded (none category).

Apart from being approached when with friends or in other company, the only other scenario that was more common in multiple perpetrator rape than single perpetrator rape was rape after hijacking or being dragged from a private car. The study also identified several circumstances in which multiple perpetrator rape took place in much the same circumstances as single perpetrator rape. Such cases included:

- Being raped when the victim was visiting someone or being visited, or by a baby sitter
- Being raped by a trusted person at home, perhaps as part of on-going sexual abuse
- Being raped by a man impersonating a sexual partner
- Rape in foster care or by another household member
- Rape of children when doing a chore or playing outside, or in school
- Sexual entitlement rape (when the victim had been at a social event and left with the perpetrator, had been on a date, took money or drinks from him, or changed her mind about wanting sex after initially agreeing).

In qualitative research, rape perpetrators have described rapes that occur when victims become (or are made) very drunk, or where victims are raped as punishment. Both of these accounted for a very small proportion of cases reported to the police. One interpretation of this finding is that these types of rapes may be substantially under-reported.
Attack characteristics

Most multiple perpetrator rapes involved two perpetrators (62.8%), and 29% involved 3 or 4 perpetrators (Table 3). The highest number was 17. In 18% of multiple perpetrator rapes other men colluded in the attack, but did not participate in the act of rape. The probability of collusion in multiple and single perpetrator rapes was much the same.

Multiple perpetrator rape mainly happened at weekends, with 65.1% occurring between Friday and Sunday, a pattern similar to that found in single perpetrator rapes.

Multiple perpetrator rapes most often occurred in open spaces, roads or alleyways (47.6%). Being raped in an open space was four times more common than for single perpetrator rapes. The great majority of single perpetrator rapes occurred in the victim's home or perpetrator's home (58.8%), whereas only 24.7% of multiple perpetrator rapes occurred in this setting.

Victim abduction was a common feature in multiple perpetrator rape, reported in two thirds (62%) of cases. This was twice as common as in single perpetrator rapes. Perpetrators of multiple perpetrator rape were often armed (52.2%), and in a third of cases there was a gun. This was much more common than in single perpetrator rapes. The high prevalence of weapon use is again quite at odds with the accounts of perpetrators in qualitative research, and may suggest that in cases where the perpetrator is armed there is a greater likelihood that the case will be reported to the police.

Table 2: Circumstances of the rape

<table>
<thead>
<tr>
<th>Circumstances</th>
<th>Single perpetrator rape n (%)</th>
<th>Multiple perpetrator rape n (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Victim walking alone or jogging when approached by perpetrator</td>
<td>292 (19.1)</td>
<td>83 (25.7)</td>
</tr>
<tr>
<td>Victim walking accompanied when approached by perpetrator</td>
<td>106 (6.9)</td>
<td>70 (21.7)</td>
</tr>
<tr>
<td>Approached at a social event</td>
<td>63 (4.1)</td>
<td>10 (3.1)</td>
</tr>
<tr>
<td>Job seeking or offered a job opportunity</td>
<td>19 (1.2)</td>
<td>1 (0.31)</td>
</tr>
<tr>
<td>Victim asks to be accompanied or accepts offer of accompaniment</td>
<td>91 (6.0)</td>
<td>18 (5.6)</td>
</tr>
<tr>
<td>Victims offered or asks for a lift in a vehicle</td>
<td>48 (3.1)</td>
<td>9 (2.8)</td>
</tr>
<tr>
<td>Victim gives a lift in vehicle</td>
<td>2 (0.13)</td>
<td>0.0</td>
</tr>
<tr>
<td>Victim visiting someone or being visited, or by babysitter</td>
<td>116 (7.6)</td>
<td>12 (3.7)</td>
</tr>
<tr>
<td>Raped by a trusted person at home: on-going sexual abuse, impersonation of partner, rape in foster care or by another household member</td>
<td>72 (4.7)</td>
<td>5 (1.5)</td>
</tr>
<tr>
<td>Child raped when doing a chore or playing outside, or in school</td>
<td>127 (8.3)</td>
<td>14 (4.3)</td>
</tr>
<tr>
<td>Rape is suspected by parent, care giver, authorities or from a complaint of the child</td>
<td>73 (4.8)</td>
<td>8 (2.5)</td>
</tr>
<tr>
<td>Statutory rape reported by parent when minor consented to sex</td>
<td>30 (2.0)</td>
<td>0.0</td>
</tr>
<tr>
<td>Raped when at home, may be breaking and entry or access through trickery</td>
<td>232 (15.2)</td>
<td>44 (13.6)</td>
</tr>
<tr>
<td>Raped during relationship conflict or split</td>
<td>61 (4.0)</td>
<td>0.0</td>
</tr>
<tr>
<td>Victim taking public transport</td>
<td>22 (1.4)</td>
<td>9 (2.8)</td>
</tr>
<tr>
<td>Victim dragged from private car or hijacked</td>
<td>5 (0.3)</td>
<td>6 (1.9)</td>
</tr>
<tr>
<td>Victim standing on the street waiting for transport or someone</td>
<td>35 (2.3)</td>
<td>15 (4.6)</td>
</tr>
<tr>
<td>Sexual entitlement rapes: victim leaves a social event with perpetrator, on a date, takes money or drinks, or changes her mind about wanting sex</td>
<td>59 (3.9)</td>
<td>6 (1.9)</td>
</tr>
<tr>
<td>Rape as punishment or revenge for theft or infidelity</td>
<td>4 (0.3)</td>
<td>2 (0.6)</td>
</tr>
<tr>
<td>Victim intimidated / blackmailed to have sex</td>
<td>3 (0.2)</td>
<td>0.0</td>
</tr>
<tr>
<td>Victim mentally ill or disabled</td>
<td>10 (0.7)</td>
<td>1 (0.3)</td>
</tr>
<tr>
<td>Victim inebriated</td>
<td>26 (1.7)</td>
<td>8 (2.5)</td>
</tr>
<tr>
<td>Victim looking for somewhere to stay</td>
<td>26 (1.7)</td>
<td>1 (0.3)</td>
</tr>
<tr>
<td>Security industry rape: police, military, security guard</td>
<td>3 (0.2)</td>
<td>1 (0.3)</td>
</tr>
<tr>
<td>Raped at work</td>
<td>5 (0.3)</td>
<td>0.0</td>
</tr>
</tbody>
</table>
There was no difference between single and multiple perpetrator rape in relation to the likelihood of victims resisting the rape through verbal protest or physically fighting off the perpetrators. Just over a third (39.6%) of victims reported resisting the rape.

