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- Adjudicating rape in the Western Cape High Court
- Applying GIS to crime pattern theory
- Case note: State accountability for the criminal acts of police officers
- Conference report: Strategies for non-violence in education
- Book review: Victimology in South Africa

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Cover
A bullet hole in a window of the Grade 1 classroom at Sonderend Primary School, in Mannenberg, on the Cape Flats. The school has been disrupted by gang violence in recent weeks, and its caretaker was shot dead on the school grounds last month. Pic: ANTON SCHOLTZ. 05/06/2013. © The Times

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EDITORIAL

The challenge of change

This year South Africa celebrates 20 years of democracy. The anniversary, coming in an election year, provides an opportunity for the ANC government to reflect back on the achievements of the past 20 years. Equally, opposition parties will seize the moment to reflect on the failures of the past 20 years. These analyses, and the accompanying array of somewhat baffling statistics,[1] focus – for good reason – on what the government has or has not done to improve conditions for its citizens. Excluded from these analyses are reflections on the role played by the multitude of non-governmental organisations that continue to support the implementation of legislation and offer a wide range of services at community level under difficult and uncertain circumstances.

The jury is still out on how useful it is to gaze back at each decade post-apartheid and count our successes and failures. It is certainly not clear that it serves any purpose other than providing politicians with a framework within which to promote their interests. As such, I shall resist the temptation to reiterate here the claims already made about changes, or lack thereof, to the criminal justice system. However, our next edition – *SACQ 48* – will be a special edition dedicated to assessing the impact of policy changes on access to justice, effective policing, violence prevention and incarceration in South Africa over the past 20 years.

In this edition of *SACQ* Stacy Moreland starts the process of assessing transformation, or rather the lack thereof, by offering an analysis of judgements made in rape cases in the Western Cape. She comes to the rather depressing, but perhaps quite predictable finding that patriarchal notions of gender still inform judgements in rape cases – and in so doing reinforce stereotypical ideas of worthy and unworthy victims.

Staying with the adjudication of rape cases, Heidi Barnes offers an analysis of the Constitutional Court case *F v Minister of Safety and Security* in which the Court established the basis for determining the vicarious responsibility of the state, in this case for the criminal act of a police officer. The case in question involved the rape of a young woman by a police officer who was on standby duty. Barnes argues that this case 'has at last provided clarity and transparency on the normative bases for holding the state vicariously liable for the criminal acts of police officers. These are the police's constitutional obligations to protect the public, and the entitlement of the public to place their trust in the police.' The ruling, she argues, significantly increases the likelihood of the Minister of Police being held responsible for criminal acts conducted by the police, even those who are not on duty at the time of the act.

In their article, Alexandra Hiropoulos and Jeremy Porter of the City University of New York (CUNY) demonstrate how Geographic Information Systems (GIS) can be used, along with crime pattern theory, to analyse police crime data. They argue that this method of crime analysis could offer the police and local government important insights into the geography of crime. However, there are still huge gaps in publicly available data that at present complicate and reduce the utility of these kinds of analyses in South Africa. This may change over time, and would certainly be helped if the SAPS were to release more detailed crime statistics more often and if there were to be a better overlap between the different geographic units of analysis (e.g. police precincts and municipal wards). However, the article also suggests that there may be a danger in presuming that new high-tech software and systems can

necessarily tell us more than we already know, or than we can learn from more traditional forms of analysis.

Geoff Harris, Crispin Hemson and Sylvia Kaye report on a conference held in Durban in mid-2013 on measures to reduce violence in schools. According to the 2012 National School Violence Study[2] by the Centre for Justice and Crime Prevention, violence in South African schools has remained at stubbornly high levels over the past five years. This conference highlighted the enormous challenges faced by learners who have to deal with the persistent reliance of teachers on harsh corporal punishment as well as violence between learners, particularly aimed at learners who don't conform to heteronormative gender stereotypes. While it is easy to become overwhelmed by the scale of the problem, the conference also showcased the work of a significant number of civil society interventions to prevent and reduce violence, and support learners. Given the evidence presented about the effectiveness of many of the violence reduction initiatives undertaken by NGOs and academics, one has to wonder whether we might not have made greater strides in reducing violence nationally if there were a concerted effort to ensure the sustainability and scaleability of these activities.

We end this edition with a review by Hema Hargovan of the latest edition of *Victimology in South Africa* by Robert Peacock (ed).

This year the Governance, Justice and Crime Division of the ISS will hold its fifth International Conference on Crime Reduction and Criminal Justice. The call for abstracts was announced at the beginning of March. The conference will be held in Johannesburg during the second week of August. Applications have also opened for the second African Publication Mentoring Programme offered by the ISS, with the first meeting of mentors and mentees taking place the day before the conference. Details of both the mentoring programme and the conference are available from the ISS website (www.issafrica.org).

Chandré Gould (Editor)

NOTES

1. For a particularly good example of the presentation of baffling statistics see 'Twenty year review of criminal justice', statement launched at a post-State of the Nation media briefing by the JCPS cluster, Cape Town: 12 March 2014.
2. Patrick Burton and Lezanne Leoschut, *School violence in South Africa: results of the 2012 National School Violence Study*, Cape Town: Centre for Justice and Crime Prevention, 2013.

Editorial policy

South African Crime Quarterly is an inter-disciplinary peer-reviewed journal that promotes professional discourse and the publication of research on the subjects of crime, criminal justice, crime prevention, and related matters, including state and non-state responses to crime and violence. South Africa is the primary focus for the journal but articles on the above-mentioned subjects that reflect research and analysis from other African countries are considered for publication, if they are of relevance to South Africa.

SACQ is an applied policy journal. Its audience includes policy makers, criminal justice practitioners and civil society researchers and analysts, including the academy. The purpose of the journal is to inform and influence policy making on violence prevention, crime reduction and criminal justice. All articles submitted to *SACQ* are double-blind peer-reviewed before publication.

TALKING ABOUT RAPE – AND WHY IT MATTERS

Adjudicating rape in the Western Cape High Court

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This article asks the question: how do judges know what rape is and what it is not? The statutory definition contained in the Criminal Law (Sexual Offences and Related Matters) Amendment Act[1] (SORMA) guides courts in adjudicating rape cases, and as such the definition is theirs to interpret and implement. This article analyses a small selection of recent judgements of the Western Cape High Court[2] (WCHC) for answers. The article begins by establishing why judgements are an important source for understanding what rape means in society at large; it then discusses the relationship between power, language, and the law. This is followed by specific analyses of cases that show how patriarchy still defines how judges express themselves about rape. It concludes by looking at the institutional factors that discourage judges from adopting new ways of talking about rape, and their constitutional mandate to do so.

WHY JUDGEMENTS MATTER

Communicating 'rape', to ourselves and to others, is difficult. To describe the experience of the violation of a person's body, dignity and sense of self – to narrow the experience to a sequence of words – will often minimise the act. Language is a limited tool, and using it in a manner that manifests rape's often intangible harms, requires skill. When judges write of rape in a bland and perfunctory manner they fail to communicate why rape is wrong, because their words do not convey how and why non-consensual sex is an infringement, or erasure, of women's dignity, freedom and bodily integrity.[3]

Legal institutions have not given meaningful content to the common understanding of rape.[4] Rape, in popular consciousness, remains limited to brutal attacks by deviant strangers.[5] This excludes the majority of rapes, which may leave no physical trace and are commonly perpetrated by acquaintances.[6] These cases are cast as unclear – the survivor herself may be unsure as to whether she was raped – and they become part of the many unreported, not prosecutable, not effectively justiciable, and not socially condemnable, instances of gender violence.

Thus the adjudication of a rape case is an important moment where the law, which criminalises rape, and the gendered social structures that enable and accept rape, meet. It is up to the judiciary to determine which specific actions constitute rape and which sexual acts are therefore socially unacceptable.[7] How the courts

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implement SORMA – whether they fail to expand on the potential of its purpose or not – will influence women's lived realities.[8]

When members of the judiciary fail to critically engage with the purposes underlying SORMA and the social structures from which the need for such legislation arises, the potential to elevate the lived experience of millions of women is lost. Judges should not be so immersed in traditional perceptions that they cannot see their flaws – this does not render them democratic. Instead it renders transformative law stagnant and entrenches inequality.

In the words of Justice Albie Sachs:

> There are those who argue that patriarchy and sexism are older and even more pernicious than apartheid, and that a failure to construct a constitutional order expressly dedicated towards their abolition will result in the transition process from apartheid to post-apartheid being little more than the handing over of power from one gang of men to another … the basic right underlying all other rights in this transition is the right of women to speak in their own voice, the right to determine their own priorities and strategies, and the right to make their voices felt.[9]

POWER AND LANGUAGE

In his book, *Reproducing rape: domination through talk in the courtroom,*[10] Gregory Matoesian deconstructs the cross-examination of rape complainants, using conversation analysis, and interprets his findings using the sociological theory of structuration.[11] Matoesian reaches the conclusion that talk in the courtroom serves power, or more particularly patriarchy, and in so doing reconstructs women's experiences of rape according to a male-privileged view of appropriate sexual behaviour.[12] He found that the defence counsel, in cross-examination, made use of their authoritative position in the trial structure to direct and dominate women's personal narratives.[13] Language, according to Matoesian, functions as a symbolic embodiment of social values – an inference generating machine – which in these cases was strategically deployed to mediate female experiences in conformity with patriarchal logic.[14]

Knox and Davies[15] portray law as a cultural object with dual capacity that enables and constrains us as it defines acceptable conduct, motives and justifications for our actions. The public perceives statute and judicial rulings as defining right and wrong, worthy and unworthy, truth and falsity. The power of the law is derived from its significance to our understanding of acceptable moral reasons and social practices.[16] The court's vision of the world is therefore an authoritative representation of how we should act and what we should believe. It creates our values and our culture as much as it reflects them.[17]

MacKinnon, as cited by Knox and Davies, argues that sexuality is the locus of gender inequality. Rape, according to MacKinnon, is a mode of patriarchal subordination.[18] Patriarchy informs the law, and thus law's norms, practices and discourses favour a male-privileged understanding of sex.[19] Thus, even when a court finds in favour of the complainant, a patriarchal view of women prevails.[20]

Throughout the 1980s and 1990s numerous academics focused their critical attention on how legal institutions symbolise rape and how this serves to perpetuate a hegemonic social order.[21] Those who adopted the critical legal studies (CLS) approach focused on how the authoritative talk of the court serves to bolster the dominance of the law and legal institutions.[22] Those who favoured a feminist or sociological approach found that legal talk conceals the coercive power of patriarchy and naturalises the social norms that benefit men.[23]

Feminists, through critical gender analysis and a methodological emphasis on women's experience of the law and society, seek to reconstitute the law 'neither to embrace nor to suppress difference but to challenge dualism and make the world safe for difference'.[24]

As cited by Mutua, Rhodes's feminism, which does not assume the essentialist and privileged female identity that first and second wave feminists are

criticised as promoting, is capable of including Crenshaw's intersectionality.[25] Intersectional feminism acknowledges that women are disempowered by unique combinations of disadvantage that constrain them in different ways.[26] This is appropriate to the South African context in which a variety of intertwined cultural, geographical, racial and sexual identities create unique gendered experiences.

With due regard to the self-conscious ethic of critical legal studies, and the experiential honesty of feminist writing, it is only right that I acknowledge the multi-disciplinary mix of approaches that have directed this article. My approach to the judgements of the WCHC was at first to view them from a media studies perspective, which finds that judges, in telling us 'what really happened', mediate the evidence before them and transform it into a symbolic construction that we should accept as, firstly, factual reality and, secondly, a neutral and correct application of the law.[27]

By conceiving of judgements as narratives we accept that they are constructions and that creating and communicating these constructions is a process laden with potential biases. If this is so then judges should be sensitive to their role in directing the process.[28] Judges are authors or storytellers with the potential to understand and communicate a variety of more or less just constructions.[29] Judges thus need to be self-aware and self-critical – this is a central tenet of critical legal studies – and specifically they must be self-critical authors, aware of the meta-narrative. This awareness requires that the judiciary write with the knowledge that how the story is written is a fundamental part of the story itself.[30]

In 'discovering' the evidence in each case, a court in fact creates an image and idea of 'what really happened', which, in the case of rape, is entirely separable from a woman's experience of her own violation.[31] Language can therefore alter our perception of reality and, writes Matoesian, 'represents the ultimate weapon of domination':

> … in a very tacit and taken for granted fashion, language categorises, objectifies, and legitimates our interpretations about social reality, sustaining some versions while disqualifying others, and conceals the hierarchical arrangements and sexual differences between men and women.[32]

This article offers a way of interpreting rape as a juridical construct. This construct is not neutral but is created by judges who must resist and avoid the pressures placed on them to conform to established rape narratives told in the traditional language of a patriarchal legal institution. For this article, judgements on rape in the WCHC were analysed for the years 2012 (January to December) and 2013 (January to August), including appeals of convictions and sentencing. This amounted to approximately 60 judgements.

CHARACTER EVIDENCE

Section 227 of SORMA is a so-called rape shield law. It extends the ambit of inadmissible evidence to include the complainant's character or conduct, unrelated to the incident in question. Evidence of this type will only be relevant and admissible when it is in the interests of justice to admit it, taking into account potential prejudice to the complainant's dignity, and providing that such evidence is not adduced for the purposes of creating the inference that the complainant was more likely to consent or is less worthy of belief.[33]

Yet the judgement of the court in *S v Rapogadie*[34] reveals a judge who easily and unselfconsciously denigrates the character of the complainant. He writes with little regard for her dignity, and depicts her as 'the type of girl' who is likely to consent to sex and is less worthy of belief. The judge found that the complainant's evidence must be considered in light of her 'life experience':

> She had some prior discussion with her cousin about sexual intercourse. She was rebellious and not controlled by her caregivers. She associated with friends much older than she was …[35]

The judge continues in a similar vein for four paragraphs in which he undermines the credibility of the witness by characterising her as a 'rebellious' and 'experienced' girl.[36] Neither the facts of the case nor the law supports reliance on this kind of character evidence. His statements are both unnecessary and unlawful. The complainant was 11 years old at the time she was raped. Statutory rape was established and there was no need to go any further. Sexual intercourse was proved through DNA testing on the basis of which the accused was found to be the father of her child. Section 57 of SORMA makes it clear that a person under the age of 12 years is incapable of consenting to a sexual act because, as per s1(3)(d)(iv), they are incapable of appreciating the nature of the act.

Furthermore, the judge does not establish why considering these alleged characteristics is in the interests of justice or relevant to the specific incident in question. In essence, the judge finds that the complainant altered her capacity to consent to sex by refusing to remain naïve. Curious girls, who exhibit signs of maturity, are thus painted as 'experienced', which, the judge makes clear, creates an inference that they are *in fact* sexually experienced. The complaints of rape by curious girls, according to this judgement, should be highly scrutinised because they are not 'real victims'.

