

THE MAKING OF THE CRIMINAL SUBJECT IN DEMOCRATIC SOUTH AFRICA

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CANDIDATE'S DECLARATION

I, Nicolas Dieltiens, hereby certify that this thesis is a presentation of my original research work and where I have consulted the published work of others, this is always clearly attributed. This has not been submitted in any previous application for a higher degree.

Signature of candidate

Date

CONTENTS

Acknowledgements	i
Introduction	1
Crime and class	4
The frontier	6
The Unfree	11
Urban criminology and the discipline of labour	14
Methodological notes	18
Ethical considerations	21
Chapter 1	
On an open frontier? <i>Crime as politics</i>	22
The criminal onslaught	23
Criminal violence <i>against</i> apartheid?	30
The gangs of Orlando East	35
Salvation over democracy	39
Post-apartheid crime in Orlando East	43
Chapter 2	
Closing the frontier of democracy	46
The making of the punishable subject	51
<i>Operation Wanya Tsotsi</i>	57
Hostels and the transmutation of the politics of violence	59
Migrancy and Crime	63
Community policing and xenophobia	69
A Jeppestown CPF meeting	71
Chapter 3	
The Biopolitical Frontier of (in)Security	75
Ethnography of a crime	75
Lynching the criminal – ‘We are all free’	78
Prison Captives	82
The pastoral power of punishment	84
Rehabilitation and reintegration at Devon Detention Centre	87
Open Day at Heidelberg Correctional Centre	90
‘Serious Fun and Sun City’	92
Conclusion	95
Appendix 1 : Prison statistical profile of awaiting trial detainees (ATDs), youth in prison and incarceration rates	98
Bibliography	101

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Introduction

Having lived through the political transition in South Africa, there is no mistaking the deep rifts crime has carved into the country's social and political reality. At the time I commenced studies at Wits University the year after the first democratic elections, access to campus was gained with an ease that a perimeter fence now makes unthinkable. The fence has enclosed the university since 1997, just a few years after the doors to higher education had been prised ajar for black students. Turnstiles, traffic booms and cattle grids regulate access using digital card technologies that enable the university to lock unwanted elements out. Amongst these are, of course, those students threatened with financial and academic exclusion from the institution, the majority of who are black. Student organisations that traditionally fought against exclusions were wary of the system of information surveillance and access control but their opposition was muted by an accepted need for better security. Armed robbers had struck the SRC shop and the bank and cell phone theft by muggers venturing on to campus was common. The separation of the university from the city was not an isolated reaction, reflecting a siege mentality transforming how public and private spaces were withdrawing behind higher walls and security detail. In a country saturated with the signs of insecurity and fed a staple diet of murder and robbery in the daily newspapers, citizens had been inured to crime as a social 'fact'. Institutions like the university could raise separation barriers that curtail the freedom of movement and the freedom to learn, and re-inscribe normative relations of apartheid with nary a protest letter being written.

Crime acts as a favourite decoy to evince indignation, civic concern and the innocence of the status quo. The volume and repetition of crime stories stoke a moral panic that has the verisimilitude of the insecurity sustained by white communities under apartheid, the primary moral threat to them being the black, untrustworthy and communist Other. Secondary moral threats were also imagined to support the crusade against the first, such as the alleged proliferation of drug use by white youth so that they would file more readily into conscription (Albertyn 1985). Now with a democratic, multiracial state in power, a public fixation with crime has reproduced old tropes about the threat to civilization represented by the black horde, posed instead as a conflict between good citizens and criminals. Could a *criminal gevaar* be no less a scare tactic than the *swart gevaar* of apartheid? Award-winning Afrikaans writer, Annelie Botes, spelled out the translation of white racial anxieties into paranoia about crime when she admitted in an interview that she is afraid of black people because of crime. "I don't have the means to get my head around that of a black man," she said. "I can't understand that. As a writer, I write what I see, what I experience and put it into context. It

isn't my job to be politically correct.”¹ Her publishers distanced themselves from her remarks and she lost her column in an Afrikaans newspaper for refusing to apologise. Andile Mngxitama came to her defence against the “hypocritical public condemnation from self righteous beneficiaries of apartheid.”² The *tsotsification* of the black subject is not her idiosyncrasy but the interpellation of white supremacy, he argued, while the beneficiaries of apartheid and the perpetrators of corporate crime are exonerated if ever accused. Stripped of its structural origins and reduced to an individualised culpability, crime has become the whetting stone for a reinvigorated Calvinist moral community convened by the state.

The state of crime is read here in political and historical terms with a view to contribute to speaking, if not truth, at least some sense to power. Every society with a state that criminalises behaviour has distinctive patterns of crime that criminology ties to causative factors. The patterns present in South Africa are partly explicable by a functionalist “Third World” criminology (Davis 1985). Its basic premise is that crime increases the paltrier the dividends from participation in the formal economy become. A statistical profile of the prison population as at March 2009 suggests as much with crimes of the stomach bulking up the proportion of awaiting trial detainees (see Appendix 1). But the patterns disclosed by an historical reading of crime and social formation is more compelling than any criminological speculation. The mistaken orientation of criminology is to treat crime as a social pathology that can be treated with the application of effective prosecution. The criminal subject is accordingly reduced to no more than the effect of misdirected social forces and what environmental conditions led to his becoming a criminal are exonerated (Stanko 1994). Following Durkheim’s dictum that an action is criminal only to the extent that “the common conscience” is shocked by it (1933:81), this sociology of crime is orientated towards a critique of those interests that are held in common and the cultural and ethical norms that decide what punishment is just. By its completion, therefore, I do not have the temerity to claim criminal motivations knowable or a solution to suggest. What I advance is instead a conception of crime that, being inextricably linked to the forces that founded the country, calls for the present-day discourse on crime to be understood no less politically.