In cases where the age of the perpetrator was known, the main perpetrator in multiple perpetrator rape cases was usually over 18 years. However, more perpetrators of multiple rape were under 18 (17% of cases) than were single perpetrators (10% of cases). Data were scanty on the age of other perpetrators of multiple rape, but in known cases they tended to be younger than the main perpetrator. The main perpetrators of gang rape were most likely to be unemployed (54.8%), or students (18.3%). Single rape perpetrators were most likely to be unemployed (37.3%), or blue collar workers (28.1%). Blue collar workers were significantly less often involved in gang rape. Very few of the perpetrators had previous convictions, and there was no difference in this regard between single and multiple perpetrator cases. The finding that 18% of perpetrators were students at the time of

<table>
<thead>
<tr>
<th>Attack characteristics</th>
<th>Single perpetrator rape</th>
<th>Multiple perpetrator rape</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N=1 558</td>
<td>N=328</td>
</tr>
<tr>
<td>Number of perpetrators:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>62.8%</td>
<td>62.8%</td>
</tr>
<tr>
<td>3</td>
<td>19.8%</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>9.2%</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>2.7%</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>2.4%</td>
<td></td>
</tr>
<tr>
<td>7-17</td>
<td>3.1%</td>
<td></td>
</tr>
<tr>
<td>1+ others colluding but not raping</td>
<td>13.6%</td>
<td>18.3%*</td>
</tr>
<tr>
<td>Day of the week:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Monday</td>
<td>11.2%</td>
<td>10.5%</td>
</tr>
<tr>
<td>Tuesday</td>
<td>10.9%</td>
<td>10.2%</td>
</tr>
<tr>
<td>Wednesday</td>
<td>10.2%</td>
<td>6.8%</td>
</tr>
<tr>
<td>Thursday</td>
<td>8.7%</td>
<td>7.4%</td>
</tr>
<tr>
<td>Friday</td>
<td>15.0%</td>
<td>18.6%</td>
</tr>
<tr>
<td>Saturday</td>
<td>26.5%</td>
<td>28.2%</td>
</tr>
<tr>
<td>Sunday</td>
<td>17.6%</td>
<td>18.3%</td>
</tr>
<tr>
<td>Place of rape:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Victim’s home</td>
<td>21.7%</td>
<td>11.1***</td>
</tr>
<tr>
<td>Perpetrator’s home</td>
<td>37.1%</td>
<td>13.6%</td>
</tr>
<tr>
<td>Other residence</td>
<td>9.4%</td>
<td>13.3%</td>
</tr>
<tr>
<td>Road/alley</td>
<td>4.0%</td>
<td>9.0%</td>
</tr>
<tr>
<td>Open space</td>
<td>17.2%</td>
<td>38.6%</td>
</tr>
<tr>
<td>Other</td>
<td>10.6%</td>
<td>14.4%</td>
</tr>
<tr>
<td>Victim was abducted</td>
<td>41.3%</td>
<td>62.0***</td>
</tr>
<tr>
<td>Victim physically or verbally resisted rape or abduction</td>
<td>37.4%</td>
<td>39.6%</td>
</tr>
<tr>
<td>Perpetrator armed</td>
<td>29.4%</td>
<td>52.2***</td>
</tr>
<tr>
<td>Was there a gun</td>
<td>11.9%</td>
<td>33.8***</td>
</tr>
<tr>
<td>Perpetrator characteristics</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Perpetrator was &lt; 18 years</td>
<td>9.5%</td>
<td>17.1**</td>
</tr>
<tr>
<td>Perpetrator occupation: unemployed</td>
<td>37.3%</td>
<td>54.8**</td>
</tr>
<tr>
<td>Professional</td>
<td>3.6%</td>
<td>2.4%</td>
</tr>
<tr>
<td>Blue collar</td>
<td>28.1%</td>
<td>10.3%</td>
</tr>
<tr>
<td>Trading/ informal sector</td>
<td>3.5%</td>
<td>2.4%</td>
</tr>
<tr>
<td>Student</td>
<td>10.9%</td>
<td>18.3%</td>
</tr>
<tr>
<td>Other</td>
<td>16.6%</td>
<td>11.8%</td>
</tr>
<tr>
<td>Perpetrator had previous convictions</td>
<td>18.5%</td>
<td>14.4%</td>
</tr>
</tbody>
</table>

P-values

* p< = 0.05      ** p< = 0.01      *** p< = 0.0001

Table 3: Circumstances of the attack in single and multiple perpetrator rape
the rape has important implications. It suggests the need for intervention through education institutions.

Findings from medico-legal examination

Table 4 describes non-genital injuries sustained from the rape. In 65% of cases there was some evidence of injury to the genital region (around the vagina) or anus, and in less than half of victims (46%) the injury had resulted in a skin break (cut, graze or tear). Injury was not more common in multiple perpetrator rape than in single perpetrator rape. Male DNA was only isolated from and analysed in 2% of the victims. These findings have important implications, as magistrates often think that the absence of injuries is an indication that there was no 'real' rape, and may therefore find that the act of sex was consensual. They assume that women fight back against their attackers, but the findings of this study show that this is not the case. In more than half of all the rape cases studied, no injuries (other than genital) resulted. Injuries (other than genital) are the exception rather than the rule.

Policing and the criminal justice system

The great majority of victims of multiple perpetrator rape (93.5%) reported the case within 72 hours of the attack (Table 5). Victims were much less able to supply details of perpetrators in multiple than in single perpetrator rape cases. This is hardly surprising, given the greater likelihood of multiple perpetrator rapes being committed by strangers. However, even when details were supplied, 70% of perpetrators in multiple perpetrator rape cases were not arrested. In fact, they were significantly less likely to be arrested than perpetrators in single perpetrator rape cases.

Overall arrests were made in 54.1% of single perpetrator rape cases and in 38.7% of multiple perpetrator rape cases. Once a perpetrator was arrested there were no significant differences in the handling of cases and outcomes by type of rape. Considerable attrition was seen in the handling of cases, with about 15% of those arrested not being charged, only just over a third of those charged going to trial, and just over a third of those

<table>
<thead>
<tr>
<th>Table 4: Medico-legal findings in single and multiple perpetrator rape*</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Single perpetrator rape</strong></td>
</tr>
<tr>
<td>Non-genital injuries</td>
</tr>
<tr>
<td>Any genital or anal injury</td>
</tr>
<tr>
<td>Genital or anal injury with a skin break</td>
</tr>
</tbody>
</table>

* Age adjusted differences were not statistically significant.

<table>
<thead>
<tr>
<th>Table 5: Legal outcomes of single and multiple perpetrator rape</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Single perpetrator rape</strong></td>
</tr>
<tr>
<td>Reported within 72 hours of rape</td>
</tr>
<tr>
<td>Victim knew full name of perpetrator</td>
</tr>
<tr>
<td>Victim provided contact details of perpetrator(s)</td>
</tr>
<tr>
<td>Perpetrator(s) arrested or asked to appear in court</td>
</tr>
<tr>
<td>Of those named or with contacts given, perpetrator(s) arrested</td>
</tr>
<tr>
<td>Charged if arrested</td>
</tr>
<tr>
<td>Trial stated among those charged</td>
</tr>
<tr>
<td>Found guilty of a sex offence among those taken to trial</td>
</tr>
<tr>
<td>Found guilty of a sex offence among all reported cases</td>
</tr>
</tbody>
</table>

P-values from age adjusted logistic regression
* p< 0.05    ** p< 0.01    *** p< 0.0001
perpetrators standing trial being found guilty of a sexual offence. In all, only 4.9% of multiple perpetrator rape cases resulted in a guilty verdict, compared to 6.6% of single perpetrator rape cases.

CONCLUSIONS

This study was based on rape cases occurring in 2003. Many aspects of the processing of cases could have changed during the last decade, especially with the recent developments with DNA sample processing. However, it is unlikely that the characteristics of victims and perpetrators and the contexts of rape will have altered much. The strengths of this study were its size and the fact that it was based on a random sample of cases from a broad geographic region. There may be limitations to the generalisability of the findings since we only had access to closed cases, and are unsure what proportion of eligible dockets were available for the sample or what biases could have ensued from this. The study relied on routine data, which are often flawed. We enhanced the validity of case outcomes data by using data from courts as well as the dockets. We are aware that the quality of documentation of the dockets and medical findings varied, but this is what is used in the criminal justice system.

The study has raised some important questions related to the handling of cases by the police. It is not clear why there should be a lower arrest rate in multiple versus single perpetrator rape cases, particularly when details were supplied. It may be that the quality of the information was different and less useful to the police, but it is also possible that the police respond differently to information in multiple perpetrator rape cases, possibly due to fear of or collusion with gangs. This deserves further research.