Here the judge constructs the complainant as a false victim by writing with a 'sense of facticity' that disguises patriarchal prejudice at work.[37] The 'sense of facticity' is obscuring. It relies on the pretence that 'facts are facts', which conceals the way in which factual evidence is transformed by ideas in the process of mediation. Ideas become facts through authoritative writing.[38]

The admission of evidence as to the character, and concerning the previous sexual experience, of a complainant is prohibited by s227 of SORMA. However, this is qualified by the proviso that such evidence may be admitted if it is deemed to be related to the offence being tried.[39] Yet, it is not a fact that the complainant in the *Rapogadie* case was rebellious or experienced. This is the judge's opinion, and a profoundly unsympathetic one, which is both irrelevant and unfounded. However, this is obscured by the judge's interweaving of his opinion with references to the complainant's testimony. This acts as a diversion. We are distracted from seeing the judge's 'opinion' for what it is. It is a depiction of the complainant as someone who has, through her own failing, positioned herself outside acceptable femininity.[40] As such she seems somehow 'less rapable' than the 'good girl' with whom she is implicitly contrasted.[41]

Gordon and Riger write of the construction of the categories of 'rapable' and 'unrapable' women as a means by which femininity, as constructed by hegemonic masculinity, must be maintained by a negative portrayal of women who challenge the boundaries of accepted gender performance.[42] These women are cast as unrapable. They cannot be raped because masculinity does not acknowledge that these women deserve the respect of having their violation portrayed as a crime.[43] They have not earned the same rights as 'rapable' women because they do not perform the obligations that the feminine role, as constructed, demands of them.[44]

Borgida and White analysed the implementation of 'rape shield' laws in the United States.[45] Like those in SORMA, these laws prevent the admission of evidence concerning the complainant's previous sexual history.[46] The writers found that the social perception of the victim was key to finding in her favour; the victim was as much on trial as the accused.[47] Where previous sexual history was admitted jurors considered it more likely that the complainant had consented to sex.[48]

Rape shield laws, according to Capers, attempt to render previous sexual history irrelevant.[49] Technically, as such evidence is generally inadmissible, this is the case. However, in substance, rape shield laws increase the prejudicial weight of a woman's sexual conduct.[50] Capers writes that these laws call for the court and the public to assume that rape survivors are, or were, virgins. Thus these laws privilege chastity and merely allow more complainants to pass as 'good girls' and thus deserving of victim status. Being 'experienced' is

still socially relevant even where it is rendered legally irrelevant.

Where judges engage in a meaning-making exercise to determine 'what really happened', they make use of and recreate an acceptable script of sexual interaction.[51] This script, drawing on the themes and symbols of a patriarchal world, inevitably provides a vocabulary of understanding that suits masculinity.[52] This script represents such a narrow and artificial conception of rape that it can be termed a 'rape myth'.[53] To legitimate their claims, complainants must conform to one of a category of 'real victims' who must perform an accepted role in the rape script. Complainants are thus cast as either 'the madonna' or 'the whore, the tease, the vengeful liar, or mentally and emotionally unstable'.[54] In this case the judge normalises this patriarchal falsehood by writing as though a negative characterisation of the complainant is inevitable, universal and objectively correct. We forget, because the judge chooses to render this fact unimportant, that she was only 11 years old at the time she was raped.

CONSENT

The expanded statutory definition of rape was intended to move our society from understanding rape as an unusual act of deviance to understanding rape as a systematic means of acquiring power in a dysfunctional and unequal society.[55] The South African culture (or cultures) of sex mimic those of other patriarchal societies. We operate within an aggressive-acquiescing model in which men initiate sex, dictate its nature, and physically control the encounter while women are the sites on which men perform their dominance.[56] This model proposes that sexual aggression, including the propensity to rape, is an extension of normative sexual behaviour in these societies.[57] It is an enforcement of the social order and not a violation of it. It is a means by which men establish their identity.[58]

SORMA defines consent as 'voluntary and uncoerced agreement'.[59] The factors listed in s1(3) attempt to expand this concept to include circumstances in which women submit to sex due to their disempowerment.[60] Yet, the success of law reform will always be limited by the manner of its adjudication, because where the court perpetuates a narrow definition of rape, it normalises coercive, patriarchal sexual behaviour as appropriate intimacy and consensual sex.[61] Thus aggressive-acquiescing sexual norms remain when judges fail to clearly cast exploitative, abusive and violent behaviour as non-consensual criminal conduct.[62]

In the case of *S v Koopman*[63] the judge's depiction of the rape of the deceased victim is hesitant, and the language in use is cautious and qualifying, and fails to condemn the behaviour of the accused. In so doing the court depicts the complainant as complicit in her own subjugation.[64]

The court identifies two strands of evidence. The first is circumstantial but persuasive:

> … it was submitted on the basis of evidence given by Mrs Kroese and Ms Strydom to the effect that Nicolene disliked Mr Koopman, that it was improbable that she would have consented to sexual intercourse with him. Further factors which led to the inference that consent had not been given, it was submitted, were that Nicolene was menstruating at the time; that a tampon had been carelessly discarded on the floor of the sitting room; that Ms Gouws was in the house, and that it is unlikely on this account that Nicolene and Mr Koopman would have engaged in intercourse in a readily accessible part of the house where they might have been discovered by her.[65]

At this point it appears, from words like 'unlikely' and 'improbable', that the court is leaning toward a conclusion of rape. The court clearly seems to be favouring an idea that the evidence here forms a sum; that the circumstantial evidence 'in addition' to clear evidence of a violent attack must amount to rape. This conclusion should have been cemented by the following:

> In addition … Nicolene had been viciously assaulted with a skateboard and had suffered extensive facial injuries and had scratched Mr Koopman with her fingernails in what must

> have been an apparent struggle, [evidence of which] militated against the fact that she consented to having intercourse with Mr Koopman.[66]

The court asserts that its starting point is 'the fact that she consented'. This is not our assumption, in law or in this case. The full weight of the evidence – Nicolene's age, her relationship with the accused, and the extreme violence of his attack on her – in fact illustrates that it was improbable that she had consented.

Judges continually cage their reasoning in restrained and neutral language to maintain the illusion of their objectivity.[67] This strategic talk accords with Matoesian's metaphorical reference to the criminal trial as a game in which the court seeks to legitimate its own authority in the process of determining who wins and who loses.[68] Facts do not just appear, but are constructed in this falsified contest between equals.[69] Rather than following a line of reasoning in a linear fashion, in which the evidence against the accused is arranged 'in addition' toward the truth, the adjudicative act is written in a back-and-forth structure in which the central line of objectivity must be maintained. Every time the evidence works against the accused, the judge responds with a qualifier that nullifies the trajectory of the complainant's story.[70]

The problem with this is that the complainant and accused – as characters in the narrative of 'what really happened' – do not bear equal brunt of the allocation of blame.[71] In all the cases analysed it was found that the accused offered little to no evidence. Blanket denials, accompanied by little evidence, are the norm. As such, the 'blame work' must be done using the complainant's evidence, and the accusatory sense generated by the interrogation of this evidence is directed solely at the complainant.[72] It is she, and not the accused, who becomes the object of suspicion.[73] Where she appears credible an inference is generated that she is 'less' blame-worthy. Where her evidence is insubstantial she appears 'more' blame-worthy, because when her evidence fails to portray the accused as wholly and clearly criminal, she appears to have contributed to her own violation.[74] While this may be unavoidable in an adversarial system in which the state must discharge the burden of proof, this – the sheer weight of the continuing critique of the complainant's evidence – results in her being cast as blame-worthy, irrespective of the accused's conviction.[75]

Initially the South African Law Reform Commission advocated for a shift from consent as the major determinative standard of rape, to one that focused entirely on coercive circumstances. The Act ultimately incorporates both criteria.[76] Where the court continues to focus on evidence of the rape as relevant to consent alone it continues to place the responsibility for resisting rape in the hands of the complainant.[77] Furthermore, the consent standard does little to affect the normalisation of aggressive sexual behaviour, because the accused's behaviour is not the object of scrutiny under this standard.[78] Irrespective of how aggressive the male's behaviour was, the complainant's 'consent' prevents the condemnation of this behaviour and instead characterises it as acceptable sexual behaviour. Thus, where the definition of rape continues to be interpreted in a consent-centric manner, it constricts the sphere of unlawful male activity.

THE CAUTIONARY RULE

The Department of Justice and Constitutional Development, according to departmental publications, is under the impression that *S v Jackson*[79] abolished the general cautionary rule, as it pertains to rape complainants, in common law.[80] This rule made it mandatory for judges to treat the testimony of a rape complainant with caution as 'women are habitually inclined to lie about rape'.[81] The Department's assumption – that the cautionary rule is no longer applied in all rape cases – is worrying. The cautionary rule has not been 'abolished'. Despite the Department of Justice's portrayal, it remains applicable. The judges of the WCHC still refer to the court in *Jackson* as advocating for the application of the cautionary rule on a discretionary basis, as 'the evidence in a particular case may call for a cautionary approach.'[82]

The Department's misunderstanding means that the intention behind s60 of SORMA, which states that 'a court may not treat the evidence of a complainant … with caution, on account of the nature of the offence', is at odds with its interpretation. Confusion remains as to whether the cautionary rule, although no longer mandatory, is applicable at the judge's discretion. This divergence, between the clearly stated legislative objective of s60 and the failure of the judiciary to expand on the *Jackson* ruling, demonstrates the judiciary's reluctance to dispense with archaic precedent in favour of the proactive interpretation of modern legislation. Instead, judgements of the WCHC suggest that the cautionary rule is applicable 'where reasonable grounds are suggested by the accused for suspecting that the State's witnesses have a grudge against him or a motive to implicate him'.[83] However, I suggest, this is not a circumstance (as the court implies) that falls outside s60's caveat of 'on account of the nature of the offence'. The notion that 'women habitually lie about rape' is born of the idea that women falsely accuse men of rape for vindictive reasons. Suggesting that the complainant may have a 'grudge' or 'motive' to falsely implicate the accused therefore falls within the ambit of s60, because these words are mere proxies for the same male-privileging idea; namely that women are liars who 'cry rape' to further their own malicious agendas.[84] Yet judges prefer to refer to *Jackson*, rather than attempt such a reading of s60.

Furthermore, the cautionary rule is still applied in cases in which the complainant is a single witness. Once again it should be clear that the legislature's intent when drafting s60 was to abolish any and all rules demanding that a complainant's testimony in a rape trial be approached with caution. However, yet again, the judiciary has not taken up this challenge. This is particularly obvious when one considers the implications of the application of this rule,[85] as it depicts complainants in rape cases as deserving of greater mistrust and scrutiny. Where their testimony is uncorroborated, the court undermines their credibility by asserting the necessity of a rule which, in effect, implies that it is possible, even probable, that the complainant is lying.[86] Where judges continue to routinely apply the single-witness cautionary role, without acknowledging its prejudicial nature, they fail to realise that this rule unnecessarily clouds the complainant's character and, symbolically, the character of complainants in general.[87] It is difficult to see how, when complainants in rape cases are so often single witnesses, this specific cautionary rule does not relate to 'the nature of the offence' and as such should be abolished by s60.[88]

INSTITUTIONAL CONSTRAINTS

In writing a judgement a judge has the power to recreate traditional rape narratives.[89] Doing so requires the conscious acknowledgement that the standard narrative and language of a rape judgement assumes a normative pattern plagued by the patriarchal understandings described above.[90] Yet, while the law enables and constrains culture, the legal institution has its own culture that constrains judges' freedom of thought and action.

Knox and Davies write that the legal institution must act to 'efface its own rhetoricity' and claim neutrality and objectivity in order to function with authority and thus legitimacy.[91] This depicts the normative pattern of rape judgements as needing to create an authoritative verdict, founded in clear and logical reasoning, and based in legal principle and precedent.[92] The security provided by the historical status of this pattern continues to give the judiciary, as judges join and leave the Bench, the appearance of consistency, objectivity and timeless authority.[93]

The maintenance of this image is an institutional goal, like patriarchal goals, that exerts considerable force on the judiciary. The trajectory of the judicial reasoning must serve this end as well as, or sometimes better than, the ends of patriarchal ideology.[94] Thus judgements, in this instance, not only talk about rape. They also talk about law and the judiciary symbolising the continuing dominance of traditional legal reasoning. This is the same mode of reasoning that, as has been noted by Rifkin, for many

decades comfortably accommodated the idea that women were property.[95]

In approximately half of the rape trials brought before the WCHC in the last two years, the state brought its cases on behalf of a woman murdered by the accused. In instances where the complainant is deceased, the state – first in prosecution and then from the Bench – must speak for or 'be' the complainant.[96] The accused's testimony, the male character, speaks directly, while the female character is spoken for – her actions are scrutinised, her motivations and reasoning are inferred, and an artificial person is constructed. She is 'told' by the court.[97] This is problematic. While judges often make mention of the trauma caused to living complainants they cannot seem to be overly sympathetic towards, or appear wary of, the character in the narrative 'played' by themselves.[98] These judgements, while no less likely to result in a guilty verdict, are somewhat hollow in terms of any real grasp of the nature of the suffering of rape victims. In these instances rape becomes a statutory term and not a tangible, lived experience.

As stated by Davis J in the judgement of *Davids v S*:[99] '… the best we can do in the circumstances of this case is to understand the enormity of that which was perpetrated on you'.[100] Yet it appears from the judgements analysed that judges fail to meet this standard. They write sparsely. Often no explicit mention is made of fundamental rights and no attempt is made to capture the complainant's experience of her violation beyond a token mention of the victim's evident pain. Instead, 'real rape' is defined by the impersonal content of the J88 medico-legal report and a description of 'real evidence'. Rees writes that, in refusing to neither clearly confirm nor deny the complainant's allegations, judges reinforce their expertise by distancing themselves from contentious issues.[101] This ensures their authority but limits the significance of their judgements.[102]

The contemporary judgements of the WCHC do not reveal a sense of dialogue or negotiation involved in the application of rules. On the contrary, every judicial decision appears unambiguous and certain, and thus inevitable. These judgements do not explicitly or implicitly reveal that judges have any discretion at all. Instead their exact process, method, structure and understanding appear as though it is and was the only choice available to them. The meta-narrative – the story about how the story is told – is missing, and the judges' creative role in defining the parameters within which rape is reproduced is concealed.[103]

Through Menkel-Meadow's lens it appears that our lower courts are mostly concerned with what she calls mid-level discourse.[104] It is mid-level in that it focuses on the dominant principles desired by the legal institution itself, such as efficiency, predictability, flexibility and fairness.[105] It does not incorporate lower discourses such as empathetic inquiries into the lived reality of citizens.[106] Nor does the WCHC make use of high-level discourse such as philosophy, social and political theory.[107] Ultimately, writes Menkel-Meadow, 'this midlevel discussion of rules separates theory from practice and in the end teaches neither'.[108] Disregarding modern theories and experiences that should inform modern legal rules renders these rules static and, as a cultural producer, creates 'real rape', which is decidedly unreal.

A further factor restricting the judiciary to formal, unsympathetic language is the tradition of the authoritative 'voice'.[109] The judiciary needs the appearance of authority to perpetuate its own legitimacy. Authority is associated with masculine traits, and judges, regardless of their gender, who want to establish their own credibility according to these established norms must display the archetypal masculine mind of a judge.[110] They must appear unemotional, powerful, rational and certain. To do so they must speak precisely and dispassionately. They cannot be openly self-critical because uncertainty is a stylistic feature of feminine speech.[111] Thus judges are doubly restricted by patriarchy and their institutional culture. It is unsurprising that a judge who creates a female character within these constraints will craft an unrealistic non-person with whom it is not easy to empathise. The concept of 'real rape' necessarily reflects patriarchal and institutional

pressures.[112] Yet, although a judge's individual capacity to manipulate tradition is limited, it is not non-existent:

> ... social structures do not do anything. If social structure exists and persists it is only because members make social facts happen and if social structure pre-exists and constrains it is only because members interpret, reify and reproduce such properties as stubborn facticities.[113]

Adjudication in its current form is not a fact; it is a system developed for solving legal disputes. As the law and legal claims evolve, so too should the approach of those who must resolve these disputes. The judiciary, as an independent branch of government, must actively accept this challenge. In this regard it is important to recall that the independence of the judiciary and the structures supporting this independence ensure judges' security of tenure. The judiciary does therefore have a measure of security that empowers it to develop a judicial culture to better suit the constitutional era.[114]

The potential to write judgements that empower women and women's understandings of the law is evident in the 'feminist judgements' of initiatives such as the Women's Court of Canada and the UK Feminist Judgements Project.[115] These judgements are characterised by intersectional portrayals of women, a refusal to rely on 'expert' evidence, and the incorporation of social science and policy sources.[116] They actively attempt to lend content and power to 'feminist common knowledge' and 'feminist practical reasoning'.[117]

Altering the way judges adjudicate need not be a complete and instantaneous revolution.[118] Judges do, however, have a duty to infuse constitutional values into our law and to implement SORMA in keeping with its purposes. In light of the Constitution and modern consciousness of the relationship between gender, power and violence in our society, one of the end goals of adjudicating rape cases should be to reproduce an appropriate image of 'real rape' and 'real victims'.[119]

CONCLUSION

Our Constitution requires that the law be a means to achieve social justice. Gender shapes the legal system and, should the judiciary continue to speak with a patriarchal voice, the achievement of gender equality will be slowed.[120] Women need to be listened to, heard and spoken for by self-conscious and critical judges. Rape complainants require more than just the vindication of a purely legal claim; they require the validation of their interpretation and experience of harmful sexual behaviour. SORMA has the potential to allow for this. Yet, when judges let the constant noise of patriarchy, which has been so constant that we forget it need not be so loud, overwhelm them, they curtail this potential.