This study of criminality starts from a sociological principle implied in the title: that crime is *made*, being at once a license for power to punish and a rejection of that prerogative by its subjects. The precedence of crime in South Africa today is not an aberrant manifestation of violence but linked to forces reflected in historical instances of the problem. Between the

¹ Groenewald, Y. and Harbour, T. Author Annelie Botes stands by racist comments. *Mail and Guardian*, 26 November 2010. Available online <http://www.mg.co.za/>

² Mngxitama, Andile. Hands Off Annelie Botes. *Mail and Guardian*, 1 December 2010. Available online <http://mg.co.za/>

dusty covers of Africana history crime is not an episodic feature but attends the extension of colonial power and the establishment of the modern state. The state is not the self-evident sovereign, its legitimacy depending on the form of life that it excludes from membership. 'Bare life' is a concept that Giorgio Agamben derives from the Ancient Greek concept of *zoe* that is excluded from *bios*, the life born of belonging to a community. Authority reinforces the exclusion continuously, predicating those who exist outside of the law in order to establish the condition for politics and conceive of the burgher or citizen. Hansen and Stepputat (2005) apply Agamben's notion of the banned form of life to argue that the criminal subject exemplifies this sacrificial body of 'bare life'. The criminal subject is constituted, on one hand, by the juridical conception of rational agency in order that he or she may be held individually accountable and rightfully punished. On the other hand, he or she is cast in opposition to a normative identity of the law-abiding citizen who enjoys the protections of the due process of law. "A criminal enemy is a creature of legal authority: he is his own presupposition, that against which the civil order must variously strive, and in whose absence it would not be itself" (Heller-Roazen 2009:38).

The dichotomy between the criminal and the subject of the law, however, is a purely legalistic formulation that depicts subjects as defined only with respect to their relation to the line between the legal and the illicit. Power is exerted by the law and expressed in how the agents of security enforce control – but crucially in Foucault's definition of the processes by which power governs life, power is directed by the resistance of its quarry (Hardt and Negri 2009:31). "If power seizes life as the object of its exercise then Foucault is interested in determining what there is in life that resists, and that, in resisting this power, creates forms of subjectification and forms of life that escape its control" (Lazzarato 2006). So while the law may predicate the criminal, he or she must be qualified as resisting subordination to it. The 'fact' of the criminal's violent nature then invites a provocative question: is crime a form of resistance? And if so, what is the criminal's relationship to dominant power, proletarian, subaltern or deviant? The criminal's activities outside of the law do not in themselves portend a counter-hegemonic character since these activities do not earn the solidarity of other subjects who are more often the victims of crime than the authority it refuses. To disambiguate the criminal identity, it becomes necessary to begin at the relationship of crime to what has been taken in social theory to be the overriding determinant of antagonism – class.

Crime and class

Instrumental Marxist accounts of the law hold that the law is above all reflective of the interests of the ruling classes. Criminologists have disputed this generic claim on the basis that a ruling class cannot be so undifferentiated (Hagan and Leon 1977) while empirical evidence shows that class interests are contradictorily manifest in the prosecution of crime (Beirne 1979). Withstanding the banality of such disputes, they agree that by rendering a class conflict in criminal-legal terms, the state justifies the deployment of higher levels of force in the 'interests of security'. The prosecution of crime adds an air of dangerousness to law-breaking, sub-dividing the working class at the same time as conscripting their conformity. A structuralist perspective highlights how the liberal rule of law may not be inherently a form of class control as much as its effect. The justiciable fitting of punishment to a crime itself reproduces the cultural forms of capitalist society: in bringing an offender to make equivalential compensation for the damages he or she has inflicted, the justice system abstracts man and seizes his labour measurable in time. There is no more powerful exposition of commodity exchange, according to Pashukanis (cited by Garland 1990). Equality before the law too reproduces another of capitalism's myths - free labour. Just as capital rewards certain forms of labour above others, equality before the law erases an offender's characteristics. The prevalence of property crime as an act to redress material inequality eludes the justice system. By classifying crimes as actions against society and the state, the political and class character is removed from redistributive actions. The forms of capital are also reproduced in the practice of incarceration. What makes the prison so symbolically powerful is that it is where state power and deviance are brought most visibly together. It is the state's unconcealed instrument to manage social contradictions on terms that invoke intractable human and moral problems.