The research has suggested that only a fraction of multiple perpetrator rape cases are reported to the police. Previous research has shown overall that rape under-reporting is an important problem, especially where boyfriends or husbands are the perpetrators. This has important implications for understanding notions of a ‘first offence’ and also recidivism. Most perpetrators did not have previous convictions for rape, but this is hardly surprising given the very low conviction rate. It is very likely that many perpetrators had raped before. Population-based research also shows that serial rape (rape of more than one victim) is disclosed by half of all perpetrators and is even more common in multiple perpetrator rape than in single perpetrator rape. Our findings provide further context to this research.

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NOTES

5. R Jewkes et al., Gender inequitable masculinity and sexual entitlement; R Jewkes et al., Understanding multiple perpetrator rape by youth in the rural Eastern Cape: a comparison of men who perpetrate multiple perpetrator rape, rape alone and never rape, under review.
12. R Jewkes et al., Gender inequitable masculinity and sexual entitlement, 3.
15. Jewkes et al., Gender inequitable masculinity and sexual entitlement, 5.
This article explores discretionary decision-making in a specific traffic police unit. This study was undertaken from a social constructivism perspective, using a single holistic case study design. The research involved presenting scenarios to traffic officials at different stages, first at the end of their training, and then again six months after they started work, to determine how they would deal with situations that required them to use their discretion. The study sought to understand the extent to which exposing newly recruited traffic officials to the realities of traffic road policing influenced their notions of discretionary decision-making. The findings suggest that there are gaps in the training of these traffic officers and it proposes that the existing pedagogical style of training be replaced with an andragogical one, focusing on judgment drills in ethical dilemmas.

Street-level bureaucrats, such as traffic officials, are the daily interface between members of the public and the government. As such, each official is judged by citizens on the basis of their expectation and hope for fair and effective treatment by government. Street-level bureaucrats have considerable discretion in how laws and regulations are operationalised, and effectively engage in policy delivery every time they interact with a member of the public. Debates about discretion, and how to prepare traffic officials for decision-making in an occupation where they are required to regularly make discretionary decisions, tend to create more questions than provide definitive resolutions.

The view in this article is that discretionary decision-making results from an innate value set which is modified by learning and teaching, honing it into a useful knowledge and skill set. The manner in which this learning takes place is crucial to informing how it can be transferred to the work context.

DISCRETIONARY DECISION-MAKING

Research by the American Bar Association in the 1950s showed that police work is not simplistic, rules-bound or under administrative control. Rather, the research found that the regular control mechanisms of police officials, such as rules,
regulations, militaristic training and structure, are unsuited to the daily demands placed on policing officials. Nickels is of the opinion that this acknowledgement about the nature of policing is the ‘single most important event’ in the history of criminal justice studies. Although this view may be disputed, it does highlight the importance of formally acknowledging the importance of discretionary decision-making as a factor in policing.

Deliberations about discretionary decision-making challenge mechanical understandings of law enforcement, exposing the gap between the law in principle and the law in practice, and open debates about what discretionary decision-making is. Simply stated, no set of laws and regulations can provide exact guidelines for every possible situation that an officer will encounter. The law has to be interpreted and applied to concrete contexts, often in split second situations. This is where the discretion of the officer comes to the fore.

Discretionary decision-making remains a contentious issue in law enforcement discussions because limited guidance is available on how to operationalise it, yet so much depends on how well it is done. Mastrofski views discretionary decision-making as the leeway that officials have to choose the most appropriate way to handle a particular situation from a bouquet of legitimate options.

Discretionary decision-making holds many benefits for traffic policing, as it allows for optimum resource allocation, judiciously applied prioritisation and responsiveness to the needs of the environment in which officials operate. This is necessary, because it is not possible for a law enforcement official to act on every infringement. However, the uncontrolled and inconsistent application of discretionary decisions violates individual rights, equal protection of the law, and offers little protection against self-incrimination and unlawful searches and seizures.

**METHODOLOGY**

The study sought to determine the extent to which training of newly recruited traffic officials prepares them for discretionary decision-making. The participants’ innate value sets and the training they received are constants in this study. Their six-month exposure to the actual work context was the variable. During the study their ability to navigate operational discretionary decision-making within the given scenarios was evaluated. This study was conducted from a social constructivist perspective, using the single holistic case study design.

The study group consisted of 269 recruits, specifically selected to be trained as an elite group of traffic officials, and independently employed by the Road Traffic Management Corporation.

The study was conducted over a period of six months, April to October 2011, where the data collection instruments were exactly replicated, first at the end of the basic training period, and again six months later. The measurement instrument required their written response to five scenarios. They had to indicate how they would handle each situation, motivate their responses and say whether they thought that there were other ways in which the scenario could have been handled.

• In the first two scenarios a stationary vehicle was spotted next to the freeway with two men standing next to the car, relieving themselves. The two scenarios differed only in terms of the traffic volume associated with the act.

• In the third and fourth scenarios two vehicles drove very slowly in the middle lane of the freeway during peak traffic volume. In the first case the driver was a young man, absorbed in listening to music on his iPod, and in the second the driver was an elderly gentleman, bewildered by the traffic around him.

• The last scenario depicted a highly complex situation where a stolen vehicle with two small children locked inside was found abandoned in a parking lot.

The participants understood that taking part in the study was voluntary and anonymous.

The responses to the scenarios provided by the traffic officials were post-coded during data transcription and the researcher maintained a reflective journal with copious analytic memos. Categories of responses were created through open
coding, developing categories, and evolving into thematic coding. The emergent themes were interpreted and validity of the data was achieved through triangulation of the data sources and using thick and rich descriptions. In vivo quotes, taken directly from the participants’ responses to the scenarios, were used verbatim.12 Minimal changes in the participants’ responses to the scenarios were evident over time, indicating little development over the six-month period.

The findings cannot be generalised, as a representative sample of traffic officials was not used.

**FINDINGS**

Nothing illustrates better the value of experience in making discretionary decisions than the change to the response following all five scenarios, which was ‘Do you think that there is another way in which this situation could have been handled?’ The typical response during the first research phase was ‘No, I don't think there could be another way to handle the situation other than locking them up.’ Only one of the participants indicated that there might have been other ways of handling it.

In the second research phase almost all the participants acknowledged that there would be alternative ways of handling the scenarios. This suggests recognition that discretionary decision-making is a reality when working as a traffic official. Despite this, their handling of each scenario remained much the same after six months’ work. This suggests that they are not empowered to use their discretion when making decisions.

Positive change occurred in the multidimensional scenario. The majority of the inexperienced recruits wanted to resolve the situation (of children abandoned in the back of a stolen vehicle) by themselves, not recognising that it required a team approach. One first phase response:

‘If 48 hours have passed, add the children on the SAPS missing list … take them to the nearest safe…’

This participant added as motivation for his decision: ‘I have followed the protocol and procedures of the Criminal Procedure Act.’

However, their experiences during the intervening six months led them to respond differently in the second research phase. The vast majority of the participants indicated that they would ‘Call the relevant team which specialises in such situations … I would be offering my service to them to help.’

Some overreaction was evident during the first phase of the study. One participant replied to scenario 5 as follows: ‘First assess the situation, call for backup … and bomb squad in case there is a bomb in the car … ’ In scenario 3 participants wanted to ‘confiscate the iPod’ and in scenario 1 they wanted to ‘…take them to the SAPS cells.’ A typical response to scenarios 1 and 2 was ‘We are going to lock up the gentlemen and open up a docket for public indecency and drive their vehicle to the nearest police station for safekeeping.’

The overreaction was absent in the second phase of the study, indicating a realisation by the participants that the response required should be commensurate with the violation observed.