The Ministerial Advisory Task Team on the Adjudication of Sexual Offences Matters recently published its guidelines for the re-establishment of dedicated Sexual Offences Courts.[121] Continued mention of the Courts' adoption of a 'victim-centred approach' is made in this document, yet it provides no idea of what this approach may look like. Without training or direction, judges must rely on judicial culture, which they are capable of influencing, to determine how they will talk about rape in future. It is only by being self-critical, and writing critically, that judges can alter their institution from within.

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NOTES

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VISUALISING PROPERTY CRIME IN GAUTENG

Applying GIS to crime pattern theory

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While the high rate of crime in South Africa has received much international attention, mainly focused on violent crime, the vast majority of offences reported to the South African Police Service concern property and other non-violent offences. The present study explores the relationship between one of the most frequently reported property crimes (thefts out of motor vehicles) and the environment in which they occur, using Geographic Information Systems (GIS). Utilising the framework of crime pattern theory, crime generators and attractors are visually examined in order to determine whether they can explain concentrations of crime. We argue that when used in conjunction with relevant social theory aimed at the examination of the determinants of crime and criminality, GIS can be a powerful practical tool in the presentation of crime data.

The last three decades have seen a growing interest in the relationship between crime and place. This is illustrated by a considerable body of writings on the ecology of crime and the development of a new subfield in criminology called environmental criminology. Environmental criminology is a family of theories that share a common interest in criminal events and the immediate geographical/spatial context in which they occur. Researchers examine crime patterns and seek to understand and explain them in terms of environmental influences associated with these contexts.[1] Most importantly, this perspective is interested in the occurrence of the crime itself, as opposed to other criminological theories that are concerned with criminality, that is, how biological, developmental and/or social factors influence a criminal offender.

The advancement of the environmental perspective has been assisted by the recent development of widely accessible computerised mapping and spatial analysis techniques. Most commonly, these mapping and spatial analytic techniques are carried out in Geographic Information Systems (GIS), which house, manage and represent spatial data in a way that can significantly improve the ability of researchers to look more closely at the spatial variations and geographic contexts of crime occurrence.[2] Perhaps the most intriguing – and powerful – property of GIS is that it can be used as

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a visualisation and data management tool, within which the integration of data from a diverse set of sources can be synthesised into a single geo-referenced database, containing observations from proximate spatial locations. Researchers can represent spatial patterns and visualise them across locations, providing insight into potential spatial clustering, spatial heterogeneity and variations over time. The advancement of GIS technology now allows us to examine data more rigorously as a way of generating new hypotheses, testing existing hypotheses and identifying unexpected spatial patterns.[3]

Research on crime and place in the United States and elsewhere has benefited from these advancements. However, this has not been the case in South Africa where, until recently, spatial data on crime and place were not readily available to researchers. Fortunately this is changing, given the availability of more reliable census data and the improving access to crime data through the efforts of some of the country's non-governmental organisations. Research institutions such as the Institute for Security Studies (ISS) have made it a point to gather spatial data, including the data for the current study. Notably, South Africa's socio-political history makes it uniquely amenable to ecological analyses of crime due to the historical fragmentation of space, the segregation of state-defined population groups into certain spaces, and surveillance and control of those spaces by the former apartheid regime.[4]

The environmental perspective is based on three simple premises. The first is that the nature of the immediate environment significantly influences criminal behaviour. All behaviour is viewed as resulting from a person-situation interaction, and the environment plays a fundamental role in initiating crime and shaping its course. Secondly, the distribution of crime in time and space is not random. Crime is patterned according to the location of criminogenic environments and will therefore be concentrated around crime opportunities and other environmental features that facilitate criminal activity. Finally, the relationship between criminogenic environments and crime patterns can provide a valuable tool in preventing crime. Based on this reasoning, environmental criminologists argue that they are strategically positioned to provide practical solutions to crime problems.[5] The provision of solutions, along with the guidance of police action, has become a major goal of environmental criminology. Its applied focus has attracted researchers, criminal justice agencies and crime prevention practitioners alike.

While proponents of the environmental perspective praise its practicality in reducing crime, many researchers critique aspects of the perspective. Their critique primarily revolves around the perspective's sole interest in criminal events, while disregarding traditional theories of crime concerned with criminal offenders. For example, Lee argues that the field of environmental criminology 'remains theoretically shallow and empirically narrow' and environmental theories 'are even more bereft of depth'.[6]

It is important to consider these critiques as one contends with the potential policy implications that might result. We argue that when used in conjunction with relevant social theory aimed at the examination of the determinants of crime *and* criminality, GIS can be a powerful practical tool in the presentation of crime data. Here we move away from the theoretical limitations of environmental criminology and focus on the methodological practicality of exploring property crime through the use of GIS technology. Specifically, we use GIS in conjunction with crime pattern theory in Gauteng to visualise the spatial relationship between property crime rates and major crime attractors and generators. Although Gauteng is the smallest of South Africa's nine provinces, it is the most urbanised and populous[7] and has been described as 'the home of crime' by former Police Commissioner General Bheki Cele, accounting for around half of the country's crime statistics.[8]

While South Africa's crime problem has received much international attention, most of it focused on violent crime, the vast majority of offences reported to the South African Police Service

(SAPS) concern property and other non-violent offences.[9,10] In fact, while violent crime has been decreasing over the past decade, property crime has been on the rise.[11] Our study seeks to examine one of the most frequently reported property crimes, thefts out of motor vehicles, through the visualisation of spatial variations in the occurrence of the crime in relation to its local surroundings.

SPATIAL/LOCATIONAL FEATURES OF CRIME

Beginning in the 1800s, many theories have been developed in the West to explain the relationship between crime and place. The roots of these theories trace back to early positivists and social ecologists Guerry and Quetelet in France during the 19th century, who attempted to explain differences in community crime levels in terms of the varying social conditions of the resident population.[12] In the early 20th century, ecological research on crime increased with the influential sociological tradition emerging from the Chicago School, which argued that we cannot understand social life without understanding the arrangements of particular social actors in particular social times and places.[13] Most influential was Shaw and McKay's work on delinquency in Chicago.[14] Their findings regarding the stability of delinquency over time within certain neighbourhoods, as well as the negative relationship between crime and distance from central business districts, gave rise to the social disorganisation theory of crime.[15]

The tradition of the Chicago School has seen a revival in contemporary ecological studies of crime, and its methodological and theoretical underpinnings have advanced with the assistance of GIS. For example, spatial data have been utilised to study social disorganisation in areas ranging from suburban Texas[16] to parts of Utrecht, Netherlands.[17]

The identification of crime hot spots by Brantingham and Brantingham in the 1980s provided a turning point in refocusing attention to spatial/locational features of crime.[18] During this time, the prevailing emphasis in the UK and US on treatment and changing criminals or their environment was widely seen not to work. This led to a focus on small-scale situational crime prevention schemes, based on notions of rational choice and intended to reduce opportunities to offend.[19]

Though there is no common definition of hot spots, it is collectively understood that 'a hot spot is an area that has a greater than average number of criminal or disorder events, or an area where people have a higher than average risk of victimisation'.[20] They are usually smaller than neighbourhoods and comprise block or street segments that experience inordinately high levels of crime. Hot spots show the potential value of place in the analysis of crime, and studies have found a relationship between crime hot spots and certain land uses and population characteristics.[21]

CRIME PATTERN THEORY

Ever since Shaw and McKay published their work on persistent concentrations of deviancy in the 1940s, many explanations of differences in neighbourhood crime levels have been proposed. The size of the geographic area of crime is pertinent.[22] Since different theories of crime explain crime at different levels of analysis, the choice of theory is dependent on the type of problem being mapped. Three levels of analysis have been identified: macro, meso, and micro.[23] Ultimately, the level at which one examines crime is dictated by the questions one asks, which will in turn determine the usefulness of the results. Theories of crime can only be useful in guiding crime mapping if an appropriate theory for the level of analysis is selected.[24]

The theories most appropriate for the meso level of analysis are neighbourhood theories of crime. Meso-level analysis is rooted in the Chicago school and involves the study of crime within the sub-areas of a city or metropolis. These areas represent intermediate levels of spatial aggregation and may range from suburbs and police districts down to individual streets and addresses.[25] Neighbourhood theories such as

crime pattern theory (CPT) deal with large areas, including square blocks, communities and census tracts, and are most appropriate for the present study because we examine property crime at the precinct level. Hot spots – that is, neighbourhood concentrations of property crime – are examined in order to discover whether neighbourhoods within Gauteng have significant property crime problems or not.[26]

CPT is highly compatible with data visualisation through GIS. Given that our goal is to visualise the relationship between the occurrence of crime and the locations in which they occur, CPT is a useful framework from which to begin. More specifically, CPT seeks to explain neighbourhood-level hot spots by investigating the way that offenders seek and find opportunities for crime in the course of their everyday lives.[27] The theory combines elements from rational choice[28] and routine activity theory[29] to help explain the distribution of crime across spaces, and argues that it is the interactions of offenders with their physical and social environments that influence their choice of targets.[30]

Three main concepts are included in CPT: nodes, paths and edges. Nodes refer to where people travel to and from. Paths refer to the actual paths that people take to and from their personal activity nodes such as home, school and entertainment areas, and edges refer to the boundaries of areas where people live, work, shop, or seek entertainment. In our research we examine 'major nodes' or physical locations that are major points of interest within Gauteng. We also pull out a subset of this group and examine crime in relation to shopping centres, which are spatially represented as nodes; and we visually inspect the relationship between the occurrence of crime and access via streets, which are visualised as lines.

The rationale of CPT is that offenders follow similar spatial-temporal movement patterns to everyone else and operate within their own awareness space – the set of normal paths within the visual range of the offender. While engaging in their routine activities, reasonably rational offenders will note places without guardians and managers. Crime occurs in areas where the awareness space of the offender transacts with suitable targets. Individuals are likely to commit their initial crimes near their learned paths or the activity nodes of their friendship network, and crimes are likely to cluster near these activity spaces, with a higher concentration near the activity nodes. Therefore, places with routine activities and situational precipitators, located along the routes offenders travel, will be more likely to be subject to criminal activities.[31]

CPT is based on the premise that crimes do not occur randomly or uniformly in time and space. There are patterns to where criminal activity occurs. How targets come to the attention of offenders influences the distribution of crime events over time and space, as well as among targets. Central to the explanation of the concentration of crime at certain locations are the concepts of crime generators and crime attractors. *Crime generators* are places that attract large numbers of people for reasons unrelated to criminal motivation, such as shopping areas, office buildings or sports stadiums. They can produce crime by creating particular times and places that provide appropriate concentrations of people and other targets, in settings that are conducive to criminal acts. Potential offenders may notice and exploit criminal opportunities as presented. *Crime attractors* are places affording criminal opportunities that are well known to offenders. These facilities have potential victims congregate near or inside of them, or may themselves be vulnerable to criminal penetration, such as bars, parking lots, or large shopping malls, particularly those near major public transit exchanges. Offenders with criminal intent are attracted to these places because of the known opportunities for particular types of crime, and they may become activity nodes for repeat offenders.[32]

In our research these contexts are largely unknown, and provide us with an opportunity to explore crime occurrence across any number of intersections and with any number of approaches. Moreover, ecological theories of crime, such as

CPT, have not been assessed to explain property crime in South Africa. Our research is therefore exploratory in the sense that it aims to visualise patterns of crime in relation to potential crime attractors and generators. It is our intention that these exploratory results can begin to contribute to the building of a knowledge base associated with the ecological examination of crime in South Africa.

METHODOLOGY

With the use of newly available data, this research explores the relationship between property crimes and the environment in which they occur. More specifically, the study seeks to answer the following questions: Are thefts out of motor vehicles concentrated in specific neighbourhoods? In other words, are there hot spots of this type of property crime? Secondly, what is the nature of the immediate environment surrounding thefts out of motor vehicles? Thirdly, is this type of property crime concentrated around the location of criminogenic environments exemplified by crime generators and crime attractors? Finally, can the environmental perspective provide practical and appropriate solutions to the problem of thefts out of motor vehicles? This last, and more theoretical, question is given most attention in the final section of the article.

Data and measures

Data for the present project were obtained from the Governance, Crime and Justice Division of the ISS. Recently, the Governance, Crime and Justice Division began geocoding annual statistics for 29 different crime categories for all 1 118 police station precincts in South Africa between 2003 and 2013, as well as approximately 150 demographic and other variables. All data used were in the form of ESRI Shape Files.

The dependent variable, thefts from vehicles, was originally obtained from the SAPS. Crime statistics are released by SAPS in an aggregated form as a crime count per police station boundary. The crime data are aggregate counts that represent the number of thefts out of motor vehicles within police precincts. Demographic and other variables can be overlaid on top of these areas, which each contain a single police station. In order to take the population distribution into account, the rate of thefts out of motor vehicles is calculated per
10 000 members of the population.

The spatial distribution of thefts out of motor vehicles will be examined independently and in conjunction with the components of crime pattern theory. In order to examine the environment surrounding this type of property crime, we utilised a number of independent variables that are considered crime generators and/or crime attractors, specifically shopping centres, major roads, and major nodes (including retail and industrial nodes and central business districts) in Gauteng.

Analytic techniques

A descriptive and exploratory examination of individual variables was conducted in order to answer the above research questions. This examination was both statistical and spatial in nature, and yielded a series of useful information concerning the utility of GIS in the visualisation of crime data within the environmental criminology framework.

Firstly, a map of theft out of motor vehicle rates was created in ArcGIS 10.0 by calculating the rate of thefts out of motor vehicles per 10 000 members of the population. The map is based on quantile classifications, a method that arranges all observations from low to high and assigns equal numbers of observations to each classification category. In other words, it sorts crime cases into groups with equal numbers of cases in each group. This approach is useful when there is a need to highlight a proportion of the observations.[33]

In order to facilitate a more rigorous analysis of spatial patterns, exploratory spatial data analysis procedures (ESDA) were used. A central feature of ESDA is the use of formal statistical tests to determine whether crime locations show evidence of clustering, or are randomly distributed.[34] The

present study utilised the GeoDa software application for ESDA and made use of its functions of spatial data manipulation and utilities, data transformation, mapping, exploratory data analysis and spatial autocorrelation.