A study of any abstract sociological concept such as class is hampered by the indeterminacy of its subjective form. Nominating criminals as representatives of the subordinate class is itself against the grain of Marxist orthodoxy that holds the working class as the primary agents of history and the fulcrum of the new society born of the contradictions of the capitalist system. Marxism's relationship to crime is fraught with the moralism that's no less the trait of liberalism. Without a relation to capital, ideology or the production of value that is anything more than parasitic, he considers criminality to be a trait of an underclass. In *The Class Struggles in France, 1848-1850*, Marx sees the lumpen proletariat as "sharply differentiated from the industrial proletariat", being the "recruiting ground for thieves and criminals of all kinds, living on the crumbs of society, people without a definite trade, vagabonds, [without hearth or home], varying according to the degree of civilization of the nation to which they

belong” (1950a:155). In *The Eighteenth Brumaire of Louis Napoleon* Marx accords this lumpen proletariat a cynical function in a class alliance with “ruined and adventurous offshoots of the bourgeoisie... from [which] kindred element Bonaparte formed the core of his [constituency]...” (1950b: 295). Marx does recognise that crime attacks property tirelessly but sees this contribution as made without a relation to value and in spite of working class interests. All it would seem to achieve is drive technical innovation – as in the invention of locks for example (1993a:53).

To show that crime is integral to the development of class society, one need look no further than Marx’s own research field, of 18th and 19th Century England where the enclosure of common land, the enforcement of private tenure and the imposition of new taxes conspired to undermine the dependence of peasants and woodcutters on the land. This ‘primitive accumulation’ prised loose populations of peasants from the land they cultivated and forced them into almost pre-capitalist communities as free and rightless proletariat. The translator notes that Marx’s original term is *vogelfrei*, “literally ‘free as a bird’ – free but outside the human community and therefore entirely unprotected and without legal right” (1993:898). Marx could see in their crimes of vagabondage and thievery only the actions of an underclass, inert for its exclusion from civil society. Peter Linebaugh (1993) revisits a pivotal moment in the development of Marx’s thought when as the editor of a newspaper, a discussion in the publication on new prohibitions against the collection of wood led him to the study of political economy. His critique of the measures against the ‘theft’ of wood was based on what he saw as the customary rights of wood gathering, which humanist leanings his later theorising of primitive accumulation would give material qualification. Linebaugh revisits the Nineteenth Century class struggle in the Rhine valley with the hindsight afforded by *Capital* to answer for Marx’s theoretical shortcomings at the time. Instead of reading the edicts of the Prussian state for the class interests these betray as Marx did, Linebaugh sees in the theft by the dispossessed from privatised forests a form of resistance to work and exploitation in the burgeoning factories.

The social histories of that time written by Gatrell (1996) and Linebaugh assert the active production of human subjectivity in this abject criminality and show how primitive accumulation not only proletarianised the dispossessed but created a class of beggars, thieves and vagabonds that were part of the groundswell of the 1848 revolutions in Europe. Crime became the repository of popular fear of the perceived disorder sweeping the continent, deeming criminals the degenerate offspring of change. While the growing anxieties in these societies reflected the political transitions they were undergoing at the time, Gatrell traces the rise of the ‘police state’ to the newfound concern to contain crimes against property and

persons. A concomitant history of ex-carceration is told by Linebaugh who chronicles the life histories of criminals condemned to hang in London during the 1700s (2003). The popular desire for freedom from the nascent police state fêted criminal heroes for their ability to thwart justice at a time when mushrooming urban slums posed a revolutionary threat to the Crown. The politicised poor were outsourced to British imperial interests by deportation while criminal subjects amongst them were sentenced to die in public displays of sovereign power at home.

The frontier

Primitive accumulation in Europe has in the imperial age of colonialism its counterpart in the frontier. The frontier marks a hypothetical boundary, separating the law from the lawless, unconquered peoples. Not simply a border, however, the frontier represents a limit of authority, rather a grey zone in which normative colonial relations are established through sovereign violence. In a staggered advance of imperial interest conceptualised by a frontier tradition of historiography, the frontier 'opened' the South African territory for exploration, which 'closed' as political authority gained hegemony over indigenous societies in the region (Mostert 1992). The open frontier is thus associated with freedom as power assesses the potential for its growth, and incrementally with repression as the frontier encloses and neutralises resistance (Giliomee 2003). The frontier as a narrative of modernisation emphasises to varying degrees conquest, dispossession and exploitation. It has, therefore, traditionally been a white trope of being in Africa, where natives are like the unfamiliar and hostile terrain, 'encountered' by intrepid explorers and missionaries. In tracing the origins of white racism, the frontier tradition in South African historiography ties the racial categories of Twentieth Century apartheid to frontier relations of power. A liberal professor of psychology at the University of the Witwatersrand, ID Macrone, authored this thesis in his *Race Attitudes in South Africa* (1937) attributing apartheid racism to the birth of black subjects and the formation of white group consciousness on the frontier (Legassick 1980). In leaving the Cape colony to stake a claim on the frontier, settlers adopted the European civilizing mission as a right to subjugate the indigenous population. Separation from Africans would extend as far as master-servant relations and necessary trade with Africans would allow (Muiu 2008). The strongest force keeping them tied to the Cape, though, was their need for ammunition without which they could not hunt wildlife, San or raid Khoi and Xhosa cattle.