The participants’ own prejudice was evident during the first study phase, as shown in this response to the scenario involving the slow-driving youth:

‘Drag him out of the road. He is disrespecting other road users … the youth of Gauteng are ill disciplined, disrespectful. They only think of themselves. They are stupid and … they need to be severely punished … arrest him immediately and get a punishment of 6 months in jail, maybe he will grow up.’

Almost all the responses during the first stage of the study were sympathetic to the elderly gentleman’s plight, while the youth was viewed quite differently. The stereotypical response to the
scenario involving the youth was ‘pull him over and charge him for reckless and negligent driving ... Issue him with an infringement because he is intentionally obstructing the flow of traffic ...’

During the second phase of the study, however, most participants indicated that they would treat both the young and the elderly man in the same way, suggesting a change in their views.

Most of the participants indicated that they didn't know how to handle the first two scenarios and preferred to ignore it, rather than dealing with it. The insecurity displayed in the first phase of the study by ignoring the illegal stopping of vehicles on the highway, shifted in the second phase with the recognition that the incident might have been more significant than first anticipated. ‘... then request them to submit to alcohol tests since ... it is mostly drunk people who will not manage to hold or contain themselves ... until the appropriate place.’ Almost a third of the participants in the second phase of the study indicated that they would utilise the opportunity to determine whether vehicles were roadworthy, and to be on the lookout for driving under the influence of alcohol. They now viewed the stationary vehicles as potentially dangerous: ‘Firstly I will approach the situation with utmost care as you don't know if the men are armed or not ... I will assess the situation and tell them to put their hands where I can see them until I make sure that they don't have any weapons.’

The months on patrol taught them that apparent insignificant incidences might be pointers to larger problems. This concern was absent in the first phase of the study, suggesting that the participants may have encountered danger while on patrol.

During the first phase of the study the participants were careful to show that they would deal with motorists politely, as shown in these two responses:

‘I will greet them, be respectful ... politely ask them why they ... explain to him politely ... encourage him to ... I understand his fear ... respect would be a priority ... speak to him politely ... be polite, courteous in a professional way.’

In the second set of responses references to politeness had virtually disappeared. This change may be ascribed to the negative attitude of motorists towards traffic officials.

During the first phase of the study, participants assumed that the transgressors in the first four scenarios did not know that they were acting unlawfully, and felt the need to ‘educate’ the motorists. Responses such as ‘It is my responsibility to educate road users’ were commonplace. One participant said in relation to scenario 1 that he would ‘Give them a lesson about public indecency. It is important to respect the environment. Let them know what they are doing is pollution ...’

This seems to have changed after six months, where the responses included the verbs: ‘order them’, ‘tell them’ and ‘reprimand them’ more frequently than during the first phase.

Only two participants in the second phase of the study mentioned education: ‘Educating road users about the rules of the road is helping us as traffic police to ensure that more people obey the road rules and make our roads safer .... Give them a lesson that it is public indecency to relieve themselves in the open.’ This participant motivated the need for the ‘lesson’: ‘It is important for individuals to have good morals, as visitors from other countries might end up thinking that this is what all South Africans are like, which is a wrong concept.’

The responses indicated that the participants did not know how the law applied to them. One participant in the first phase of the study wrote in reaction to scenario 1 and 2 that ‘I do not have the power to arrest a person.’ Another said, ‘Sometimes you cannot arrest a person without telling a person why you are doing that.’ Some participants stated that the prescribed minimum speed on the highway is ‘60 to 80 km’ [per hour] while another said that ‘the only speed on the highway is 120 km’. One participant said that they would ‘ask the elderly gentleman to keep right and let others pass on the left...’
This level of ignorance of the laws did not change after six months’ experience, as demonstrated by one participant’s response to scenario 5: ‘I will take the vehicle to the police station and take the children to child care while I am still investigating’, despite the fact that she had no investigating powers, and would destroy the crime scene by moving the vehicle prematurely. In addition, during the second phase more than half of the participants said they would summarily arrest the gentlemen in the first two scenarios, despite the fact that road violations of this nature do not warrant arrests.

During the second phase of the study a larger number of participants failed to correctly identify the core issues. In relation to scenarios 1 and 2, the participants ignored the fact that the vehicles had stopped illegally and focused on the fact that the men had relieved themselves rather than on the illegal stoppage. Phrases such as ‘you confront them and charge them with public indecency’ appeared in approximately half of the first group of responses and in two thirds of the second group. One participant wanted to ‘place them under arrest, no other way’. The reason for this deterioration is not clear, as it would be expected that their exposure to the policing context would allow them to identify core problems and not focus on lesser matters. Their failure to identify the core issue in these two scenarios may be due to the fact that such behaviour has become so common that it has become a priority issue to address.

The discretionary decision-making varied significantly within the group, meaning that some participants reacted very differently to the same scenario than others. There is little discretionary consensus to use the legal bouquet that they have in hand and the same scenario might be handled very differently by different traffic officials. The assumption is that the values of traffic officials are pre-dispositioned and discretionary decision-making ability is innate, yet the analysis indicates that it is not so. The socialisation model of police ethics indicates that norms and values are learned through a process of organisational socialisation, but this is not evident in this study.13 In fact, the responses from the participants developed minimally during the six months of being exposed to practice. Six months may be too short for significant development, but at least some organisational socialisation should have occurred.

EMPOWERING TRAFFIC OFFICIALS IN DISCRETIONARY DECISION-MAKING

The ability to use one’s discretion in decision-making implies that individuals have the normative condition to make practical determinations because they possess special knowledge and expertise in relation to their sphere of specialisation.24 When it is recognised that officers need to make a discretionary decision, it will ipso facto be presumed that they are competent to implement it. Young refers to the fact that only a third of police officials in the USA receive more than five hours’ training in discretionary decision-making, with little change over the last 30 years in post-academy training.25 The participants in this study were exposed to very little training in decision-making, which was only covered in passing in sessions focusing on corruption awareness and communication skills.26

Mastrofski purports that many research projects focus on the importance of controlling police discretionary decisions, yet he has little to say about the manner in which it should be done.27 Ideally one would want consistent judgments in discretionary situations, resulting in equal treatment of all members of the public. This can be attained through moral reasoning and frequent discussion sessions, which will have as their outcome judgments that are more closely aligned.

Young emphasises this point by stating that ‘an excellent character comes through learning and practicing moral behavior that conforms to accepted professional standards’.28 Ellwanger identifies that shortfalls in training on professional conduct and guidelines for discretionary decision-making diminishes the quality of service delivery.29 This allows personal whim to be the basis of discretionary decision-making and exposes the agency and individual
officer to liability suits. Training traffic officials in discretionary decision-making is not easy, however deLint contends that real-life policing dilemmas could augment the formal curriculum.\(^{20}\)

Cederblom and Spohn advocate a model for teaching criminal justice ethics that involves integrating a theoretical understanding of ethical reasoning with practical application to situations students are likely to encounter.\(^{21}\) Judgment drills are useful tools to improve discretionary decision-making. They provide an integrated learning opportunity to practice ethical, legal, professional and occupational standards, principles and objectives in decision-making. Marenin supports this and views the ultimate goal of police training in a democratic dispensation as 'the capacity to make situational judgments which are in accord with democratic, societal and legal norms and expectations.'\(^{22}\) The manner in which ethical principles are inculcated is important.\(^{23}\)

The traditional pedagogical learning approach was utilised in teaching limited decision-making skills to the participants in this study.\(^{24}\) Pollock and Williams claim that traditional pedagogical approaches are ineffective in developing the ability to make value-based decisions, and that an andragogical approach is a better fit for the teaching of values and ethics to police officials.\(^{25}\) The fact that an andragogical tool offers relevant realistic learning and practical application, may prove to be beneficial in advancing the ability of traffic officials to use their discretion consistently and fairly. The work setting is the most powerful agent in professional socialisation and it is thus imperative that traffic officials should be trained to use their discretion, using real-life examples.\(^{26}\)

### CONCLUSION

Discretionary decision-making is an integral and valuable tool for traffic officials, but the ability to make discretionary decisions is not predisposed. This was evident from the scenario analysis, in that the participants’ responses fluctuated wildly. This ability was not taught during their basic training, as the method of teaching did not encourage the students to select relevant responses from the available options. Enabling traffic officials to confidently make decisions based on their discretion, and that also are in line with the law, would contribute towards better policing and better civilian-police relations.