GeoDa provides several statistical applications for conducting exploratory data analysis. In order to test for evidence of crime event clustering (i.e. whether thefts from vehicles tend to be concentrated in specific neighbourhoods), the Moran's I spatial autocorrelation technique was utilised. Spatial autocorrelation techniques test whether the distributions of point events are related to each other. The Moran's I statistic works by comparing the value at any one location with the value at all other locations. Moran's I requires an intensity value for each aggregate unit, which is then assigned an intensity value (in this case, the rate of thefts out of motor vehicles within a police precinct). The Moran's I result varies between -1.0 and +1.0, with a positive coefficient indicating that places close together are statistically more alike, a negative coefficient that places close together tend to be dissimilar to one another, and a coefficient of approximately zero, indicating that the attribute values are randomly spread over space. Where aggregate units that are close together have similar values, the Moran's I result is high, indicating spatial clustering of high values (hot spots), low values (cold spots), and medium values.[35]

The assessment of global spatial autocorrelation, however, needs to also be supplemented by local measures of spatial dependence. In contrast to a global statistic such as the Moran's I (which is a single number or graph that indicates whether the null hypothesis of spatial randomness is satisfied for the complete map), a local statistic is designed to detect specific locations of elevated counts or rates.[36] Such measures can help us identify statistically significant, independent clusters of thefts out of motor vehicles. Local indicators of spatial association (LISA) statistics were used to assess the local association between data by comparing local averages to global averages.[37] These can be used to identify significant patterns of spatial association around individual locations such as hot spots, and can assess the extent to which the global pattern of spatial association is spread uniformly throughout the data or whether there are significant types of locations affecting the computation of Moran's I.[38] LISA statistics are therefore useful in adding definition to crime hot spots and placing a spatial limit on those areas of highest crime event concentration.

In keeping with the framework of crime pattern theory, the study also sought to examine the surrounding locations of hot spots of thefts out of motor vehicles. With the use of ArcGIS 10.0, crime generators and attractors were overlaid on top of the map of significant clusters in order to visually inspect whether the environments surrounding hot spots are criminogenic.

RESULTS

Figure 1 displays the rates of thefts out of motor vehicles per 10 000 members of the population. A visual inspection of the map identified several spatial clusters that experience high and low rates of property crime.

Results from the Moran's I spatial autocorrelation technique can be seen in Figure 2. The Moran's I statistic is easily visualised in a graph called a Moran scatter plot. The four quadrants in the Moran scatter plot in Figure 2 identify four types of spatial association between a location and its neighbours. Quadrants I (upper right) and III (lower left) indicate a positive spatial association. In Quadrant I, a location with an above-average value is surrounded by neighbours whose values are also above average (high-high). In Quadrant III, a location with a below-average value is surrounded by neighbours whose values are also below average (low-low). Quadrants IV and II indicate a negative spatial association. In Quadrant IV, a location with an above-average value is surrounded by neighbours with below-average values (high-low) and in Quadrant II, a location with a below-average value is surrounded by neighbours with above-average values (high-low). The slope of the regression line in the scatter plot is the global Moran's I. The global Moran's I for thefts out of motor vehicles is 0.431,

indicating positive spatial autocorrelation across crime event counts.

Since the null hypothesis of spatial randomness was sufficiently rejected and evidence for overall clustering was found, LISA statistics provided information about the nature of the clusters (high or low values) and their location. Figure 3 illustrates the LISA cluster map for rates of thefts out of motor vehicles. The cluster map shows the four types of local spatial autocorrelation (high-high, low-low, high-low, low-high) for those precincts with a significant local Moran statistic. The dark green shaded areas correspond to clusters of police precincts that experience high rates of thefts out of motor vehicles, and the light green shaded areas correspond to clusters of precincts that experience low rates of thefts out of motor vehicles. These precincts have been listed in Table 1. From this map we can statistically determine the precincts that are hot spots for thefts out of motor vehicles, as well as the precincts that experience considerably fewer thefts out of motor vehicles than would be expected if this type of property crime were randomly distributed across the province. However, even though the LISA cluster map suggests interesting locations, it does not provide

Figure 2: Scatter Plot and Global Moran's I of rates of thefts out of motor vehicles

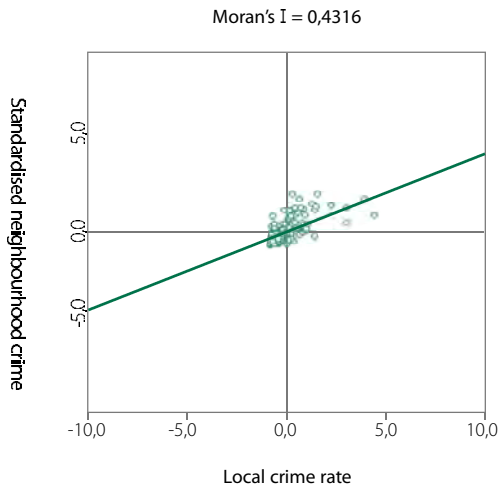


Figure 1: Rates of thefts out of motor vehicles per 10 000 population

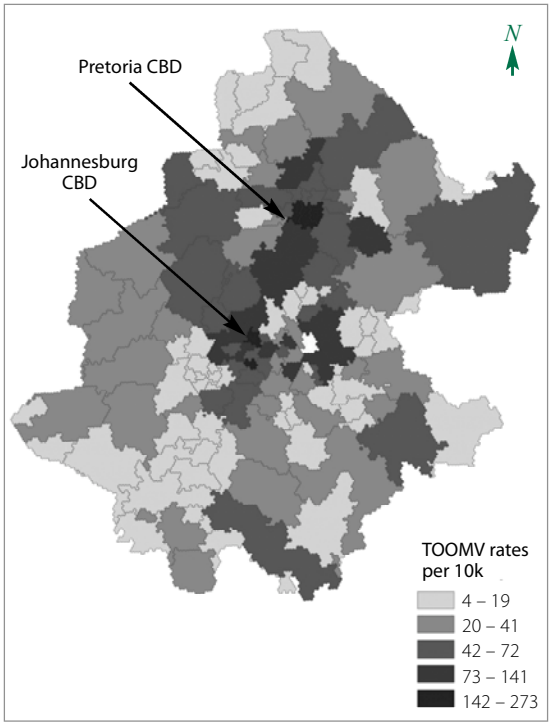


Figure 3: LISA cluster map for theft out of motor vehicle rates in Gauteng

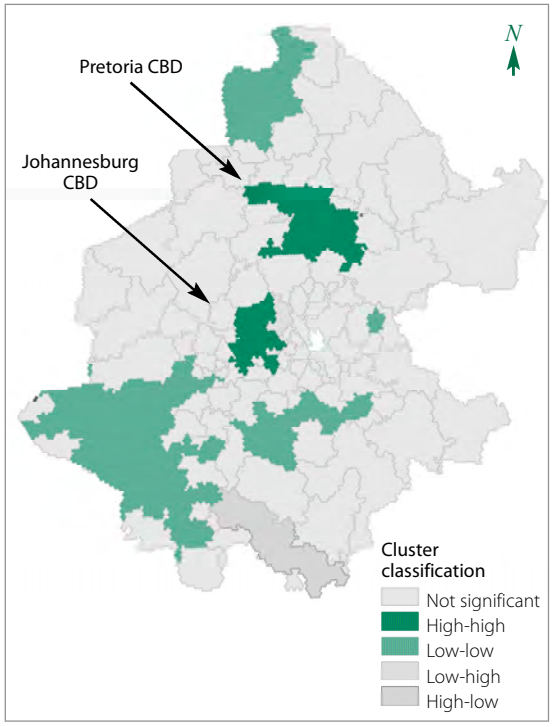


Table 1: Gauteng police precincts located within significant spatial clusters of theft out of motor vehicle rates

High-high (police precincts)	Low-low (police precincts)
Hercules	Makapanstad
Wonderboompoort	Loate
Pretoria Moot	Dube
Villieria	Klipgat
Pretoria West	Mabopane
Pretoria Central	
Sunnyside	Putfontein
Brooklyn	
Garsfontein	Tsakane
Lyttleton	Vosloorus
Wierdabrug	Katlehong
	Edenpark
Sandton	Kliprivier
Randburg	
Linden	Moroka
Rosebank	Protea Glen
Bramley	Westonaria
Norwood	Carltonville
Parkview	Fochville
Sophiatown	Orange Farm
Brixton	Sebokeng
Hillbrow	Vanderbijlpark
Jeppe	
Langlaagte	

a way to explain why the patterns occur where they do.[39] In order to determine whether the surrounding environments are criminogenic, crime generators and attractors (shopping centres, major roads and major nodes, including retail and industrial nodes and central business districts) were overlaid on top of the LISA map of significant clusters. Figure 4 displays the LISA cluster map with the locations of shopping centres in Gauteng overlaid on top. Shopping centres can be both crime generators and attractors. A visual inspection of the map clearly shows that the majority of shopping centres in Gauteng are located in significant clusters of high rates of thefts out of motor vehicles. The precincts within these clusters are significantly more likely to neighbour a precinct that also experiences high rates of property crime. Few shopping centres are located in other areas of Gauteng, including clusters with low rates of thefts out of motor vehicles, and areas where property crime was found not to be related to its location.

Major nodes can also be both crime generators and attractors. The major nodes included in the study were retail and industrial nodes and central business districts within Gauteng. Figure 5 displays the LISA cluster map with the locations of major nodes overlaid on top. A visual inspection of the map shows that most of the major nodes in the province are located in clusters with high rates of thefts out of motor vehicles. These are especially located in the central business districts of Gauteng.

Finally, major roads are considered crime attractors because they are well known to offenders as easy routes for movement into and out of the area, while victims also tend to use these roads for ease of movement. Where the density of roads is high, one might assume that property crime is generated due to access points into and out of areas with high numbers of potential crime targets. In order to inspect whether major roads could be attracting thefts out of motor vehicles, Gauteng's major roads were overlaid on the LISA map of significant clusters experiencing high rates of this type of property crime (see Figure 6). Not surprisingly, the major hubs of these roads are located in clusters that experience high rates of thefts out of motor vehicles.

Figure 4: LISA cluster map overlaid with locations of shopping centres in Gauteng

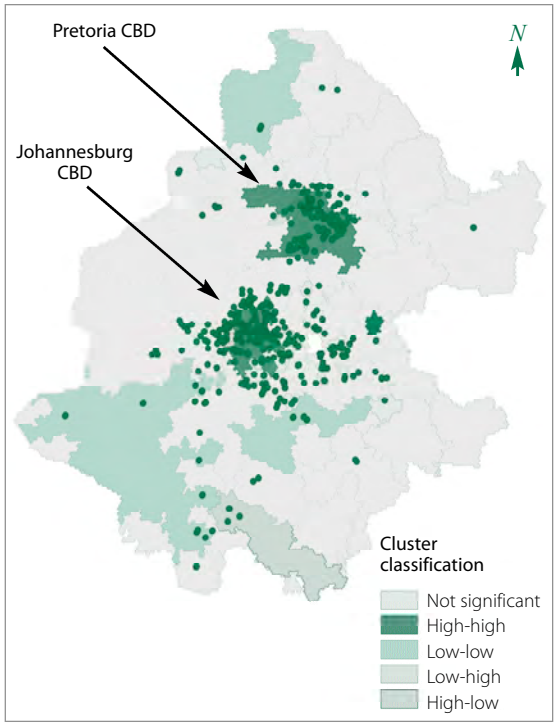


Figure 5: LISA cluster map overlaid with locations of major nodes in Gauteng

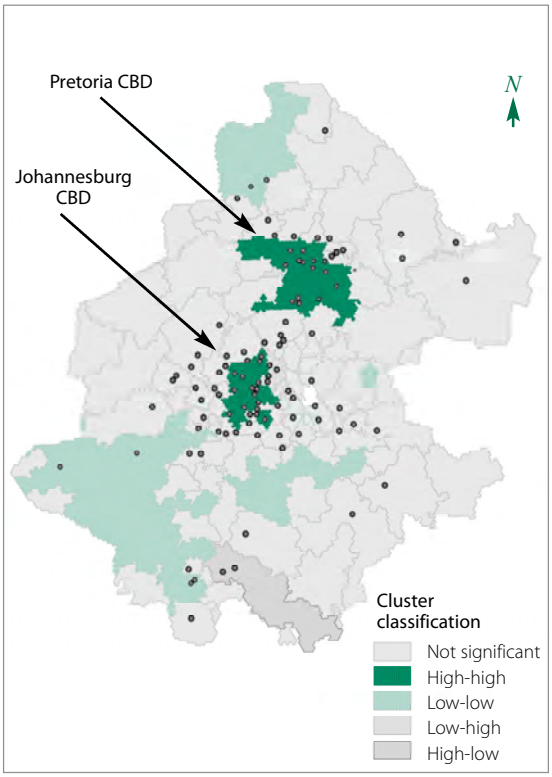
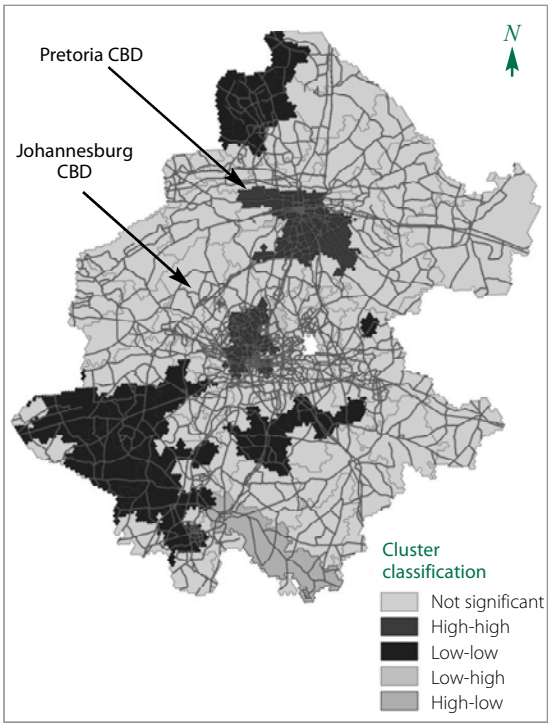


Figure 6: LISA cluster map with locations of major roads in Gauteng



DISCUSSION

The present study found that place does matter, and that the visualisation of crime can be descriptively linked to the physical location of crime attractors and generators within the framework of CPT. Thefts out of motor vehicles were found to be concentrated in specific precincts in Gauteng and did not occur randomly or uniformly in space. Indeed, significant patterns of criminal activity were found, including precincts with significant clusters (hot spots) of thefts out of motor vehicles, as well as precincts that experienced considerably fewer thefts from vehicles than would be expected if crime were randomly distributed across precincts. The precincts within significant clusters of high rates of property crime were predominantly located in and around the central business districts of Gauteng. In this way, the study aims to contribute to a better understanding of the nature of property crime in the province of Gauteng, South Africa. Though the limitations of environmental criminology remain, we find evidence of the practicality associated with examining such a framework within the confines of a GIS.

Though the examination of crime generators and attractors was based on descriptive analyses, our findings show that CPT can provide a useful framework for explaining neighbourhood-level hot spots, due to its focus on the way that offenders seek and find opportunities for crime in the course of their everyday lives. Most of the shopping centres and major retail and industrial nodes in Gauteng are located in areas that experience high rates of thefts out of motor vehicles, mainly in the central business districts of the province. If crime mainly occurs in areas where the awareness space of the offender transacts with suitable targets, as crime pattern theory purports, this is not a surprising finding.

Hot spots of thefts out of motor vehicles were also found in locations with major roads running through them. Major roads, like shopping centres and major nodes, can be crime attractors, because they afford criminal opportunities that are well known to offenders. Since individuals are likely to

commit crimes near their learned paths or activity nodes, and crimes are likely to cluster near these activity spaces, facilities along these activity nodes may themselves be vulnerable to criminal activity, as was the case in the present study. The present findings are therefore in agreement with Brantingham and Brantingham's commonsensical assertion that places with routine activities and situational precipitators located along the routes offenders travel, or near nodes that offenders frequent, are more likely to be subject to criminal activities.[40]

While indicative of the utility of such an approach, our study does have limitations. One such limitation could be the use of population counts as a denominator for calculating rates of property crime. This approach may create hot spot mapping output that misleads by exaggerating the crime problem in town centres that have few residents but a concentration of thefts out of motor vehicles. Ideally, it is preferable to use denominators that are directly relevant to the crime type for which a rate is created. In the present case, this would have been vehicle counts. However, such data were unavailable.