Capitalist development in South Africa constructed regimes of difference, between white and black, the civilizing mission of colonial authority and the savage native. Complementing the

religious approval of the imperial project was the emergent study of criminology, which caught in the positivist science of the time, ascribed criminality to the ethnic and physiological characteristics of the subject. The study of crime thus had a close affinity with anthropology for the determination of difference. This Western criminological tradition offered a ready scientific claim to justify racial oppression without reference to a racialised hierarchy – black people had to be treated as potential criminals. Colonial governance in South Africa adapted Western criminological studies, not in an attempt to understand the criminal or define a criminal justice system but to qualify the separation of races and the construction of otherness (Chanock 2001:64). Race and criminality intersected from the ‘opening’ of the frontier by the Dutch East India Company in 1652. The first administrators of the Cape of Good Hope battled to establish what the company had mandated to be a refreshment station. Their principle problem was the ‘dull, stupid, lazy, stinking’ native who could not be subordinated to work on the fields and was an incorrigible deserter (Mostert 1992:138). Slaves had to be imported from West Africa and Batavia to work under the whip to compensate for the early labour shortage. For their own contribution to the agricultural economy, the European settlers were little help to the corporate enterprise. The second administrator of the Cape complained that they had only proved to be as depraved, drunken and lazy as the Khoi. While control of the region’s livestock and grazing land lay in the hands of several Khoi groups, the Company tried to maintain its monopoly on the maritime trade by forbidding trade. The free burghers paid little heed and began competing with the Company for Khoi cattle to the extent that successive governors considered them suitable for punishment on Robben Island.

The first act of Khoi rebellion occurred the year after Dutch settlement, led by Autshumato, an old Khoi chief who had acted as an interpreter to the administrators. He made off with most of the settlers’ head of cattle in 1653, killing a young Dutch cowherd in the process. Though he returned with his family and kin to the colony two years later, he was too valuable to the barter between the Dutch settlers and the different Khoi groups to punish. The Dutch would not ever trust Harry the Strandloper, as they named him, suspecting him of double-dealing and self-enrichment at their expense (Mostert 1992). To groom a loyal intermediary, the first Dutch colonial administrator and his wife adopted a niece of Autshumato, Kratoa. She was baptised Eva and educated in European language, dressed in European clothes and taught Christian values. The emergence of another Khoi leader who could act as interpreter made Autshumato dispensable. In 1658, he was banished to Robben Island for theft and being a danger to the settlement, related to the 1653 rebellion. Of all the political prisoners that were to follow Autshumato to the island, he brought the political cheek in criminal jowl – at least for the year and a half he spent on the island before returning to life and work in service to the

Dutch before his death in 1663. The only reason the Dutch did not recapture him was that his successor, Nommoa, had proven to be just as much incorrigible. The repression of Nommoa's rebellion was recorded as the first Dutch-Khoi war (1659-60). Khoikhoi chiefdoms remaining on prize land were vanquished in Company-organised cattle raids called the second and third Dutch-Khoi wars. Defeated, Khoikhoi resistance to the acquisitive colonists began to wilt. As their society disintegrated from the inducements of alcohol and tobacco, and death as a result of smallpox to which they had no immunity, the first phase of the frontier reached closure.

The clear difference between the colonial and the European modes of primitive accumulation was the scale of violence deployed. The violence of the encroaching colonial state was a necessary feature of nomadic pastoralism. If land and water sources are not acquired, pastoral societies stagnate for the constant need to migrate to prevent the degradation of the land by overgrazing. The unit of production of a pastoral economy being the patrilineal family group, a failure to expand also results in increased domestic tension. Since expansion brought the settlers into conflict with the indigenous landholders, warfare and cattle raiding were the inexorable result (Penn 2005). The Company could not contain this acquisitive desire while the parsimony of its market monopoly left colonists with little incentive to remain within its impoverishing boundaries. To hide their plunder, settlers would undertake these raids against the Khoi with pledges formally recorded in a volume that they entitled 'The Christian Voyage' (Mostert 1992:161). Any need for the Christianly subterfuge changed when in 1700, the Company rescinded its interests in cattle rearing and lifted the prohibition on colonists to engage in cattle trade. Initially, they were to keep their herds no further than a day's journey from their homesteads, but once this restriction was lifted, no restraint remained on their appropriation of land. Prospective cattle herders had just to apply for grazing permits from the Company on land deemed unoccupied and the Cape peninsula being the only 'occupied' land, the receding horizon of colonial expansion was chased by generations of settlers into the interior to stake out their fortunes.

The commando was the colonial weapon to pacify native resistance, moreover to ensure by military means that the labour of conquered peoples could be exploited by *trekboer* (migrant farmer) society. The Khoi people whose land had been expropriated were forced into tributary labour in exchange for access to water and grazing for their own livestock (Penn 2005), which surrender of the means of production continued as the frontier was closed until they had no access at all. The first commando was equipped and rallied by the Dutch East India Company in 1774 to suppress resistance by the San whose hunter-gatherer livelihood was threatened by the advancing frontier (Mostert 1992). Many more commandos would be rallied by successive colonial authorities, first from mercenaries and then conscripted from colonists or

their servant proxies in ongoing conflict with the enemies of civilization. Pejoratively called ‘Bushmen’, the San’s plunder of the flocks and herds of the new economy stirred the unbridled hatred of the colonists for them. The leader of a commando in 1775 petitioned the Company “to be allowed to destroy the robbers without giving quarter” (Mostert 1992:222). San resistance pushed the colonial advance eastward, to confrontation with the Xhosa where earlier in the Eighteenth Century trekboers had ‘opened’ the frontier between the Fish and Kei Rivers with tales of the riches of the land the British called ‘Kaffraria’. The Xhosa posed a very different foe from the Khoi and San of previous commando missions. Where the military power of the commando had been dedicated to securing the pastoral economy, it was now dedicated to dislodging native competitors to make way for colonial occupation. Land under Xhosa customary law belonged to the chief but was utilised communally, in direct contradiction to the private ownership and fixed title upheld by the Boers. Mutual indignation gave rise to bitter enmity between the Boers and Xhosa, which portended the adversarial race relations that would come to define the history of the subsequent country.