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### NOTES

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17. Mastrofski, Controlling street-level discretion.
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26. Lipsky, Street-level bureaucracy.
The overarching goal of offender rehabilitation should be to increase public safety. This can be achieved by adding incremental validity to the risk assessment and risk management repertoires and related treatment-planning decisions made by professionals who provide supervision and offence-specific treatment to incarcerated offenders. Assessment should be the first step in the development itinerary of an inmate, and the needs of the offender should be harmonised with the necessary resources to ensure maximum support. The time has arrived to look into offender assessment as a basis for the treatment of offenders, specifically on a personal level. This must be done against the background of a greater emphasis on human rights, visible and working treatment and development programmes, and greater efforts to reduce recidivism in a country where crime, while starting to stabilise and moderate somewhat, is still endemic. The need for individualised assessment of offenders is

SEEING THE PERSON, NOT JUST THE NUMBER

Needs-based rehabilitation of offenders in South African prisons

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South Africa has one of the highest crime and recidivism rates in the world. Although widely accepted that crime is a complex and multi-nodal social phenomenon, it is indubitably causally linked to South Africa's historical and current socio-political circumstances, poverty and unemployment, as well as the ineffective rehabilitation and treatment of offenders. Anecdotal evidence suggests that offenders are often apportioned the blame for reoffending and written off as incorrigible, without any real reflection on the efficiency and/or relevance of the prison programmes to which they were subjected to begin with. Accurate and relevant assessment of criminogenic risk factors is not only connected to the major outcomes of meta-analyses, but forms the foundation for treatment-planning and decision-making pertaining to risk and safety, and ultimately abstinence from aberrant behaviour. This article critically addresses the issue of South African needs-based offender rehabilitation in a systemic and diagnostic manner by aligning theory with relevant case scenarios in order to expose the essence of the therapeutic challenges in the South African custodial environment.
Admission:
Identification and capturing of personal details; welcoming; assessment of immediate risks and needs and referral to an assessment unit.

Admission to a housing unit:
Includes induction and allocation of offenders to a Case Officer.

Assessment/orientation/profiling in assessment unit:
Comprehensive health assessment; orientation/induction; comprehensive risks/needs assessment; profiling/analysis of assessment outcomes; classification; development of sentence plan; confirmation of the classification and the correctional sentence plan; and allocation to housing unit/transfer to another correctional centre.

CURRENT OFFENDER ASSESSMENT PRACTICES

In South Africa, offender needs and risk assessment practices are based on first generation assessments – one-on-one, in-depth and personal assessments that mostly draw on the assessor’s knowledge, intuition, practical experience and personal judgement of offending behaviour. Portentously, however, the specific rehabilitation needs of only 38% of sentenced offenders and those under correctional supervision and/or parole have been subjected to regular assessments and correctional programmes to address their offending behaviour. DCS itself cites lack of capacity in management areas and the absence of a consistent appointment structure as reasons for the underperformance within correctional centres. Notwithstanding, the foregoing first generation assessment indicators (criteria) are drawn from second to fourth generation assessment needs and risk actuarial scales that represent standardised, theoretically based assessment instruments.

Second to fourth generation assessment scales determine offender needs and risk factors comprising the following: dynamic factors (i.e., substance abuse and support structure); static factors (i.e., age and criminal history); offender risk prediction foci; and a sentence plan that ultimately incorporates all identified offending needs and risks for rehabilitation and management purposes. South African correctional rehabilitation, intervention and offender management efforts are, therefore, directed through individualised assessment indicators (first generation assessments) that also guide and inform correctional therapists and authorities regarding appropriate and unique offender needs and risk indicators. Due to capacity constraints, however, criminologists often assist the DCS with extreme offender management cases, risk prediction of ostensibly high-risk offenders, and pre-parole evaluations on a one-on-one first generation basis.

CORRECTIONAL SERVICES’ OFFENDER REHABILITATION PATH

The offender rehabilitation path (ORP) entails converting certain guiding principles from the White Paper on Corrections in South Africa into practice. The mission of the DCS is to place rehabilitation at the centre of all departmental activities, in partnership with (private and public) external stakeholders. The ORP has accordingly been embedded in the mandate of the DCS. Notwithstanding the noble aspirations of this
process, rehabilitation per se can only be achieved through the delivery of vital services to offenders, including modification of the offending behaviour and the development of the human being involved.\textsuperscript{10}

The intention within the DCS is that reformation is facilitated through a holistic sentence planning process that engages offenders at all levels – social, moral, spiritual, physical, vocational, educational, intellectual and mental.\textsuperscript{11} In some, but not all, correctional centres, rehabilitation practices would be entirely feasible – but it depends on the availability of psychologists and social workers, and the specific centre’s overcrowding rate. For instance, it might work in smaller correctional centres, but not necessarily at the larger, more metropolitan centres such as the Johannesburg Correctional Management Area, where the current occupancy rate is in excess of 235\%, and severe staff shortages are being experienced.\textsuperscript{12}

According to the DCS, the rehabilitation of offenders is based on:

- **Needs and risk assessments**, including a unique profile of each offender, summarising needs, risks, and intervention strategies; classification of risk level (maximum, medium or low); correctional sentence plan stipulating the offender’s rehabilitation path; and a quality assured correctional programme\textsuperscript{13} dealing with substance abuse, anger management, sexual offences, parenting skills, HIV/AIDS, moral renewal programme, spiritual care, alternative to violence project, drug peer educator programme, anti-violence project, crime prevention initiatives\textsuperscript{14} and more.
- **Rehabilitation**, comprising structured day programmes, a business process mapping exercise, social reintegration, sport, recreation, arts and culture, education (including literacy, Adult Basic Education and Training, and correspondence studies), vocational skills and training, professional counselling and therapy, and providing needs-based personal development services to all offenders. The provision of needs-based care programmes are aimed at maintaining the well-being of prisoners and social reintegration. Providing services focused on offenders’ preparation for release and reintegration into society forms part of the rehabilitation process of each inmate.

It is important to note that the ‘rehabilitation’ of an offender should ideally start when that offender enters the DCS structure, and continue until a parolee is released back (reintegrated) into the community, where such an individual is still monitored and might be subjected to rehabilitation programmes and counselling endeavours. Of course the success or lack thereof all depends on factors such as the availability of professional staff, their morale and passion, and work commitment.\textsuperscript{15}

**AWAITING TRIAL DETAINES (ATDs)**

In contrast to international practices, where ATDs are generally the sole responsibility of correctional authorities, it is the responsibility of DCS to house, secure and care for them even though they are exclusively the liability of the South African Police Service (SAPS). These individuals have a unique status and are protected by a set of rights and requirements different to those of sentenced offenders.\textsuperscript{16} ATD’s rights are enshrined in section 12 and section 35(2) of the Constitution, and have a direct bearing on their detention.\textsuperscript{17}
ATDs do not have to attend correctional programmes until sentenced, or wear prison clothes designed for sentenced offenders,18 because all ATDs are the legal responsibility, and under the care, of the SAPS, even though they are housed at correctional centres. Thus, these detainees do not fall within the rehabilitation mandate of the DCS and any and all rehabilitative and/or counselling efforts pertaining to these detainees are placed on the shoulders of non-governmental organisations (NGOs) and/or practicing students (i.e. training social workers and psychologists) who need to complete a practical/experiential period for professional registration/degree purposes.