A further caveat could be the limitation to stationary information on crime and location. Though we found that place matters, social and spatial processes within places are non-stationary, and criminal activity can also be affected by variations in demographics, the built environment, economics and other social aspects that change across space and time. This point is especially relevant to South Africa, where urban space is drastically changing. Currently South Africa is characterised by great population mobility, increasing income inequality, multi-ethnicity, racial and ethnic segregation as well as family disruption.[41] While these changing social geographies of urban South Africa provide a unique ecological platform to hypothesise about crime, they also place limitations on the sole use of the environmental perspective, which does not spend much time focusing on these characteristics to explain crime but instead on the physical layout and proximate locations of crime.

As noted above, in addition to aiding scholars in their pursuit to understand why crime is concentrated in certain neighbourhoods, the identification of crime hot spots may play an important role in the development of strategies to combat crime.[42] If offenders are concentrated at a few places rather than mobile throughout an area, efforts to deter them should occur at this level. Findings from the present study could therefore contribute to recommendations for proper methods of combating this type of crime in Gauteng. However, it is important that the findings from this project are interpreted in the context of exploratory research, and any policy applications built upon the integration of social theory in their interpretation.

Recommendations that attempt to provide solutions to this crime problem and guide police action must be informed by an understanding of relevant social theory pertaining to the neighbourhood, and social conditions that exist in these spatial locations. Future research should build upon these findings in order to make them useful in practice. To that point, the present project was a first attempt at examining the relationship between property crime and space in South Africa. With the availability of newly developed data sets of spatial crime, demographic and socio-economic information, this is only the beginning of empirical research examining the spatial dimension of crime in South Africa. This could include investigations of factors associated with crime areas, such as unemployment, income, urbanisation rates and education levels.

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NOTES

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F v MINISTER OF SAFETY AND SECURITY

Vicarious liability and state accountability for the criminal acts of police officers

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The Constitutional Court judgement in F v Minister of Safety and Security [1] *is a ground-breaking judgement in two important respects: firstly, it finally does away with the fiction that an employee acts within the course and scope of her employment in the so-called deviation cases in the law of vicarious liability, and secondly it clarifies the normative basis for holding the state vicariously liable for the criminal acts of police officers. In this latter respect it significantly promotes state accountability for the criminal acts of police officers.*

In *F v Minister of Safety and Security* the Constitutional Court held the Minister of Safety and Security vicariously liable for damages arising from the brutal rape of a 13-year-old girl by a police officer who was on standby duty. Writing for the majority of the Court, Mogoeng CJ held that the police's obligation to protect citizens and the corresponding trust that the public is entitled to place in the police provide the normative basis for holding the state vicariously liable for the criminal acts of police officers, provided that a sufficiently close link is established between the criminal conduct and the perpetrator's employment as a police officer. In this case the police officer had not been in uniform, his police car had been unmarked and he had not been on duty but on standby. Nevertheless, the Court found that his use of the police car had facilitated the rape. Furthermore, the 13-year-old girl, Ms *F*, had identified him as a police officer by virtue of the police dockets and the police radio in the car, and had trusted him as a result. The Court held that these factors established a sufficiently close connection between the criminal conduct of the police officer and his employment to justify holding the Minister liable for the damages suffered by Ms *F*.

This article will begin by setting out the principles of vicarious liability as they have traditionally existed in our common law. It will next discuss the important Constitutional Court judgement in *K v Minister of Safety and Security*.[2] That judgment developed the common law of vicarious liability in two critical respects: firstly, it laid bare the policy-laden or normative character of vicarious liability and required that the normative

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considerations at play be expressly articulated by the courts. Secondly, it endorsed a new test for the imposition of vicarious liability in the deviation cases, which embraces such normative considerations. It is against this background that the judgement in *F v Minister of Safety and Security* will be discussed. *F* built on the judgement in *K* both in terms of the test for the imposition of vicarious liability in the deviation cases and the implications of this for state liability for the criminal acts of police officers.

VICARIOUS LIABILITY IN THE COMMON LAW

Vicarious liability means the liability of one person for the delict[3] of another. This form of liability applies to certain relationships, one of which is the relationship between employer and employee. Thus an employer is liable for the damage caused by the delict of an employee, committed while acting within the course and scope of her duties as an employee. The employer is liable despite the fact that it is the employee who has committed the wrong and the employer is not at fault. Vicarious liability is therefore at odds with a basic norm of our society, namely that liability for harm should rest on fault, either in the form of negligence or intention.[4]

The rationale for vicarious liability is to be found in a number of underlying principles. One of these is the creation of a risk or danger of damage to others. As it was put in the case of *Feldman (Pty) Ltd v Mall:*[5]

> [A] master who does his work by the hand of a servant creates [for his own ends] a risk of harm to others if the servant should prove to be negligent or inefficient or untrustworthy … he is under a duty to ensure that no one is injured by the servant's improper conduct or negligence in carrying on his work.[6]

Another principle underlying vicarious liability is the desirability of affording claimants effective remedies for harm they have suffered.[7] A further principle is the need to encourage employers to take active steps to prevent their employees from causing harm to members of the broader community.[8]

As the Constitutional Court has noted, there is a countervailing principle too: this is that damages should not be borne by employers in all circumstances, but only in those circumstances in which it is fair to require them to do so.[9]

The normative content of the above principles means that vicarious liability is fundamentally a policy-laden concept. Yet despite this, our courts have traditionally asserted (with few exceptions) that the common law rules of vicarious liability are not to be confused with the reasons for them, and that their application remains a matter of fact.[10] Thus, cases of vicarious liability in the common law have been dealt with on the basis that three factual conditions must be met:

- The existence of an employer-employee relationship
- A delict committed by the employee
- The employee acting within the course and scope of her employment[11]

If these three factual conditions were found to be met, vicarious liability would be imposed. In the vast majority of cases this was done without any reference to, or acknowledgement of, the normative principles underlying vicarious liability.[12]

Of the three conditions, the question of whether the employee was acting within the course and scope of her employment when she committed the delict has proved the most difficult to answer in practice. At one extreme is the delict committed by the employee while going about her employment in the ordinary course. At the other extreme is the delict committed by the employee going about her own business, unconnected to that of the employer, often referred to as the employee 'going on a frolic of her own.'[13] Between these two extremes lies what the courts have described as 'an uncertain and wavering line.'

In navigating this line, the courts, rather than drawing on the normative principles underpinning vicarious liability, have engaged in the somewhat

artificial exercise of attempting to plot the employee's delict on a space/time continuum in relation to her employment. Thus, in *Feldman (Pty) Ltd v Mall,*[15] Tindell JA held that the test to be applied is 'whether the circumstances of the particular case show that the servant's digression is so great in respect of time and space that it cannot reasonably be said that he is still exercising the functions to which he was appointed; if this is the case then the master is not liable.' [16]

Also somewhat tortuous is the so-called Salmond test, which asks whether the commission of the delict can rightly be regarded as 'a mode – although an improper mode of exercising the authorisation conferred by the employment.' [17]

The artificiality of the traditional approach is revealed by the fact that over the years vicarious liability has been imposed in cases where it is clear from the facts that the employee was not acting within the course and scope of her employment. In *Minister of Police v Rabie* [18] the employee was a mechanic in the employ of the South African Police. He was off duty, dressed in plain clothes, in his private vehicle and acting in pursuance of his private interests when he fraudulently claimed to be a police officer and wrongfully and unlawfully arrested his victim and charged him with house-breaking.[19] In *Minister of Safety and Security v Luiters*[20] the employee was an off duty police officer pursuing persons who had attempted to rob him when he shot an innocent third party. In both cases the Minister was held vicariously liable. Cases like this became known as 'the deviation cases.'[21] Various forms of tortuous reasoning were adopted to demonstrate that employees such as these had in fact been acting within the course and scope of their employment at the time that they committed the delict. Invariably in these cases, powerful normative considerations militated in favour of holding the state vicariously liable, but these were seldom expressly articulated. As a result the basis for the imposition of vicarious liability in the deviation cases was inconsistent and unclear.

All of this changed with the advent of the Constitutional Court judgement in *K v Minister of Safety and Security*.

K v MINISTER OF SAFETY AND SECURITY: THE DEVELOPMENT OF THE COMMON LAW

K was a 20-year-old woman who was stranded at a petrol station in the early hours of the morning when three on duty, uniformed police officers offered to give her a lift home. On route, *K* was brutally raped by all three police officers and abandoned by the side of the road. The Supreme Court of Appeal held that the Minister of Safety and Security was not vicariously liable for the police officers' conduct. On appeal, the Constitutional Court reversed the Supreme Court of Appeal judgement. In doing so it developed the common law of vicarious liability in certain fundamental respects.

The Constitutional Court held that it was clear that characterising the application of the principles of vicarious liability as a matter of fact, untrammelled by any normative considerations, was not correct.[22] To continue with such an approach would be to sterilise the common law test for vicarious liability and purge it of any normative or social or economic considerations.[23] The Court held that given the clear policy basis of vicarious liability, such an approach could not be sustained under the new constitutional order. It stated that:

> What is clear … is that as a matter of law and social regulation, the principles of vicarious liability are principles which are imbued with social policy and normative content. Their application will always be difficult and will require what may be troublesome lines to be drawn by the courts applying them.[24]
>
> Denying that the principles bear such normative implications will only bedevil the exercise by rendering inarticulate premises that in a democracy committed to openness, responsiveness and accountability, should be articulated.[25]

The Court endorsed a new test for the imposition of vicarious liability in the deviation cases, which had its roots in some of the common law case

law.[26] There are two legs to the test. The first leg looks at the subjective state of mind of the perpetrators and asks whether, subjectively viewed, they were acting in pursuit of their own interests or those of their employer. The second leg of the test is objective. It involves mixed questions of fact and law and asks whether, even if the employees were acting in pursuit of their own interests, there is nevertheless a sufficient connection between their conduct and their employment to justify holding their employer vicariously liable.[27] The Constitutional Court held that in applying the second leg of the test the courts should promote constitutional values and expressly articulate the normative considerations at play. The Court held as follows:

> The objective element of the test which relates to the connection between the deviant conduct and the employment, approached with the spirit, purport and objects of the Constitution in mind is sufficiently flexible to incorporate not only constitutional norms but other norms as well. It requires a court when applying it to articulate its reasoning for its conclusions as to whether there is a sufficient connection between the wrongful conduct and the employment or not. Thus developed, by the explicit recognition of the normative content of the objective stage of the test, its application should not offend the Bill of Rights or be at odds with our constitutional order.[28]

The Constitutional Court then applied the test to the facts of the case. On the first leg of the test, the Court held that the police officers were clearly acting in pursuit of their own interests and not those of their employer.[29]

On the second leg of the test, the Court held that there were three important facts that pointed to the closeness of the connection between the conduct of the police officers and the business of their employer. Firstly, the police officers all bore a statutory and constitutional duty to prevent crime and protect the members of the public.[30] Secondly, the police officers had offered to assist *K* and she had accepted their offer, thus placing her trust in them.[31] Thirdly, the conduct of the police officers constituted a simultaneous commission and omission. Their commission lay in their brutal rape of *K* and their simultaneous omission lay in their failing to protect her from harm while on duty.[32]

The Court concluded that the connection between the conduct of the police officers and their employment was sufficiently close to render the Minister vicariously liable.[33]

F v MINISTER OF SAFETY AND SECURITY

The facts in this case were disturbingly similar to those in *K*. In the early hours of one morning, Ms *F*, who was 13 years old at the time, was stranded and was offered a lift home by Mr Van Wyk. At the time Van Wyk was not in uniform, drove an unmarked police car and was not on duty but was on standby.

On route Ms *F* noticed a police radio in the car as well as a pile of police dockets bearing the name and rank of Van Wyk. When she asked Van Wyk about this he told her that he was a private detective. Ms *F* understood this to mean that he was a police officer.

Contrary to his undertaking to drive Ms *F* home, Van Wyk drove in a different direction. Van Wyk then stopped the car in a quiet, dark area. Ms *F* became suspicious, jumped out of the car and ran away and hid herself. After some time, Van Wyk drove off.

Ms *F* then emerged from her hiding place and began hitchhiking. A car stopped next to her. It turned out to be Van Wyk, who again offered her a lift home. Owing to her desperate situation, Ms *F* relented and got into the car. In her evidence Ms *F* stated that the fact that she believed Van Wyk to be a policeman played a role in allaying her fears.

While on their way to her home Van Wyk unexpectedly turned off the road. Ms *F* attempted to escape again but this time Van Wyk overpowered her and brutally assaulted and raped her.

Ms *F* obtained judgement against the Minister of Safety and Security in the High Court but this was reversed in the Supreme Court of Appeal, largely on the basis that Van Wyk had not been on duty at the time that he committed the rape.

The Constitutional Court: applying the *K* test

The Constitutional Court held that since Van Wyk had plainly been acting in his own selfish interests, the first leg of the *K* test did not establish state liability. The Court then turned to the second leg of the *K* test. It noted, as *K* had indicated, that the normative components pointing to liability needed to be expressly articulated. The Court held that the normative components at play in this case were firstly the state's constitutional obligations to protect the public, and secondly the trust that the public is entitled to place in the police. In dealing with the first normative component Mogoeng CJ referred to the scourge of violence against women and held that the state 'through its foremost agency against crime, the police service, bears the primary responsibility to protect women and children against this prevalent plague of violent crimes.' [34]

In respect of the second normative component, trust, Mogoeng CJ held that this operated both normatively, in laying the basis for holding the state liable for the wrong of an off-duty police officer, and factually, in that it created a connection between the employment and the wrongful conduct. The Court held as follows:

> Accordingly, the employment of someone as a police official may rightly be equated to an invitation extended by the police service to the public to repose their trust in that employee. When a policeman abuses the trust placed in him by a vulnerable woman or girl-child, by raping her, a link may well be established between the employee's employment and the delict flowing from the rape.[35]

The Court held that additional connecting factors were the police car that was issued to Van Wyk precisely because he was on standby duty, and which enabled him to commit the rape, and the fact that Ms *F* had deduced that Van Wyk was a police officer and that this had allayed her fears when she re-entered the car on the second occasion.[36] The Court accordingly concluded that in terms of the second leg of the *K* test, the Minister was indeed vicariously liable.[37]

OBSERVATIONS

Several commentators who have written about *F* do not appear to have appreciated that the judgement finally does away with the requirement that the employee must be acting within the course and scope of her employment for vicarious liability to be imposed in the deviation cases.[38] This is the effect of the test developed in *K* and applied in *F*, but it is also explicitly stated by Mogoeng CJ in his judgement, in the following terms:

> Unlike before, when the test in deviation cases was whether the employee acted within the course and scope of employment, the focus now is whether – 'the connection between the conduct of the policemen and their employment was sufficiently close to render the respondent liable.'[39]

F accordingly makes it abundantly clear that the test is the sufficiency of the connection between the employee's misconduct and her employment, and that the normative considerations at play form part of this enquiry. This is to be welcomed. The reality is that in the deviation cases it has always been a fiction to say that the employee was acting within the course and scope of her employment. In truth, the imposition of vicarious liability in the deviation cases has always been founded on an inarticulate normative premise of one sort or another. The judgements in *K* and *F* have laid this fiction bare and demanded that we articulate the normative principles upon which vicarious liability has always been based.