This has left us with a history of a clash of civilizations that has valorised categories of race, nation and class and overlooked the social constructions that are at odds with this ‘frontier tradition’. In his seminal critique *The Frontier Tradition in South African Historiography*, Legassick argues that liberal and nationalist historians had reduced apartheid to primordial difference, imposing a racial binary on frontier relations that were more co-operative than they were adversarial. The antimony of civilizing white settlement and premodern barbarians encountered on the colonial frontier was increasingly characterised by assimilation: “If there was a trend in class relationships, it was a trend away from master-slave towards chief-subject or patron-client on the frontier” (Legassick 1980:68). As much as the frontier represented the geographic limit of colonial authority, across its unmarked boundary lay a lawless hinterland across which the malcontents of the Cape of Good Hope would flee to find refuge. They were motley groups of migrants, fugitives from colonial authority, some escaped slaves and other non-conformist Europeans, and the *bastards* of interracial mixing in the colony. Among the *transfrontier* communities were kin groups led by white patriarchs that were if anything, anti-modern. Their tribe-size families were the offspring of multiple wives or concubines they took from amongst servants, freed slaves and the women of Khoikhoi, Xhosa and Tswana clans they defeated. As such, they were unsuitable material for nationalist historians in search of the pioneer spirit or subjects of white group consciousness.

A common distinguishing feature of these outlaws was their prodigious rejection of the frontier family tradition where children born of slave rape were *bastards* without right of inheritance. Jan Bloem, whose son lent the family name to Bloemfontein, was a German

outlaw who killed his wife and escaped from justice across the frontier where he took 19 wives. The ‘King of the Bastards’, Coenraad de Buys, was a mythologised seven-foot giant who acquired wives and concubines in strategy and conquest. He had 315 half-caste children and as many as 3,000 grandchildren who migrated with de Buys in 1821 at least as far north as Debuysdorp in present-day Limpopo (Penn 2005). Still other deviant settlers on the eastern frontier were the Bezuidenouts and Prinsloos, and in the Garieb region of the north hid “Stephanos, Hendrik Wikar, Petrus Pienaar, and Jacob and Hans Kruger ... on the run from the authorities in Cape Town for crimes ranging from forgery and desertion to murder” (Mellet 2009). Any influence they had on the modern identities in formation at the frontier was edited from the Afrikaner national canon. The Great Trek of boers from the Cape Colony in the 1830s was the founding moment of Afrikaner nationhood and it is their history of conquest and native treachery that is commemorated in stone relief at the Voortrekker Monument in Pretoria. Horseback bandits and their racially mixed kin could have no place in the making of the Afrikaner nation as white. The first Afrikaners, and in name, were not white but a Khoi family who, sixty years before the Great Trek, broke free from the white farmer to whom they had been indentured. The Afrikaners together with the boer, Petrus Pienaar, were a mercenary force that profited from settler insecurity and with the collaboration of colonial authorities, carried out cattle raids against the Khoi and massacred the San people (Mellet 2009). Pienaar was also notorious for his sexual violence and he would rape not only the women of defeated clans but the wives of the Afrikaners as well while they were out on account. Their resentment for their master grew until the Afrikaner brothers Jager and Titus murdered Pienaar and his white family. Gathering together an intemperate band of outlaws, the Afrikaners formed an independent community that survived by cattle raiding. Jager (later Christian Afrikaner after a strategic conversion to Christianity) migrated from the north-western frontier all the way to uncolonised Namibia.

The murder of Petrus Pienaar is one case study of how the economy of the frontier exceeded the utility of the master-servant relationship. The lawless hinterland had been absorbed to bring the settlers and indigenous into sometimes co-operative proximity, though the potential for revolt by the subject races stoked the security fears amongst settlers that Pienaar, for example, exploited. Frontier power relations would over the course of the Nineteenth Century be radically restructured to bring the native into a subject relation to colonial law. When the British occupied the Cape Colony in 1806, they presumed to be the harbingers of enlightenment, social harmony, economic growth and social progress. On the frontier, however, the enlightenment clashed with conservative attitudes of the settlers who then, more than ever, motivated for an acceleration of imperial conquest. Resistance to the expansion of the frontier was still fierce and settlers were in constant conflict with the ‘incorrigibly savage’

San people in the north, and the Xhosa in the east, described as ‘Kaffirs, robbers, marauders’ who fought the Fourth (1811), Fifth (1819) and Sixth (1834-5) instalments of the Frontier War (Giliomee 2003). Other frontiers would be opened by the British with their own set of non-conformist Europeans and the legends of the many wives³ they took. There were yet endogenous challenges to frontier relations from defeated Khoi and refugees from regional conflicts who had been indentured to white masters.