A case in point is that of Shrien Dewani, who is accused of paying for the murder of his wife Anni while on honeymoon in South Africa. It was successfully argued before a London court that one of the major challenges encumbering his extradition is the current prison conditions in South Africa for ATDs, and that the accused's human rights would be severely violated should extradition to South Africa be granted.19

Ramagaga notes that conditions in South African prisons are so severe (overcrowding, inadequate human resources, offender treatment programmes and services, and infringement of prisoners' human rights), that they do not meet international minimum standards.20 Another problem is the length of time that awaiting trial detainees spend in prison before their matters are finalised. Current figures show that 29.8% of all inmates are awaiting trial detainees, spending between three months and five years awaiting the finalisation of their cases.21 Lastly, there are no separate confinement facilities or categories for mentally ill, terminally ill or disabled persons, and appropriate accommodation arrangements for these awaiting trial detainees are still a major challenge.22

**Case study one: ‘Sipho’**

The following scenario, obtained from a volunteer student criminologist presently assisting DCS with criminological needs, risk, and pre-parole assessments, illustrates the quandary facing ATDs. Sipho is a 24 year-old male being detained at an awaiting trial correctional facility. He was arrested for rape, assault and attempted murder. He has no prior criminal record. Upon entering the awaiting trial facility he is recruited into a correctional centre gang known as the twenty-sixes, and subsequently becomes involved in two gang fights. In all probability more charges will now be added to the crimes he was arrested for before he is sentenced. There is no assessment practice available for this type of detainee, thus no precautions are in place to discourage and/or prevent gang involvement, or to manage aggressive and violent behaviour/tendencies, and he has no access to psychological or social work services. These practices (assessment) and services (specialist intervention) are only available to sentenced inmates.

**RESTORATIVE JUSTICE AS A CORNERSTONE OF REHABILITATION**

Restorative justice is an important component of rehabilitation and common practice within the DCS. It forms the basis of several programmes and counselling endeavours, facilitated by DCS in partnership with NGOs such as NICRO and Khulisa.23 Certain types of offenders (i.e. economic offenders, rapists, murderers) are encouraged to engage with victims and the community in order to bridge the gap between crime, criminality, rehabilitation and society. Restorative justice offers hope and support to offenders and focuses on healing and recompense in the wake of crime. Within the context of South African corrections, restorative justice emphasises the importance of the victims, families and community members by actively involving them in the justice process. Restorative justice challenges therapists to examine the root causes of violence and crime in order to break these cycles. This process helps offenders to identify their responsibilities and to promote healing. It seeks to restore personal responsibility for criminal behaviour and its consequences, restore a sense of control, make amends, and restore a belief that the justice process and outcomes were fair and just.24
Restorative justice offers the offender an increased awareness regarding the impact of the crime itself as well as its effect on other people; the capacity to contribute productively to the community; social and decision-making skills; improving self-image and improved public image; a sense of belonging to the community; and enables greater forgiveness by the community towards the offender.25

Consequently the DCS has decided to place rehabilitation and restorative justice at the centre of its operations, aligning it with the need for individualised assessment regimes, as dealing with criminal behaviour is a complex social matter that cannot be transacted effectively through retributive justice alone.26

Case study two: ‘Peter’

The following authentic case illustrates the diversion process. Peter, a 36 year-old male, is arrested for domestic violence. Peter, who has no criminal record, is a chartered accountant. After his arrest Peter is referred to the Centre for Restorative Justice (CRJ) at Pretoria for possible consideration of sentence diversion and restorative justice process initiation. The CRJ is known to assist in diversion with first offenders in domestic violence cases, especially where the perpetrator is the only breadwinner. He undergoes several restorative justice assessments and completes various restorative justice programmes, and as such a positive recommendation is made to prevent a possible imprisonment sentence. Since his arrest Peter has complied with all restorative justice criteria, is currently involved in community-based anger management and self-esteem programmes, and participates in regular risk monitoring processes instituted for restorative justice candidates.

CORRECTIONAL ASSESSMENT OF INMATES

The general principles of offender assessment are described in the Correctional Services Act 111 of 1998 (Sections 37-38, 42). According to these principles, each sentenced offender has to participate in an assessment process as soon as possible after admission, in order to, amongst others, determine:27

- security classification
- health and emotional needs
- social and psychological needs
- specific development programme needs
- needs regarding reintegration into the community

This assessment is conducted by a multi-disciplinary team comprising an educationalist, psychologist, social worker, religious worker and health care worker, significantly enhancing the holistic treatment of an offender. This goal is unfortunately often stymied by capacity constraints, making it, in the main, somewhat aspirational. Section 42(2) of the Correctional Services Act, 1998 stipulates that the Case Management Committee must ensure that each sentenced prisoner has been assessed.28 Ironically, until April 2003, no assessment structure existed in DCS for the effective treatment of offenders. In this vein it is argued that safe and progressive prisons cannot exist without proper classification and assessment systems.29 Assessment should, and indeed must, be the first step in the development of an inmate, and the needs of the offender should be matched with the resources to ensure maximum support.

According to Coetzee, offender assessment in South Africa stems from the following models:30

- The medical model, based on the conviction that certain causes of criminal behaviour can be diagnosed and treated.
- European models, based on assessment instruments designed for white European or Hispanic males. Given that the majority of offenders in South African prisons are black and coloured, this is not necessarily the most appropriate approach.
- Culture deprivation, based on the unique subcultures that exist in South Africa, affecting the nature and focus of assessment efforts.
THE NEED FOR INDIVIDUAL ASSESSMENT OF OFFENDERS

Individual treatment of offenders is not the norm. A ‘one size fits all’ approach is often pursued by South African corrections, even though the White Paper on Corrections stresses the need to introduce more individualised treatment and assessment of offenders to coordinate and facilitate effective rehabilitation and attenuation efforts. This view is supported by the Correctional Services Act, 1998 (Section 38(2)) which stipulates that individual assessments are important for the development of individualised treatment programmes for offenders who have a right to an individualised assessment-based development plan. Individual assessment is necessary to verify the type of crime committed, the criminal history, the offender’s needs and risks, the motives and causes of criminal behaviour, predictors for reoffending and the individual’s responsiveness to treatment.

COUNSELLING, TREATMENT AND REHABILITATION ROLE PLAYERS

The following professional staff and NGOs are responsible for counselling and service delivery at the DCS:

- **Health care workers**
  Various DCS health care workers offer health care oriented personal care, including HIV counselling, to awaiting trial and sentenced offenders. Nurses, medical doctors, contracted psychiatrists, dentists, and contracted physiotherapists assist inmates with daily medical problems, medical evaluation, counselling and treatments.

- **Educationalists**
  Educationalists are tasked with tertiary, primary and post school counselling and education of inmates. Various didactic programmes and schooling projects are offered to offenders. Funding for post schooling endeavours are the responsibility of the offenders although the department assists inmates to apply for study bursaries.

- **Religious care workers**
  A variety of religious and spiritual care workers assist offenders with personal, religious/spiritual care, and familial support and/or counselling services representative of all denominations.