Some commentators have, however, criticised the policy-laden character of the *K* test. Boonzaier does so in the following terms:

> The difficulty is that various policy factors relating to the imposition of liability upon the

state are being considered to determine whether the tortious conduct of the state employee is sufficiently closely connected to his employment with the state, an enquiry with which such factors are indeed 'somewhat at odds.'[40]

The reality, however, is that facts alone have never been determinative of whether or not liability should be imposed on the state for the delicts of its employees, particularly in the deviation cases. The question has always fundamentally been a policy-driven one. Far from being at odds with the enquiry, policy factors relating to the imposition of liability on the state are therefore an integral part of the enquiry. Only once this is acknowledged is it possible to have an honest dialogue about the bases on which employers are held liable for the delicts of their employees in our law. *F* has at last provided clarity and transparency on the normative bases for holding the state vicariously liable for the criminal acts of police officers. These are the police's constitutional obligations to protect the public, and the entitlement of the public to place their trust in the police. These normative considerations are weighty and it will therefore only likely be in cases where there is the most tenuous link between a police officer's criminal act and his employment that the state will not be held vicariously liable. In that respect the Constitutional Court judgement in *F* is a highly significant and welcome development in the promotion of state accountability for the criminal acts of police officers.

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NOTES

1. *F v Minister of Safety and Security,* 2012 (1) SA 536 (CC).
2. *K* v *Minister of Safety and Security*, 2005 (6) SA 419 (CC).
3. A delict may be defined as follows: 'An unlawful, blameworthy (i.e. intentional or negligent) act or omission which causes another person damage to person or property or injury to personality and for which a civil remedy for recovery of damages is available.' J Burchell, *Principles of delict,* Cape Town: Juta, 1993, 10.
4. *K v Minister of Safety and Security*, para 21.
5. *Feldman (Pty) Ltd v Mall,* 1945 AD 733.
6. Ibid., 741.
7. See *K* v *Minister of Safety and Security*, para 21 and the authorities cited in endnote 22.
8. Ibid.
9. Ibid., para 21.
10. See, for example, *Bezuidenhout NO v Eskom,* 2003 (3) SA 83 (SCA), para 19; *Minister van Veiligheid en Sekuriteit v Japmoco BK h/a Status Motors,* 2002 (5) SA 649 (SCA), para 1; *Absa Bank Ltd v Bond Equipment (Pretoria) (Pty) Ltd,* 2001 (1) SA 372 (SCA), para 5.
11. J Neethling, Risk creation and the vicarious liability of employers, *THRHR* 70(4) (2007), 527-528.
12. See the cases cited in note 9 above. See also *Jordan v Bloemfontein Transitional Local Authority and Another,* 2004 (3) SA 371 (SCA), para 3; *Minister van Veiligheid en Sekuriteit v Phoebus Apollo Aviation BK,* 2002 (5) SA 475 (SCA), para 5; *Govender v Minister of Safety and Security,* 2001 (4) SA 273 (SCA), para 3; *Tshabalala v Lekoa City Council,* 1992 (3) SA 21 (A), 28A-B; *Estate van der Byl v Swanepoel,* 1927 AD 141, 146; *Mkize v Martins,* 1914 AD 382, 390.
13. Burchell, *Principles of delict,* 219.
14. J Andrews in *Palsgraf v Long Island Railroad Company*, 59 ALR 1253, cited by C J Watermeyer, *Feldman (Pty) Ltd v Mall,* 1945 AD 733, 750.
15. *Feldman (Pty) Ltd v Mall,* 750.
16. Ibid., 756.
17. The 'Salmond test' for vicarious liability established in JW Salmond, *The law of torts,* London: Stevens and Haynes, 1907, 83.
18. *Minister of Police v Rabie,* 1986 (1) SA 117 (A).
19. In *Minister of Police v Rabie* the Court justified this on the basis of the creation of risk, holding that the dominant question to be asked was whether the employee's acts fell within the risks created by the state and concluding that they had.
20. *Minister of Safety and Security v Luiters,* 2007 (2) SA 106 (CC).
21. *F* v *Minister of Safety and Security,* para 41.
22. *K* v *Minister of Safety and Security,* para 22.
23. Ibid., para 22.
24. Ibid., para 22.
25. Ibid., para 23.
26. Notably in *Minister of Police v Rabie:* see J W Salmond, *The law of torts.*
27. *K* v *Minister of Safety and Security,* para 32.
28. Ibid., para 44.
29. Ibid., para 50.
30. Ibid., para 51.
31. Ibid., para 51.
32. Ibid., para 53.
33. Ibid., para 53.
34. *F* v *Minister of Safety and Security,* para 57.
35. Ibid., para 64.
36. Ibid., para 81.
37. Ibid., para 81.
38. See in this regard M M Botha and D Millard, The past, present and future of vicarious liability in South Africa, *De Jure* 45(2) (2012), 225. See also L Boonzaier, State liability in South Africa: the need for a more direct approach, *SALJ* 130(2) (2013), 367.
39. *F* v *Minister of Safety and Security*, para 76.
40. Boonzaier, State liability in South Africa, 367.

CREATIVE ACTION FOR CHANGE

Conference report: Strategies for non-violence in education

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There is ample evidence of the persistence of violence at all levels of the South African education system. Working on the assumption that change will require active collaboration across all sectors, three organisations held a conference in Durban to sustain work towards non-violence. This article reports the process of working from an understanding of the nature and extent of such violence to a review of current projects and programmes to address it, and finally to a collaborative process in developing strategies for change. Research presented gave considerable insight into how violence operates and how interventions can make a significant difference. Two key disconnects were identified – the gap between the values advocated in policies and those actually experienced, and the failure to see humans as simultaneously physical, spiritual, emotional and cognitive. Learners challenged the practice of tolerating violence as a norm and insisted on the right to learn in conditions of safety. Practitioners demonstrated a range of innovative interventions through presentations and experiential learning. The strategies placed strong emphasis on ways of fostering positive values and ethical behaviour in education, and on promoting the many ways in which people can take creative action for change.

It is becoming increasingly clear that most of the direct or physical violence experienced in developing countries is not the result of civil wars between governments and their opponents. The reports of the Human Security Report Project[1] clearly show that such wars have decreased significantly in number and intensity over the past two decades. In much of sub-Saharan Africa most violence occurs in households and communities, mainly perpetrated by husbands, fathers and young men against women and girls. South Africa fits this pattern. Even though there is no civil war, and limited violence from organised crime and gangs, it is one of the world's most violent countries, ranked 15th in the world in terms of its homicide rate per 100 000 people by the United Nations Office on Drugs and Crime,[2] and eighth in terms of violent deaths per 100 000 according to the Geneva Declaration on Armed Conflict.[3] It is

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frequently referred to as the 'rape capital of the world', with 50 000 to 55 000 rapes and attempted rapes reported to police each year – and these are regarded as being just the tip of the iceberg. A respected estimate by Gender Links and the Medical Research Council[4] indicates that only one in 25 victims actually reports to the police. A nationally representative survey of 1 738 African males in KwaZulu-Natal and the Eastern Cape by Jewkes, Sikweyiya, Morrell & Dunkle[5] reported disturbingly high levels of rape. Over 40% said that they had been physically violent to an intimate partner, and 14% said that this had occurred within the last year.

South Africa's schools mirror the intense violence in wider society. The 2012 National School Violence Survey (NSVS),[6] a nationally representative survey carried out in 121 high schools among 5 939 learners, 121 principals and 239 educators, found very high levels of violence experienced by learners, ranging from assaults to threats and sexual assaults. Educators were also victims of violence. More than half reported being verbally abused by learners, 12,4% had been subject to physical violence and 3,3% had been sexually assaulted. A further study, the *Dynamics of violence in South African schools* (DVSAS)[7] investigated 24 schools across six provinces. This indicated that 55% of learners stated that they had experienced violence, with 28% noting that this violence was a daily occurrence. Not surprisingly, schools were generally regarded as places of fear and apprehension.

One of the significant papers that influenced the conference organisers was Adams's work on 'chronic violence', which affects about a quarter of the world's population and which she defines using three dimensions of 'intensity, space and time':

- Rates of violent death are at least twice the average for the country income category
- These levels are sustained for five years or more
- Acts of violence not necessarily resulting in death are recorded at high levels across several socialisation spaces, such as the household, the neighbourhood *and the school,*[8] contributing to the further reproduction of violence over time[9]

South Africa clearly fits this definition and manifests another central aspect of chronic violence – that it becomes accepted and 'normalised'. In Adams's words, 'When people are dominated by chronic fear or repression, the differences between right and wrong, the innocent and the criminal, the moral and the immoral, become blurred'.[10] Indeed, South African learners generally come from violent environments. Almost half the respondents in the 2012 NSVS[11] agreed that 'crime is a problem in my neighbourhood' and more than a third had seen a fight in their neighbourhood in the previous month. 10,9% had been assaulted at home in the last year and 59,7% of these victims had been assaulted more than once. Almost a quarter had siblings who had been imprisoned for criminal offences and almost 10% of their parents or caregivers had been imprisoned.[12]

There was also evidence cited in the study[13] that those learners who had been victims of violence or who had friends who were engaged in violence-related behaviour were more tolerant of violent behaviour. Exposure to violence seems to encourage such tolerance '… which has a significant bearing on the later perpetration of violent and aggressive behaviours'. It was facts and insights such as these that led us to organise the Strategies for Non-Violence in Education Conference, held at the Durban University of Technology from 1 to 3 July 2013.[14] The 100 or so participants came principally from academia and non-governmental organisations (NGOs), with some representation from national and provincial departments of Basic Education. Fifteen high school students from two rural KwaZulu-Natal high schools and a township school also attended, and provided invaluable insights from their perspective.

The conference was organised around three themes – understanding violence in education, current actions against this violence and developing a strategy for building non-violence. This article provides an overview of the main insights that emerged under these themes, with

reference to the papers/presentations made at the conference. A list of the papers presented is included in the endnotes of this article.

UNDERSTANDING VIOLENCE IN EDUCATION

Our knowledge of the nature and extent of violence in education is taken from three sources – previous studies, in particular the 2012 NSVS and the 2013 DVSAS studies, presentations at the conference, and the key issues that arose from the nominal group technique, described in detail in section four. The NSVS and the DVSAS studies, as we have seen, provide unequivocal evidence that violence is endemic in South African schools. Learners who attended the conference were adamant about two types of violence in schools, the first being the use of 'power over' learners by teachers, particularly male teachers. This was exemplified by the widespread use of corporal punishment by teachers and the creation of a climate of repression and fear. As one learner put it, 'How can we learn when we are always frightened?' Corporal punishment was made illegal in 1996; despite this, it is still prevalent in schools. The NSVS found that just under half the learners said they had been caned or spanked by an educator or principal;[15] the DVSAS study found that 41% of learners who reported corporal punishment said that they had been injured, and a significant proportion had gone to a clinic or hospital for treatment. The issue of corporal punishment is one we return to below.

The second type of violence was gender-based violence by male learners against female learners, which ranged from uninvited and unwanted comments to rape. Girls cannot understand why so many boys treat them in such disrespectful and threatening ways. These issues were discussed in conference presentations by Mulumeoderhwa[16] and Van der Walt.[17] Recent research in KwaZulu-Natal by Sathiparsad[18] and Mulumeoderhwa and Harris[19] has found that many boys hold attitudes which make them feel entitled to expect sexual favours from their girlfriends and that force is justifiable if the girl refuses without good reason. As Msibi[20] reported, this form of masculinity is responsible also for homophobic violence in township schools. Of major concern is the role of teachers in promoting homophobia, and the threats of rape against lesbian learners.

Morojele[21] further explored the role of gender relations in fostering violence in South African schools. In particular he found that young people (including girls) use language that is inherently derogatory of girls and humiliates them, both for being sexual and for not meeting the standards of heterosexual attractiveness. Language is used similarly against sexual minorities; in both cases language serves to normalise violence.

Violence extends to tertiary institutions, as noted in the presentation by Collins,[22] Gordon[23] and Du Randt,[24] who conducted research among female students in residence at the University of KwaZulu-Natal. This study showed that violence is the norm for the vast majority of those with boyfriends. Violence took the form both of forced sex and common assault by male partners against their girlfriends. A variation on this theme is that many males in positions of power – academics, Student Representative Council (SRC) members and security staff – constantly use their positions to try and secure sexual favours from female students.

The issue of power is a major cause of gender violence. Those in power – very largely men – do not want to hear stories of gender violence. Incidents are hushed up and glossed over, thus effectively silencing the victim. Collins *et al* asserted that the executive of the University of KwaZulu-Natal, for example, has refused to acknowledge the endemic violence against females in residence, preferring to focus their concerns on preventing the relatively infrequent breaches of the university's security by outsiders.

Hemson's presentation[25] posed the question as to why the very high levels of violence in the last days of apartheid had not declined with democracy, and examined this at both a societal and personal level. Changing from non-violence requires unlearning some of what we have learnt from our social norms.

Lamb and Snodgrass's presentation[26] reported a study of young adults' narratives in the Eastern Cape that revealed how 'embedded and normalised violence is in their lives – in their homes, schools and neighbourhoods.' They described the destructive influence of patriarchal attitudes that condone violence against girls but also that of fathers against boys. The problem is less that of criminal intent than a result of the 'dominant discourse of violence'; they argue for strategies to build the self-esteem and resilience of young people. Similarly, Tschudin's[27] presentation reported research on how early childhood development experiences are critical to shaping subsequent life trajectories; he gave examples of violent language and actions carried out by very young children in school and pointed to ways in which these youngsters were themselves victims of violence.

Part of the problem that confronts us is that people who denounce violence often advocate further violence as a solution. This entrenches the norm that violence is the only solution, or perhaps a necessary evil. Harris's presentation[28] addressed the question as to whether violence is necessary because it 'works'. The research literature shows with remarkable consistency that the use of violence has far fewer positive outcomes than peaceful approaches. Corporal punishment in schools is a particularly relevant case. While many believe that discipline is not possible without it, Harris presented the considerable evidence of its association with negative outcomes for young people and also in their lives as adults. For example, children subjected to parents' corporal punishment were consistently more likely to be aggressive as children and were more likely to have mental health problems, both as children and as adults.

With respect to values and prejudice, Kaye[29] discussed the Bahá'í perspective that a peaceful world is not only possible but also inevitable as humanity adopts beneficial values, applicable to individuals and society as a whole. 'Development, in the Bahá'í view, is an organic process in which "the spiritual is expressed and carried out in the material."'[30] When constructive values and morality cease to form the standards of human behaviour, we see the breakdown of societies. This allows for the spread of prejudices, hatred, jealousy, etc., which become the dominant attitudes and practices in those societies. Violence not only becomes normal but takes the form of extremes, such as horrifying cases of child abuse.

The ways in which violence becomes normalised and values distorted was a key theme in the conference. The problem is not one of the formal curriculum. What emerged clearly in this part of the conference was the way that violence in South African education is fuelled by the disconnect between ethical and progressive policies and curricula on the one hand, and corrosive values and practice on the other. Violence can become the norm in some schools, just as it is in broader society. Nonetheless, some schools do succeed in developing norms and values of acceptance and safety.

The young people present were insistent on the need for safety in their schools as an essential condition for learning to take place. Thus, the challenge confronting us was to provide a positive answer to the question: how can schools be harmonious and peaceful in violent, disunited communities?

CURRENT ACTIONS AGAINST VIOLENCE

This section records and analyses the conference presentations related to taking action against violence, with the purpose of demonstrating the potential for linking different actors and different interventions in a coherent way. A patchwork of presentations and workshops addressed interventions at different points; they were intentionally diverse, presenting a broad range of projects aimed at peacebuilding. The experiential learning approach fostered lively discussions among the conference participants.