The Unfree

A new paradigm of power to regulate the labour of ‘free’ subjects was augured by the emancipation of the Khoikhoi from peonage in 1828 and the 1834 abolition of slavery by British edict. The emancipation signalled a transition from a regional economy based on trade and plunder to commodity production, with resistance and migration re-territorialising frontier relations. Struggles ensued over the regulation of free labour and the differential inclusion of ‘brown’ bastards, Khoi and freed slaves into the body politic. Envisaged as a solution to the shortage of compliant labour, the emancipation of indentured labour instead precipitated mass desertions by an emergent peasantry that had acquired property, dubbed the *unfree*. The flux of European domination on the frontier during the late Eighteenth and early Nineteenth centuries had opened the scope for slaves, indentured labourers and labour tenants to have access to land, livestock and the know-how to engage in the trade of their agricultural products (Bundy 1979, Crais 1992). These were concessions begrudged by slaveholders to their slaves in order to deter desertion. The accumulation of property by the unfree did not, of course, subvert their subordinate position on frontier farms as the farmers would appropriate what they deemed their fair reward. The Protector and Guardian of Slaves, an initiative by the British colonial state to improve the conditions of slavery, provides documentary record of discrete arenas of struggle over the organisation of agrarian production and the maintenance of kinship ties despite the master-slave relation (Crais 1992). Complaints filed by slaves against their masters included the expropriation of property amongst the physical abuses inflicted by slaveowners.

With the confidence the ownership of livestock gave them, the unfree deserted their masters’ farms after the emancipation. Many migrated to burgeoning towns built around mission stations that since the Khoikhoi Rebellion in 1799 had become places of refuge and their

³ John Dunne, the white chief of Zululand and advisor to Zulu king Cetshwayo, was a Scotsman who was reported to have married 47 Zulu women. Unlike the transfrontier boers on the Cape frontiers, he was not a fugitive from justice as much as motivated by grief (Mellet 2009).

populations boomed. The Khoi had been exposed to colonial culture for generations and could understand Dutch. Their receptiveness to the Christian message was explained by their pastoral affinity and the common belief in a supreme Creator and a Devil-like trickster, as compared to the hunter-gatherer San who resisted conversion. Closer to the truth was the fact that the missionaries on the colonial frontier had become brokers of power, offering not just membership of the Christian faith but access to literacy and status enhancement (Penn 2005). After the emancipations of the Khoi in 1828, the colonial government assigned the responsibility for the 'rehabilitation' of the Khoi to missionaries (Giliomee 2003:108). The newly free at the mission stations generally preferred to engage in small peasant production where possible, hunting and casual labour in town, and if employed on white farms, only ever on short contracts. Rather than opting to return to the service of white farmers, missionaries document their settlement on land availed by local authorities close to towns, describing an almost quaint artisanal existence. After completing what apprenticeships could be available to them, the pastoral idyll disintegrated as 'rehabilitated' Khoi found that there was very little land open to them to cultivate.

Emancipated slaves otherwise opted to form independent communities on vacant land beyond the boundary of their former master's farm. These deserters converged with Africans dispossessed by colonial expansion through the present-day Free State. Together, they formed bandit groups that menaced colonists, stealing cattle and beating up the black labourers who remained on white farms, and threatened to 'shoot whites dead' (Crais 1992:74). Settlers on the eastern frontier feared the possibility of an alliance between freed slaves and Xhosa in attacking white settlers. Under the unrelenting colonial gaze, this banditry proved that while he may judicially be set free, the African native was nonetheless incorrigibly inferior in human character, morality and intellect. A process of symbolic inversion resolutely cast the black subject as the symbol of all the colonialists deemed abhorrent in their own culture and as impostors in white dominion. The representation of the native changed in the media of the early Nineteenth Century from the redeemable savage to the morally degenerate subject bent on stealing from whites (Muiu 2008). The first newspaper established by British settlers in Grahamstown in the Eastern Cape editorialised the view that without recognised political systems of their own, Africans were liable to engage in warfare or mischief if not subject to white rule. There could be no enlightenment notions of free and equal subjects in the colony when these were constitutively white and black. For the British settlers, the defects in the native character were critically related to a lack of respect for private property and an unwillingness to work for white masters. Their petitions for colonial force to be used for the restoration of order over freedom began to find resonance with enlightened colonial policy. After the outbreak of war with the Xhosa in 1834-5 was blamed in London on the

‘oppressions of the European colonists’, “...the portrayals of Africans by politicians in the metropole had become far more misanthropic. Bringing ‘light’ to a ‘place of darkness’ involved less the earlier policies of peaceful co-operation but more the full weight and violence of imperial rule” (Crais 1992:149).