- **Social workers**
  DCS-employed social workers address familial and intimate relationship difficulties among all prisoners and probationers. The service is aimed at maintaining and improving social functioning, and contributing to reintegration. Treatment covers a wide spectrum of social problems ranging from supportive services to intensive counselling provided mostly on an individual basis and/or through case or group work. Social workers act as a link in maintaining family and social ties. Other areas of concern are orientation of imprisonment, HIV/AIDS counselling, substance abuse, adaptation problems, marital and family problems, aggressive and sexual behaviour, support services, trauma debriefing, and preparation, release and after-care services.

- **Psychologists**
  Departmental psychologists assist in the identification and treatment of personality insecurities and cognitive distortions, as well as with in-depth, long-term therapy of offenders. Correctional psychologists primarily focus on the mental health functioning of sentenced prisoners. Target areas for psychological services include suicide risk management, psychological intervention when requested by a court of law, psychological counselling, risk management of persons under supervision inside the community, and offenders guilty of aggressive and sexual offences. According to the Departmental Psychological Services Review and Needs Analysis, current psychological services offer individual, group and family therapy. However, current psychological service shortages within the department, as alluded to previously, limit effective therapy, intervention and treatment efforts.

- **Criminologists**
  In South Africa, volunteer criminologists, usually affiliated to academic institutions, and students of criminology from honours level play a comprehensive role in the assessment, analysis...
and treatment of offenders. Tasks include applying knowledge and an understanding of criminal behaviour, analysis of the criminal mind, profiling, the identification of causes, motives, triggers and high-risk situations of crime, a scientific explanation of criminal behaviour, empowerment and the reintegration of offenders. Through this the criminologist determines individualised and unique treatment, therapy, and offender management needs and risk indicators for sentence plans and rehabilitation efforts aimed at correcting offending behaviour.

- **Non-governmental organisations**
  Prominent NGOs such as faith-based entities, Khulisa and NICRO assist DCS with counselling, programme delivery, offender rehabilitation and reintegration services. These organisations focus on spiritual guidance and support, education, prevention of crime, diversion of youth, personal development, community-based support for children before/after release from awaiting trial or places of safety, behaviour change, crime awareness, community liaison, violence in relationships and conflict management, HIV/AIDS, life skills, pre-release and reintegration, restorative justice, securing employment for inmates about to be released and ex-offenders (economic opportunities project), leadership skills, human rights, community empowerment, upliftment and victim support, first aid and self defence, rape and sexual offences counselling, project design, administration, and study bursaries. These services are theoretically available in all DCS facilities, but are usually easier to access at urban centres than rural ones.

### Case study three: ‘Joseph’

The following authentic case illustrates the DCS inmate assessment path. Joseph, an adult male, is a second-time offender serving a 15-year sentence for his index crimes, namely armed robbery and attempted murder. His criminal record reveals previous assault, house breaking, and entering and trespassing, for which he served a seven-year sentence.

The inmate holds that during his first incarceration he did not undergo any form of inmate assessment, that is, the initial DCS assessment (medical assessment and assessment of immediate needs and risks), an in-depth assessment (comprehensive needs and risk assessment to guide his sentence plan) or a pre-parole assessment process (to determine risks and danger levels for reoffending future behaviour). Classification occurred on the basis of his sentence, i.e., any inmate serving a sentence less than ten years is automatically classified as a 'medium' category offender. During his first incarceration period Joseph never consulted with any social workers or psychologists in order to address any personal/criminal problems. He did, however, attend anger management and HIV/AIDS programmes and he completed matric. The attendance of these programmes and the completion of scholastic education supported Joseph’s successful parole application and release from the correctional facility.

Regarding the inmate’s current imprisonment, he has now, the second time around, finally been subjected to an initial assessment during which it was established that he is a prominent correctional centre gang member (twenty-sixes gang), addicted to dagga (marijuana) and heroin, and is HIV positive. Because the inmate voluntarily participated in an ‘HIV/AIDS: Responsible Sexual Behaviour’ programme his positive HIV/AIDS status was discovered. Since then, he has actively received HIV/AIDS counselling and he follows a special immune-strengthening diet. The circumstances surrounding Joseph’s index crimes relate to long-standing criminal associations, and these crimes were committed in a group/organised crime context. Joseph is not only a member of a correctional centre gang, but also a member of a community gang, to which the co-accused of his index crimes also belong. Joseph and his co-accused were involved in an ATM bombing and assaulting a security guard.

The following issues are pertinent to his case:

- **Childhood:** Joseph is one of six siblings (the second youngest child), his parents passed away
in 1995 during a bus accident. The inmate’s three oldest siblings successfully took over the child-headed household, providing for all the remaining children’s needs. Joseph is the only member of his family who has clashed with the law; all other siblings are educated and hold secure positions. The inmate grew up in a close-knit family environment and he reports that his parents had a loving marriage and were devoted Christians.

- Early onset of antisocial and criminal behaviour: At the age of 11 years, Joseph was arrested for theft (shoplifting). He also stole alcohol from his parents and was often caught intoxicated. He ran away from home due to physical abuse and general non-conformance to the house rules.

- Schooling: Joseph failed Grade 6 due to antisocial peer involvement, substance abuse, truancy and a general disinterest in schoolwork. After various involvements in physical fights with fellow learners and disobedience, he was eventually expelled. During this period he became involved in a local boy-gang within his community. He left his parental home and stayed with two of his co-accused on the streets. Since Joseph’s expulsion he lost contact with his family, and has only now re-established it.

According to Joseph’s need and risk assessment outcomes, he was scheduled to attend the following programmes/therapy: anger management, substance abuse, HIV/AIDS, decision-making skills, addressing self-esteem and assertiveness, and in-depth psychological counselling for health-related issues and personal problems/development.

During the inmate’s parole application criminologists highlighted the following risks that should be taken into account for sound pre-parole decisions (i.e., predicting future dangerousness and criminality): early onset of antisocial and criminal behaviour, history of gang/criminal associations, no prior legitimate employment, criminal diversity and criminal record, history of substance abuse, history of aggressive and violent behaviour, no law-abiding acquaintances, an inability to form and maintain non-criminal relations, and a limited non-criminal support structure.

Research on offender risk assessment demonstrates that all of the aforementioned risk factors are positively linked to future criminal involvement, relapse into crime and personal dangerousness. Due to the criminological pre-parole risk indication, Joseph was only granted parole after serving 12 years of his sentence. He is currently actively involved in a community ‘anti-crime and gang’ project that targets high-risk school children who might be prone to juvenile delinquency, gang involvement and substance addiction. Joseph is one of three ex-offenders involved in this project and a prominent motivational speaker in this regard.

CONCLUSION

The South African corrections, remedial and counselling programme is, although far from being faultless, a progressive and directed endeavour, focusing on the successful rehabilitation and reintegration of offenders through the application of holistic and comprehensive counselling initiatives within a containment approach. Although faced with intrinsic challenges that make many endeavours temporal and, therefore, somewhat aspirational instead of achievable, the South African DCS aims to entrench its role as a leader in the field of African behaviour modification and rehabilitation.