The report distinguishes here between societal, community, relationship and individual approaches, following the approach of Dahlberg and Krug.[31] Situating each presentation or

initiative in this way enables one to see the need for work in one level to be complemented by work in others. The framework suggests that no one approach will be sufficient if it focuses on only one level; in the context of the conference, the question arose about whether the potential exists for different interventions to gain in effectiveness by the 'vertical' crossing of different levels as well as the 'horizontal' links across a level.

Societal level

Mannah's presentation on behalf of the Department of Basic Education (DBE)[32] addressed the responsibility of the whole education system, and thus spans both societal and community levels. The DBE approach has been to address the whole school in the context of its links to families and communities. A central intervention has been the establishment of Safe Schools Committees, involving the police and parents as well as the school itself. There are also proactive programmes to reduce the likelihood of violence, and systematic responses to recommendations of the NSVS. In recent years the levels of violence seem not to have changed; the question that arises is not about the commitment of the department, but rather whether the measures being undertaken are sufficiently vigorous or sufficiently directed to address the factors that perpetuate the norm of violence.

Kemp[33] advocated the use of school social workers and explained how their role is different to that of educators within the schooling system. The social worker has the responsibility to seek to understand the root causes of violence and to frame programmes that address these in the context of the school. Her argument is that this role is a critical element in a system that works to reduce violence.

Community level and relationship level

The bulk of the presentations focused on interventions that address the school or university community, or teachers or students within the school. The major emphasis fell on changing the culture of the community and on developing positive relationships.

John[34] presented research that engaged teachers and students separately in the process of mapping places of conflict and violence in schools. The study revealed how far apart perceptions were as to the reality of violence; comparison of the maps exposed 'blind spots' teachers had given no attention to. This process then enabled the teachers to design peacebuilding interventions within the school.

Gould[35] reported on the Seven Passes Initiative, an intervention that spans more than one group of stakeholders in developing relationships beyond the school, including focused academic support for young people. This presentation also addressed the challenging area of parenting practices. The empirical study related to the Initiative revealed highly inconsistent parenting, both positive and negative, that correlates highly with the behaviour of children. This study is informing the design of an intervention to address parenting practices over a three-year period. Kimbuku[36] also argued for a change in community practices in a paper that proposed the use of restorative justice approaches to discipline.

Several presentations dealt with the work of clubs among learners. Soul City[37] reported on the 6 000 Buddyz Clubs that work with youngsters in schools in a participatory way, with a range of activities designed to build social competence and confidence. The DVSAS study[38] reported on the positive impact of such work in a particular school. Similarly, Alty[39] spoke on school Peace Clubs that involve students with teacher oversight, and address ways of handling conflict and challenging social issues.

January's[40] presentation addressed both individual and societal levels, exploring the key elements of a Bahá'í-inspired curriculum for moral development that addresses both cognitive and affective learning. It emphasises constructive peer learning in a small group facilitated by an older youth who serves as a facilitator or mentor to the group. In such an environment, young people feel free to

discuss their experiences, problems and aspirations. One of the core values adopted by the group is that of service to the community. Each group decides on a service project that they plan and conduct. Fudu[41] gave a workshop that demonstrated how such groups function in practice. It is a grassroots effort, as participation is voluntary and plans emerge from the groups' discussions.

Several papers addressed ways of responding to violence at universities. Duma[42] proposed a four-step approach to addressing sexual violence, drawing also on Dahlberg and Krug's model to identify different interventions for different levels. Collins[43] drew on an analysis of violence in residences to argue that approaches based on more effective security technologies and prosecutions were failing. While incidents of violence perpetrated by outsiders are well reported, there is massive under-reporting of violence happening inside the university in interpersonal relationships, in particular with sexual coercion and partner abuse. He advocated directing attention to how violence is normalised, and how perpetrators often hold social and institutional power. The discourse of violence as necessary and inevitable can be challenged through proactive interventions and through building participatory democracy. The core academic training of all students should include a focus on how relationships of power are caught up with exploitation, abuse and violence, and how people can work to create relationships of non-violence.

Chirambwi and Matunda[44] reported on the use of campus dialogue, a process that has succeeded in reducing violent conflict within a Zimbabwean university since it started in 2010, and is now spreading to other institutions. They identified a range of drivers of the violence, and discussed how the approach enabled communication between a range of stakeholders who then addressed various factors together.

At the other end of the education system, Kaya and Padayachee's[45] presentation on indigenous knowledge systems outlined how values such as ubuntu can be communicated through a range of cultural tools suitable for early childhood development.

A group led by Odendaal[46] held a workshop demonstrating the Alternatives to Violence Project, which uses participatory methods to educate on conflict transformation. This approach was explored further by Stanford Jarvis, who examined the significance and effectiveness of the affirmation exercises undertaken by participants in the Project.

Individual level

Four presentations addressed the individual as the person at the centre of change. In this approach, change towards non-violence begins with one's ability to address one's own consciousness and behaviour. Jevan's *Bringing about change*[48] focused on one's sense of self and how it is necessary to start with the self if one is serious about addressing violence. Similarly, Pillay's workshop[49] dealt with looking inward as a way of resolving fear and its resulting violence. Keats-Morrison[50] presented her work with young people, including offenders, using activities that draw on the capacities of the right brain. Partab[51] reported on the use of applied drama as a vehicle for addressing fear and trauma among young people. Finally, Dlamini[52] reviewed the range of different programmes, and argued that educational institutions need to draw on these resources in developing a nonviolent education system.

In his keynote address, Soudien[53] spoke about a man who had been in prison for murder, and who is now a peaceable community leader. A key element in this man's ability to change, he indicated, was the development of a wider repertoire of responses to stressful situations. Education that fulfils the basic task of teaching young people to think, and to develop greater awareness of their actions and their impact, serves to reduce the likelihood that they might turn to violence.

In reflecting on the range of presentations, we were struck by their diversity. While there was good evidence that constructive acts do contribute

to transformation, we noted that approaches that take a more holistic approach have a better chance of success. This includes such examples as the Bahá'í initiatives that address both cognitive and affective issues, and address life both within and outside schools, or programmes that address the relationship of parents to schools. One of the approaches not reported at the conference, the Bambanani Safer Schools initiative,[54] starts from the recognition that schools are not islands but are always embedded in specific community contexts, and that interventions must address these relationships.

In contrast, some interventions may work well at the individual or group level, but fail to have an influence beyond those directly involved, unless they address structures and relationships in the community as a whole. Furthermore, while political leadership can address policy, there was ample evidence at the conference of the ways in which policy is impeded by individual or community resistance, or passivity or inaction, leading to major problems of implementation.

If this analysis is correct, there is a major need to carefully link the different resources that are available. Adams,[55] in referring to action to reduce the chronic violence of societies like South Africa, writes of the need to address it through inter-sectoral and interdisciplinary approaches. One rationale for this conference was exactly that: the development of collaboration across sectors. Since the conference we have learnt how some participants have started to work with one another, making more effective use of the limited resources available. Another rationale for the conference was to enable participants to develop a much more comprehensive understanding of the nature of violence and of the possibilities of mobilising against it in many diverse ways, thus building both imagination and hope.

A STRATEGY FOR NON-VIOLENCE

The third day of the conference was devoted to developing strategies. We decided to use a nominal group technique,[56] as it combined individual reflection and group consultation. A nominal group technique has been defined by several authors as the means of encouraging a group to develop a plan that the majority support. The process usually begins with the group facilitator presenting the problem to a small group of six to ten people. Each person then silently writes down his/her thoughts and ideas. The second phase is a round-robin where each person, in turn, presents one of his or her ideas. At this time there is no discussion; each point is written up so that everyone can see it. If two people have the same idea, the facilitator writes it only once, unless it is a variation of the idea. This continues until all the ideas have been noted. The third phase allows for discussion, explanation and expanding the idea. Finally, each person silently votes and ranks five ideas from highest to lowest. The votes are tallied and the highest-ranked ideas become the group's decision.

The conference participants were divided into groups, with each group identifying the most important points of a strategy. The question posed was 'What are the key elements of a strategic plan to reduce violence in schools?' We found that the nominal group technique was more effective than that of brainstorming, as it gave everyone the opportunity to participate (with brainstorming a group can often be dominated by one or two individuals). The opportunity for reflection at the beginning gave everyone time to think about the previous two days and to note what each person considered as the most important themes and ideas. Each group developed its own list of five points. We then presented each group's points in plenary. Although the groups approached the task differently, there were several repeating themes, discussed below.

Conscientiation and (re)training: Learners and teachers must firstly understand the destructive influence of violence on all stakeholders, whether victim, perpetrator, or observer. Conceptual understanding alone is insufficient without concurrent skills training. The form that such training could take is a series of seminars or workshops. For example, there is good evidence that youth empowerment groups are proving to be effective, as they provide a safe environment for

youth to discuss this issue, the challenges they face, and steps that they can take irrespective of initial adult support. The inclusion of peace education in the curriculum would be a positive step towards re-education and training.

Advocacy, protection and confrontation of the issue: Groups of any combination – parents, learners, community, teachers – must pressurise school councils to provide adequate education and a clear, safe structure for reporting and supporting victims. All stakeholders need to know the process of reporting, the consequences of violent acts, and why eliminating silence is a powerful method of reducing violence. The groups proposed a range of methods to encourage speaking out, for example telling life stories in safe settings, and writing. The two issues of advocacy and protection are interlinked as they create an environment of intolerance for violence. Youth advocates, once empowered, can transform very adverse situations.

Ethical and moral behaviour: The need for ethical and moral behaviour must be applied firstly to teachers, principals and school councils – all those in a position of authority in the school. Given the clear evidence of widespread abuse of learners in the form of corporal punishment and sexual harassment, there are profound ethical concerns, let alone legal issues. Processes that enable educators to rethink their ethical responsibilities are essential. Without trust, learners are not safe nor are they being provided with positive role models. Training could include workshops on conflict resolution and on the meaning of sexual harassment. Although appropriate policies are in place, teacher accountability is essential.

Student life: In some areas, there is little to do after school, thus more constructive activities – cultural, clubs, life skills, training in collaborative methods – would provide positive alternatives. These could counterbalance boredom, inactivity, or the base excitement of conflict.

Understanding the causes: Poverty is rife in South Africa, and the conditions at some schools extremely poor. These can demotivate learners as they are in an environment that implies that they are unimportant, and that there is little value in human life. Furthermore, as home and community are sources of violence, normalisation becomes the standard, with both communities and families not acting to prevent violence. A further deterioration of relationships in the family, community and school poses great challenges for learners.

Strategy: The participants decided that an effective strategy would be to first develop indicators that could be used to measure a school's capacity to reduce school violence. These indicators could help with the school conducting an initial 'peace audit', and subsequently, with the data collected from the peace audit, to develop a pilot project at a school that meets the standards identified as necessary to reduce school violence.

CONCLUSIONS

Our thoughts:

- Our first conclusion was that the conference was not only planning for non-violence, but is itself working for non-violence. Drawing together diverse groups of people with a common interest in education in a way that communicates respect across difference, and developing a sense of a common mission, is part of what needs to be done.

- While top down direction and support are valuable, the solutions must be more holistic. That is, the school governing councils, principals, educators and learners in individual schools need to decide how they want their school to be, and to take the appropriate action. They may well have to do this without much initial support from the local community or from government.

- There is a glaring disconnect between the values spelt out in policy documents and implicit in the formal curriculum, and the values that become obvious from the 'hidden curriculum' of educational systems. We need

to organise to expose and challenge the practices that permeate so much of South African education, and hold individuals responsible for their moral and ethical behaviour.

- The usefulness of action was a recurring theme throughout the conference. Even the most modest project aimed at reducing violence had positive outcomes. This led participants to develop a strategic plan that took each individual school as a starting place to incorporate the points raised by the papers and by the nominal group discussions.

- Teacher education is failing in its task of addressing the ethical behaviour of pre-service and in-service teachers. Despite policy, teacher education seems to have been reduced largely to purely cognitive and technical issues, leading to an impoverished sense of teacher identity.

- Poverty, inequality and poor quality of education in the country are some of the contributing factors to school violence. Youths understandably want material goods and in some cases have role models who value amassing wealth, no matter how acquired. This provides an imbalanced understanding of human nature, the goal of life and the role of community. People are not simply physical; constructive societies are built both upon values and on having basic needs met.

- We were struck by the significant role played by young people at the conference. There was a sense of youthful action that extends beyond resistance to creative ways of handling relationships in schools, thus bringing about positive change.

- We recognise the long history of violence and the ways in which its normalisation continues to inform 'solutions' to the problems of South African society. Challenging the discourse of violence requires actions across a range of sites; we emerged with a stronger sense of how that might be possible.

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BOOK REVIEW

Victimology in South Africa

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Title: Victimology in South Africa
Author: Robert Peacock (Editor)
Publisher: Van Schaik Publishers
Pages: 221
Price: R359
ISBN: 978-0627030208

The book 'Victimology in South Africa' by Robert Peacock (ed) is a revised and updated version of the text by the same name, first published in 2005. The book provides a useful overview of important and relevant topics in the fast developing field of victimology and victim assistance. It is clear that, where necessary, much effort has gone into rewriting content to keep the material relevant. In addition, all the chapters have been updated in line with a significant global and national focus on protecting the rights of victims through the development of policy and legislation.

Prof Ferdinand Kirchhof,[1] highly respected among world scholars and commentators on victimology and victims' issues, begins by explaining the relevance of the question, 'What is victimology?', even though a post-modern analysis might indicate that an 'all encompassing answer to this question is not possible' (page vii). He goes on to locate the historical development of victimology in the social sciences, and further emphasises the relevance and importance of historical insights, for instance in South Africa, where 'dark sides of the past' would refer to the history of colonisation and apartheid. He concludes by focusing on the need for 'a victimology that looks at local conditions and produces a victimology for the people – a 'victim's victimology'. While this sentiment is laudable, given the fact that a victim's socio-political and economic context is closely intertwined with the South African context, the text is silent in most parts about the preference for the term victim as opposed to survivor; and the reasons for this preference.

While in the past the subject of victimology and victims' issues appeared as an after-thought; often only appearing in a concluding chapter of a criminology text, in recent years an 'avalanche' of publications in this field has become evident.[2] An astute reader will also notice that in this new and updated version, the word 'criminology' has been dropped from the list of key terms on the first page of chapter 1 – perhaps a sign that victimology has finally come of age and is no longer a step child of criminology.

The text is presented at several levels, with some chapters catering for undergraduate students and practitioners, and others requiring deeper critique and debate. The inclusion of authors' names on the contents page makes for easy reference. Each

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chapter highlights the core issues, key terms, definitions, and critical thinking questions in shaded text boxes, making it quite student and practitioner friendly. Furthermore, lecturers can utilise these case studies, questions, practical examples, reports and more to set assessment tasks and/or engage with students through tutorials, small group discussions and debates. As such the text is tailored to a teaching environment rather than intended for a specialist in the field of victimology.

The book is organised around four sections, an expansion on the previous version, which comprised three sections. Section 1: 'Victimology in Context' begins with the chapter *Overview of concepts in victimology* by Robert Peacock, which provides a comprehensive overview of victimology as a discipline. With the graphics of an African mask, poignantly depicting the shame that is associated with all forms of victimisation, on the cover, to the book's concluding paragraphs, the call for an African victimology is the golden thread that runs through the book.