As the English conscience yielded to the view from the frontier that the native would only respond to coercion, new techniques to restore order were mooted. Under the racist Governor D'Urban, the Legislative Council of the Cape colony (that had been established to involve colonists in administrative decisions taken by colony's Executive Council) proposed a Vagrancy Ordinance in 1834. According to the proposal, people deemed to be squatting on Crown or unused land, found to be unemployed or hunting on land they did not own were liable to be arrested as vagrants (Crais 1992). Though distinguishing subjects in terms of class and not racial specification, the law was rejected by the Crown as prejudicing its interests and not enacted. The settlers were incensed, adding fuel to their demands for representative government. Just three years after the failure of the vagrancy law, its aims were partially achieved with the introduction of legislation to control the migration of black people (100 years before this became an ‘influx’ to urban areas). Unauthorised native locations were prohibited and ‘native foreigners’ found without a pass in the colony could be arrested. The contractual bonds employers held on free labour were also tightened with the passing of the Masters and Servants Ordinance of 1841. Where indentured Khoi labourers had been taken to be freer than slaves, the Ordinance subjected free labour, without racial differentiation, to white masters (Giliomee 2003). The measures did not succeed in returning freed labour to work on the farm, however, leading frustrated settlers to complain to governors in the Cape that legislation to furnish them with ready sources of labour were still not adequate. The colonial state, in the climate of renewed racism, was sympathetic and by 1848, launched an inquiry into the state of labour in the colony. The inquiry revealed the perceptions amongst settlers of the weakness of the authorities in dealing with indolent Africans and their refuge in idleness at mission stations. The Cape government responded to the recommendations from the inquiry by recuperating some of the entitlements of the Cape slave codes. “...Scarcely twenty years after the oppressed tasted the freedom European colonists ‘eat so sweet’, most had been forced back to the white farm. Life as a bandit or an independent peasant producer was now only a memory resuscitated in informal discussions of the past and in bittersweet dreams of better days” (Crais 1992:86). The breach of labour contracts by black servants was criminalised with the passing of the Masters and Servants Act of 1856. An ordinance was, moreover, passed while the inquiry was underway allowing farmers to capture and indenture Xhosa labour outside the bounds of the colony.

Urban criminology and the discipline of labour

The emancipation of slaves having proven to be the closure on one frontier and the prelude to the opening of another, the Nineteenth Century bequeathed to the Twentieth the techniques of governance for racial segregation. The black subject was assuming its modern form as the frontier urbanised, folding in around the labour-intensive gold and diamond diggings where submission could no longer be to a master but to the discipline of work. The black-criminal complex was essential not only to the foundation of racial rule but to the control of labour as well. A strong link was drawn between unemployment and criminality and a slew of litigation enforcing racial segregation was premised on the criminal dispositions of black men. With class formation that would follow conquest and emancipation, the techniques of labour control would be generalised to apply to all black subjects. The discovery of diamonds near the Orange River in 1867 and gold in the Transvaal republic in 1886 were the sites of a new frontier of capitalist development. Concomitantly, the regimes of racial separation, white mastery and black servitude, had to be scaled up to suit a demand for labour that the colonial framework was not designed to govern. Where the essentially agrarian economic base of the Afrikaner republics was organised in patrimonial boundaries and labour tenancy, the ever-increasing demand for labour in the burgeoning mines on the Witwatersrand drafted a class of black workers to urban centres. Through punitive taxes in rural reserves and land dispossession (Land Act of 1913 and later of 1936), African men were dislodged from agricultural subsistence and forced to underground rockfaces. This influx of a large black population instigated a recurrence of the *swart gevaar* – a fear of the threat not only posed to frontier political control but to the stability and profitability of diamond and gold mining. Migration control regulations were first drafted by the Chamber of Mines' Native Labour Department in 1895 as a response to perceived state reluctance to organise a stable and constant labour supply. The president of the Chamber of Mines enthused: "...a most excellent law... which should enable us to have complete control over the Kaffirs." This zeal for migratory labour control on the part of the mining houses set the precedent of the pass laws which the Union government and apartheid republic was to extend to all spheres of social control.

After the defeat of the Boer republics in the Anglo Boer War,⁴ imperial interest set about promulgating the proper conditions for the control of labour on a mass scale. British Lord Milner, Governor General of British Southern Africa from 1897 to 1905, would be the first to moot a passport system to control 'aboriginal natives' working in white areas (cited by Muui

⁴ Also known as the South African War by historical revision at the time of its centennial commemoration.

2008:52). The obligation to work could not conceivably be enforced by the master-servant relation; the new labour regime would instead compel workers by force of contract (Chanock 2001). On its premises, the labour contract presents a benign face of fairness and free choice: workers are 'free' to submit to stated employment conditions and classified under civil code, a breach of contract was decriminalised. The obligation to work had to be enforced by the criminalisation of *not* working and the temporality of contract work lent the new system a technology for migration and segregation control. Idle black men in 'white' towns were cast as foreigners, lazy or as thieves and murderers, more so when the labour shortage was acute (Muiu 2008). The separation of races made not only economic sense therefore but ensured the peace as well. According to the Transvaal Indigency Commission, the application of the English model of poor and vagrancy laws would ensure that blacks could not corrupt poor whites (Chanock 2001:68). Whites not being by nature criminal, white offenders in the opinion of the Commission were treated too leniently and had to be sentenced to labour colonies for long enough to acquire a trade. The ascension of the segregationist, white state with the Union of South Africa in 1910, stopped the application of these correctional ideas to whites but gave impetus to their extension for the control of black labour only.