It is clear that professional capacity within the DCS needs to be urgently addressed and the energies and acumen of external role players harnessed and directed if the ultimate goal of effective rehabilitation and reintegration is to be achieved. The DCS should gravitate away from the rigid constabulary role it is fulfilling, and galvanise behind its resolve to strategically address the rehabilitation and recidivism dilemmas currently plaguing the corrections sector in a prompt and effective manner, conducive to the interests of both offenders and society at large. Although fractional successes have been achieved, the DCS should not rest on its laurels, and must continue to aggressively pursue its rehabilitation mandate in accordance with the mantra ‘facta non verba’ – deeds, not words.
NOTES

5. DCS Budgetary Review, 4.
6. Ibid.
12. Magadani, Musicians reap rewards, 11.
14. Magadani, Musicians reap rewards, 12.
16. Ibid.
17. Constitution of the Republic of South Africa 1996, Act 108 of 1996, Pretoria: Government printer. Furthermore, section 35(2) of the Constitution, affords each detainee, amongst others, the right to:
   • Be informed promptly of the reason for being detained;
   • Challenge the lawfulness of the detention in person before a court, and if the detention is unlawful, to be released;
   • Conditions of detention that are consistent with human dignity, including exercise, adequate accommodation, nutrition, reading material and medical treatment; and
20. Ibid.
25. Ibid.
27. Ibid.
33. Ibid.
34. Du Preez, Integrated offender administration, 30.
The ethical commentator, in response to the abject failure of the global war on drugs, the harms it generates and the apparent lunacy of its continuing application, may be forgiven for an appeal to scientism. Indeed, a common refrain among drug war critics is the need for social policy decision-making that sidesteps moralising and ideology, and instead focuses on ‘the facts’. In *The Drug Effect: Health, Crime and Society*, Suzanne Fraser and David Moore have collected a range of voices that question the objectivity of the scientific approach, and, more fundamentally, the ‘epistemological naivety’ of positivism – that is, the view that it is possible to produce objective, value-free knowledge about the world. Instead, they argue for constructionism, and the view that everything we think we know about ‘drugs’ is determined by discourse, values, history and politics. This isn’t necessarily to say that there is nothing whatsoever material about matter (although the authors are interestingly inconsistent on this) and that a fatal heroin overdose is ‘merely a discursive construction’, but it is at the very least a warning that the supposed ‘facts’ may be no less subject to discourse and social norm than are the transparently moral judgements they wish to circumvent.

The result is a fascinating collection of perspectives, in three parts. The first, corresponding with the ‘society’ of the subtitle, is *Drug Use as Social and Cultural Practice*. These chapters centre on exchange relations in a heroin marketplace, the significance of drug practices in urban gay identity, the complex representations of illegal drugs in popular culture, and the challenges and benefits of multidisciplinarity in drug research. Inasmuch as these diverse texts have a common thread, it is the view of illicit drugs as having multidimensional social meanings, with their practice vitally embedded in those broader social contexts.

So it is that the anthropologist (Robyn Dwyer) finds that her exchange of cigarettes with research participants mirrors in complexity and significance their exchanges of heroin with others. This is not the depersonalised marketplace where *homo economicus* maximises utility through the selfinterested exchange of cash and goods, but rather an intricate social practice where factors like ethnicity, trust, respect and the strength and nuance of personal relationships radically impact on behaviour. There is no objective ‘fact’ or ‘rule’ about drugs or drug markets to be found here; there is only the unfolding of layers of meaning and subjectivity.

It would be easy, to those unfamiliar with medical anthropology or the theory and literature around...
medicalisation, to assume that the second section, on 'health', would, unlike 'society', provide a more concrete perspective on drugs. The focus in the section entitled Drugs, Health and the Medicalisation of Addiction is on such biologically tangible subjects as hepatitis C epidemics, the use of pharmaceuticals in enhancing employment performance, drug maintenance programmes and the place of pharmacotherapy within broader social policy and welfare principles. In each of these short chapters, however, each roughly ten pages in length, the reader is brought to fully grasp the subtle irony of the book's title, which seemed so academic when introduced – that whatever the predictable, physical effects of drugs may be (and even these are built on problematic assumptions), the idea of drugs has an at least equally powerful effect on the way that they come to manifest, on a micro no less than on a macro level.

The final section, on 'crime', or Drugs, Crime and the Law, is largely rather less thought provoking, though no doubt as important. As is probably inevitable with a legal focus, its case studies, largely British and Australian, tend to be more difficult to generalise to other legal contexts. Still, its chapter on the danger of medicalisation to the cause of cannabis decriminalisation (by Craig Reinarman) is enlightening, and the final chapter, condensed from Desmond Manderson's Possessed: Drug Policy, Witchcraft and Belief, should be required reading for anyone with an interest in drug policy. This text draws astonishing parallels between a zero tolerance approach to drugs and the witchcraft frenzy of the sixteenth century, reflecting their common foundation in a shaky faith in, and thus a desperate defence of, a certain system as the all-powerful enforcer of social norms, obedience and simple morality. The permissive world that anti-drug champions and witch hunters fear is, through the drug user and the witch, made concrete and firmly 'other', thus propping up the increasingly rickety but still dominant construct of the normal and good, be it the church or the law.

For all of this, the book has three major drawbacks. The first, and least fundamental, is that, in drawing only from scholars in the US, the UK, Canada and especially Australia, its range of insight is difficult to extrapolate to the developing world. One of the most interesting case studies, for example, is on the way that the discourse of sleep disorder and its pharmaceutical self-management have been developed to serve the needs of the employer, at the emotional, financial and physical expense of the employee. With the different workplace dynamics in developing countries and their far lower market penetration of sleeping pills, it is unclear how this analysis can be made relevant to the other 85% of the world's people. But the flippant dismissal of 'first world problems', so beloved of hip internet denizens, is, of course, neither fair nor productive. In fact, the social constructionist approach is, although itself obviously subject to social deconstruction, unusually transmittable. The insight that social dynamics shape every possible observation of the world is just as easily applied to any social context or observation. Still, the relative lack of variety in direct subject matter robs the book of a certain richness, and the reader of a real understanding of the flexibility of this analytical lens.

Its second drawback is very nearly the reverse. The brevity of the chapters makes the book engaging and readable, but will likely also leave the non-specialist with the sense that there was a great deal more to be learnt, but that the author could only afford to allude to it. Some of the theoretical language of post-objectivism, constructionism or postmodernism can be tough to untangle without a patient guide. And, as attractive as density of meaning can be, it can also be overwhelming. Although the scholar might get bored, the reader with a less than comprehensive familiarity with Foucault, Freud, Latour, Derrida, Fanon, Säid etc. may find their lightly dropped names either enticing or alienating. Either way, allowing the authors more space for theoretical exposition, even at the expense of one or two other chapters, might have facilitated the book's usefulness to non-specialists and non-scholars.

The book's final and most fundamental weakness, however, is not so much its own as that of its entire analytical mode. Having had all the
certainty appropriately slipped out from under our feet, we find that not only has the way forward been totally obscured, but that we’re also going to have to think seriously about the meaning of direction and what it means to walk. We find ourselves in the place of Latour’s mad scientists, ‘who have let the virus of critique out of the confines of their laboratories and cannot do anything now to limit its deleterious effects; it mutates now, gnawing everything up, even the vessels in which it is contained.’ With everything stripped of its very thingness, the thought of decisive action seems absurd. Admittedly, the editors claim only to have aimed to emphasise the value of a critical approach to drugs, and at this they entirely succeed. But, while such an emphasis can hardly be imagined to lead to worse policy decisions, it is unclear how it will lead to any at all. Given that society continues to experience massive drug-related harm, and that a number of the authors are also involved in drug policy making or activism, one can only hope that they devote the next book to explaining what we can and should actually do about it.

NOTES
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In 2011 the Constitutional Court found that the law establishing the Directorate of Priority Crimes Investigation (known as the Hawks) did not sufficiently protect the directorate from political interference and influence. The articles in this edition all focus on matters relating to the need for South Africa to have an independent anti-corruption agency, and suggest how best this may be achieved. This special edition of SA Crime Quarterly was funded by the Open Society Foundation of South Africa.