Most relevant to the African continent is a critique of 'colonial tyranny', and the need to move away from an over-simplified and 'false victim-offender' dichotomy. The book draws attention to the homogeneity and fluidity of victim and offender populations and the importance of taking into account the 'socio-economic and political dimensions of crime and victimisation' (page 7). With its history of colonialism, abuse of power and conflict, and institutionalised racism, Peacock emphasises the need to 'shift the boundaries of defining victimological concepts outside the realm of existing definitions and frameworks of crime and criminal justice' (page 7).[3]

Armando Saponaro also laments the dearth of literature on victimisation that originates in Africa in the concluding paragraphs of chapter 2, and cautions that theories of victimisation that are formulated in other regions, especially North America and Europe, are 'not always applicable to the local context' (page 30). A major challenge in South Africa is measuring and adequately responding to victimisation. Official police statistics of crime are not supplemented with data from other sources, such as victim surveys,[4] even though victim surveys have been conducted by Statistics SA.[5] Both government and non-governmental organisations depend on accurate data to ensure that responses to victimisation are adequate in terms of resource allocation.

The following six chapters are all updated versions of chapters from the previous edition. There is a good spread of topics that provide the reader with excellent foundational knowledge for what is to follow in the next three sections – Chapter 2: *Theoretical approaches and perspectives in victimology* (Armando Saponaro); Chapter 3: *Assessing the nature and extent of victimisation in South Africa* (Jean Steyn); Chapter 4: *South African laws and policies supporting victims* (Lilian Artz and Dee Smythe); Chapter 5: *Victim empowerment in South Africa* (Juan Nel and Hanlie van Wyk); Chapter 6: *Challenges of the criminal justice system in addressing the needs of victims and witnesses* (David Bruce); Chapter 7: *Restorative justice in South Africa* (Mike Batley).

In the light of the extremely high rates of officially reported cases of violent crime, as well as public perceptions and experiences of crime, it is understandable that the general public (and media) response is retributive.[6] The discussion on the rights of victims when offenders become eligible to be considered for parole is a welcome addition to this version of chapter 6 (page 106); as is the inclusion of emerging jurisprudence on restorative justice (page 117). While it is evident that there have been policy and legislative reforms to include victims in parole hearings,[7] procedural challenges remain. However, the author has failed to delve more deeply into the number of practical challenges that victims currently face if they wish to participate in parole processes.[8]

Chapter 8, *Restorative justice around the world and in cases of mass victimisation*' (Elmar Weitekamp) is new, and a welcome addition to this version of the book, in the light of the recent spate of gross human rights violations and mass victimisation in some parts of the Middle East and Africa. The

author's critique of restorative justice programmes and the 'paradox' that one encounters when evaluating the development of restorative justice and victim-offender mediation in the world (page 133), shifts the lens to a much neglected area of concern, namely the gap between victim support and restorative justice. On the one hand, restorative justice and victim-offender mediation programmes seem to develop in a haphazard way in countries that have a strong victim support system. On the other hand, countries with a poor, or no, victim support system (such as South Africa) become fertile ground for the growth and development of restorative justice. Perhaps most relevant for South Africa and other post-conflict societies is how 'to come to grips with questions of gross human rights violations and mass victimisation caused by political crimes or for political gain'. However, in answering this question one would have expected the author to engage more closely with the transitional justice discourse more generally, and its relevance to the South African context. While there is cursory reference to this aspect in chapter 1, it is a missed opportunity in chapter 8.

The concluding pages of the chapter are devoted to appropriate models to deal with the past in post-conflict societies. Parmentier's 2003 TARR (Truth, Accountability, Reparation and Reconciliation) model for post-conflict justice is discussed in detail, and seen as a forerunner from which other models developed, notably the peace circle model which was applied in Zwelethemba, one of South Africa's early and much cited experiments with restorative justice. The model bears similarities to truth commission processes that are aimed at ruling out formal justice through the courts in favour of restorative justice with an emphasis on accountability, perpetrators taking responsibility for their actions and being reintegrated into their communities, and restoring the humanity and dignity of victims. The author concludes by recommending further empirical testing of the model to establish it in victimological theory.

The title of the second section has changed from 'Specific *categories* of victims' to 'Specific *patterns* of victimisation'. The next four chapters, Chapter 9: *The troublesome gender: (re)considering gender-based violence* (Lilian Artz); Chapter 10: *Victimisation of the elderly* (Rina Delport); Chapter 11: *Victims of commercial crimes* (Stefan Grobler); and Chapter 12: *Victims of motor vehicle hijacking* (Rudolph Zinn) are all updated versions of chapters from the previous edition, with the exception of chapter 9, which is a new chapter. In Chapter 9, Artz examines the use and construction of gender in criminological and victimological theory, and posits that 'gender is a social construct defined by social cultures and historical points in time'. The author skillfully unpacks the term 'gender based violence' and observes that the use of gender versus women to describe a range of violating behaviour is problematic as it 'obscures the gendered nature of specific offences such as domestic violence and rape' (page 153). The chapter is thought-provoking and challenges the student/reader to dig deeper into how women experience crime differently from men, and the dearth of literature on why women engage in criminality. The author concludes that in relation to gender issues victimology has fallen short, and that as it is currently constructed 'it lacks the power to challenge prevailing notions of social life (including crime and victimisation), (page 157).

Chapter 11, *Victims of commercial crimes*, moves the reader's attention away from traditional crimes to those that cause collective harm. The chapter clarifies the various types of commercial crime and their impact on victims. In the light of recent public and media attention on the corrupt activities of politicians, the inclusion of a discussion on 'Commercial crime committed by political figures' is relevant, albeit brief, especially against the backdrop of the recently passed, controversial, and much debated Protection of State Information Bill (6 of 2010) (page 175). The author could have delved more deeply into the controversies surrounding the Bill in the context of South Africa's constitutional dispensation and the public's right to information.

The third section, which focuses on *Marginalisation and multiple victimisation,* opens

with a new chapter on *Victimisation vulnerability of street (community) children* (Robert Peacock with Fernanda Rosenblatt). The primary issue highlighted in this chapter is that children are vulnerable to state, structural, institutional and interpersonal violence. By challenging narrow juridical understandings of conflict and victimisation, the chapter immediately picks up the threads from the opening chapter of the book. The authors criticise labels such as 'street children', which tend to encourage a view that 'street children are a homogenous dispossessed group which has fallen through support cracks of the support system'. The notion of 'community children' is proposed, as it 'acknowledges the variation in identity but also similarities and differences in the experiences of community children to whom the street has become home'. While the authors explain the reason for their preference for this term they fail to unpack the varied meanings associated with the term 'community' and that the notion of 'community' is contested. The debate as to what constitutes community is an ongoing, and perhaps never-ending one. For example, is community a 'defined spatial area … a general locality, neighbourhood or community'? While ecological perspectives define community as 'the structure of relationships through which a localised population meets its daily requirements', systems theory defines it as 'the combination of social units and systems that perform major social functions'.[9] Do street children then leave their 'community' to form a distinct community on the streets?

The chapter makes for exciting reading as it has a distinctly global flavour, not so evident in most of the book. A broader lens also allows the authors to view the phenomenon of street children as 'a product of unequal power relations in and between societies' (page 203) and to recommend a framework for research that adopts a culturally sensitive understanding of risk factors that shape the lives of street children – a recognition that the identities of street children are usually shaped by their circumstances. The authors see the phenomenon of street children as a symptom of social dysfunction – a consequence of broader political and institutional factors, socio-political change, overpopulation, resource scarcity and underdevelopment; all leading to the disintegration of social systems and ultimately filtering down to an increase in street children. This is an important chapter, as it moves the reader's gaze away from a narrow understanding of the phenomenon of street children as simply a result of family dysfunction. According to the authors this would be tantamount to a reductionist and distortive understanding and would 'distract from the multilocational and embedded nature of this phenomenon with structural causes that sustain victimising processes' (page 204).

This theme is further expanded on in the next six chapters. As in the previous section, several chapters in this section are revised and updated versions of the previous edition, namely Chapter 14: *Kill or be killed: the plight of child soldiers in Africa* (Lauren Jones); Chapter 15: *Human trafficking with a focus on Africa* (Marie Segrave); Chapter 16: *Victims of hate crime* (Juan Nel and Duncan Breen; Chapter 17: *Sex workers: survivors of multiple victimisation* (Jaco Barkhuizen); Chapter 18: *Military veterans as victims* (Gary Baines and Sasha Gear); and Chapter 19: *Offenders as victims: exploring victimisation within prison* (Amanda Dissel).

However, worth noting is the inclusion of a historical background on, and the original feminist frameworks that informed the United Nations Convention for the Suppression of the Trafficking in Persons and of the Exploitation of the Prostitution of Others, adopted in 1949, which preceded the 2000 Trafficking Protocol. The key debates and frameworks (pages 229-230) are clearly set out in tabular format. Since human trafficking manifests in nations across the world, the need for adequate analysis of international developments and debates is self-explanatory. The author cites USDOS (2011)[10] in noting that South Africa is a 'significant source, transit and destination country in relation to human trafficking' (page 232). Even though the controversies surrounding the labelling of certain countries as such are not discussed in the chapter, the authors

do explain South Africa's efforts to develop a legal and policy framework.

In addition to their depiction of extreme incidents of racist victimisation, which 'continue[s] to shape the international image of post-apartheid South Africa' (page 242), chapter 16 unpacks the labelling theory with an illustration of the 'circular relationship between categorisation, stereotypes, prejudice, discrimination and victimisation' (page 249); specifically in relation to crimes that target people on the basis of their nationality, race, sexual orientation, and/or gender identity. The authors conclude that current legislation and policy frameworks are insufficient for an appropriate response to minimise and/or prevent such types of victimisation. Although controversial, perhaps the most significant addition is the call for a legal response to hate crime.

In chapter 18, the authors have done well to draw attention to the importance of and effects of 'militarised identities'. Here again the blurring of the notion of victim is evident. An important question is posed by the authors: does a loss of agency amount to victimisation (page 265)? The emergence over time of 'militarised identities', where veterans' military training define their sense of who they are, is discussed, and how, in attempting to obtain redress, they see themselves as victims. The consequent attempts by government and non-governmental organisations to address the plight of veterans are regarded as mostly inadequate (pages 268-269), hence the authors' view that the government's rather expedient passing of the Military Veterans Bill (18 of 2011) was an attempt to 'defuse the time bomb' that veterans' issues had become, especially since the Bill provides for a number of benefits and services for veterans (page 270).

In the light of the major advances for victims within international criminal justice, and the work of the International Criminal Court (ICC), the chapter *An international criminal justice system for victims? The situation at the International Criminal Court* (Dawn Rothe) is relevant and an important source for both academics and practitioners alike. The chapter clearly and concisely emphasises the approach adopted by the international criminal justice system to the issue of victimisation and the role of the victim (page 288), where the overarching concern is the protection of the victims' well-being and the right of victims to dictate the nature and extent of their participation. However, the author is careful to caution that victims nevertheless still face certain obstacles in proceedings before the ICC, and highlights the need for greater support for victims in the form of legal representation, trust funds, direct assistance and/or 'programmes aimed at broader community healing or restoration' (page 289).

Chapter 21 on *International protocols on victims' rights* (Marc Groenhuijsen) is a reflection on recent significant developments in victimology, while at the same time highlighting the maturity attained by the discipline, its 'indisputable international dimension', and consequent global awareness that touches people, regardless of where and who the victim is. It is natural therefore that that prominent international protocols and instruments should reflect these developments. The chapter concludes by unravelling some of the crucial debates, dilemmas and difficulties confronting practitioners, policy makers and academics alike. Adequate attention is paid to the disjunction between the development of new victim-related policies and protocols, and their actual implementation (page 318). The author adopts a forward looking stance in the latter part of the chapter by providing some analysis of the main issues that are likely to dominate victimological debates in the future, such as restorative justice and mediation, terrorism, the ICC and ad-hoc tribunals, and victim support for ethnic minorities such as refugees.

The final chapter, penned by the editor, brings the book back home to 'Victimology in South Africa'. It is a short chapter that cleverly links up with the sentiments expressed in chapter 1; that there is a need for greater and more sensitive conceptualisation of victimisation and victimhood in transitional societies; especially

those on the African continent that have suffered deep 'institutional, structural and cultural violence associated with colonisation'. The author again makes a strong case for the development of theory and empirical inquiry that would contribute to the development of victimological studies in Africa. The author has masterfully intertwined African values of ubuntu in both the opening and concluding chapters to create a text that has as its golden thread the role of victimology in building restorative communities and a more just and human world.

With its multi-disciplinary flavour, the book will undoubtedly serve as a useful and relevant reference text for students of, *inter alia,* criminology, victimology, law, criminal justice, social work, and psychology. However, its greatest strength lies in its accessibility, in terms of layout and easy readability, for the large number of practitioners working in the field of victim empowerment and support services, both in the government as well as the non-governmental sector, in South Africa and abroad.

NOTES

1. G H Kirchhof, History and a theoretical structure of victimology, in S G Shohom, P Knepper P & M Kett (eds), *International handbook of victimology,* Boca Raton: Taylor and Francis, 2010.
2. See J P Dussich, History of the proposed UN Convention on Justice and Support for Victims of Crime and Abuse of Power, in M Hidemishi, J P Dussich & G F Kirchhoff (eds), *Victimology and human security: new horizons,* Nijmegen: Wolf Legal Publishers, 2012; E A Fattah, The Evolution of a young promising discipline: sixty years of victimology, a retrospective and prospective look, in S G Shohum, P Knepper & M Kett, *International handbook of victimology;* R Letschert, R Haveman, A De Brouwer & A Pemberton, *Victimological approaches to international crimes: Africa,* Cambridge: Intersentia, 2011.
3. See also M Batley, Restorative justice in South Africa, in Chapter 7 of the text.
4. M Govender, The paradox of crime perceptions: SAPS crime statistics, Victims of Crime Surveys and the media, *South African Crime Quarterly* 46 (Dec 2013).
5. See Victims of Crime Survey, Statistics South Africa, 2011 and 2012 accessed at www.statssa.gov.za
6. Ibid.
7. See Section 75 (4) of the Correctional Services Act (No. 111 of 1998), and the Criminal Procedure Act (No. 51 of 1977).
8. See T Ramagaga, Is South Africa making strides in the participation of victims of crime in parole processes?, *ISS Today,* Institute of Security Studies, 2012.
9. D Matarrita-Cascante & M A Brennan, Conceptualising community development in the 21st century, Community Development, 43(3) (July 2012), 293-305.
10. US Department of State (USDOS), Trafficking in persons report (TIP), Washington: USDOS.

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PREVIOUS ISSUES

Andrew Faull responds to Herrick and Charman' (*SACQ 45*) delving into the messy business of daily policing liquor in the Western Cape. He forces us to look beyond policing for solutions to alcohol related harms. Claudia Forester-Towne's article considers how race and gender influence police reservists' views about their work and their motivation for joining the reserve. Elrena Van der Spuy's article assesses the contribution of ethnographers and autobiographies to our understanding of policing in South Africa. Megan Govender looks the way in which crime statistics and the national victims of crime survey are presented and used to support opposing views of public perception about the levels of crime. The edition is concluded with a discussion between Oliver Owen (Nigeria) and Andrew Faull, (South Africa) about the differences in how police performance is managed and measured in the two countries.

Sarah Henkeman follows Bill Dixon in taking on South African criminology. Her article both challenges South African criminologists and offers some thoughts on where we might take our thinking. Clare Herrick and Andrew Charman's article shows that enforcing restrictions on the sale of alcohol in some cases has undermined the ability of shebeen owners to ensure the safety of their customers. David Bruce analyses cases of politically motivated killings since 1994. Karabo Ngidi provides a case note about a Constitutional Court case that confirmed a court order for a house from which alcohol had been sold illegally to be forfeited by the owners. Ngidi argues that the ruling is indicative of a hardened stance towards shebeens. In the on-the-record feature, Savera Kalideen, advocacy manager for Soul City, speaks about the Phuza Wize campaign and the difficulties facing proponents of a public health approach to violence reduction.

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