The criminalisation of the black subject set fundamental terms on how labour would be disciplined, critically bearing on how the migration of workers was policed. In the growing city of Johannesburg, major employers set up their own private police units to guard against the perceived criminal ferment in the labour compounds where black workers were accommodated for the duration of their contracts. Not conventional police, they would arrest and, without following a legal procedure, punish perpetrators of minor infractions with a whipping. The police commissioner would lament, though, that they were 'utterly unreliable' in enforcing the prohibition of alcohol in the compounds (Chanock 2001:58). The compounds themselves were by the mining industry's design, prisons. The closed compound was modelled on De Beers's convict station at its diamond mine in Kimberley. The company had negotiated with the Cape government for a supply of labour, accommodated in this prototype labour hostel. De Beers employed convict labour from 1884 to 1932, which more than a solution to the labour shortage at the Kimberley diggings, proved very profitable. Convicts are, of course, more efficient than free labourers because the prevention of theft is made easier. Inmates of De Beers's convict station would be searched on entry and exit, stripped in search houses and led off naked to the holding cells (Turrell 1987). For low-cost, forced labour the mine paid the operating costs of the prison plus a token fee to the state for the use of convict labour (two pence a day) (Chanock 2001). For the Cape government, forcing prisoners to work was poetic justice for a growing black prison population sentenced for being idle – that is, caught without a pass and no evidence of a having a white master. The

Union Government in its Prisons Report in 1910 endorsed a wider application of convict labour. Away from the torpor of containment in prison cells, it argued, minor offenders would be saved contamination by association with hardened criminals to instead be put to work on building roads and other public works (cited by Chanock 2001:109). The subsequent Prisons Act of 1911 gave the Director of Prisons the discretion to contract the labour of inmates, with the proviso that these be contracts for public works 'as far as possible'. The colour bar that reserved skilled work to white workers applied to even convict labour. With a militant white labour movement leading open rebellions against the state and pogroms against black workers, an increasing sensitivity to scale punishment to the race of offenders is evident in later prison reports.

The punishment of the black subject was instrumental to disciplining (indeed producing) the labour force for industrial capitalism. As the law would be elaborated over the course of the apartheid century, common law increasingly came to be interpreted on the racist precepts underpinning criminal law (Chanock 2001). The law was instrumental to the making of the modern state, contrary to the liberal principle that it should be a limitation on power. This influence of the criminal threat over social control did not always follow an economic logic. The maintenance of the colour bar, for instance, was doggedly defended by the government to appease the fears of a militant white workers' movement of the cheaper alternative of indentured Chinese labour. These apparent non-rational elements in the law were drawn from a bifurcation of power that reproduced racial difference litigated under colonial law and unified by the reason of state. Authoritarian rule over black subjects could co-exist with white democracy for all their defects of character, culture and intellect. There was no contradiction in these antinomies since the law was always exceeded by power whenever the prerogative of white authority was tested. Legal reason would be suspended when suspects of crimes against the state or applicants for restitution were black; their temerity to demand the democratic freedoms reserved for whites stood only to be quashed.

A purely juridical analysis of subjectivation does not fulfil what Foucault holds as the principle of biopolitics – the freedom of subjects to resist. The scorn for the incorrigible laziness and delinquent native by apartheid's Industrial Relations Commission was racist but essentially correct. Deborah Posel (1991) shows how the rejection of work by township youths was enabled by unwaged support networks, not least of which were criminal. Migrant labour was not a policy choice of preference but was confirmed as the primary conduit of labour for the mines and industry because urban youth were not as compliant. The insertion of a regimented population of black labour into the urban landscape served to divide the black community. Yet, the most vivid rejection of the humiliations of work under apartheid

emerged from the migrant labour system in the form of banditry on the urban frontier. Van Onselen's *A small matter of a horse* (1984) is a social history of Nongoloza, a Zulu migrant who forms a gang based on the principle of autonomy from wage labour against the backdrop of the immoralities and corruptions of work in the mines. The gang ambushed migrant workers going to their rural homes from the mines, robbing them of their wages. Later as the 'People of the Stone' – a reference to the stone on which the bandits' codes were in legend, inked – Nongoloza's gang came into direct conflict with the colonial state and the mineral economy. The first organised anti colonial struggle on the Reef, in their biographer's estimation, was then criminal.

The legend of Nongoloza, and Kilkiljan with whom he comes to conflict over his homosexual relationship with a fellow gang member, is the folklore for the formation of South African prison gangs, the 28s and the 27s respectively. The Number, according to Steinberg (2004b), constituted the laws of struggle by black prisoners in the prisons of apartheid. The lineage claimed by the Number prison gangs to these bandits is the subject of Steinberg's biography of Magadien Wentzel (2004a). As a long-time gang member, Wentzel's rise to the judiciary of the prison gang hierarchy paralleled SA's transition from apartheid to democracy, and the transformation of gang structures in this period see a migration of gangs out of the prison. Once pitted against racial oppression, the Number exceeded the confines of the prison in the 1980s as apartheid was coming undone. Democracy, experienced at its onset by Magadien from inside prison, forsook the 'oldest liberation movement' in the country. He laments the dissolution of the prison gangs' codes of discipline and honour because of their increasing role in criminal networks outside of the penal institution. Steinberg's interviews with Numbers suggest that the lore captured the imagination of the streets and ex-carcerated number gang members, like the 28 Colin Stansfield and Jackie Lonti, found in the Number a ready-made instrument to co-ordinate the growth of their criminal empires. A lieutenant of Jackie Lonti's recounts how his gang boss, a leader of the Americans before his time in prison, was released a blooded 26 beginning a "natural, organic assimilation of street gangs" (Steinberg 2004).

The migration of prison gangs to the street is at one level a reflection of South Africa's incorporation into global criminal networks. More fundamentally, however, the currency the Number found outside the prison reflected a shift in a frontier that had historically lain between white jailers and black prisoners. Given the decline of the apartheid state and the unbanning of the liberation movement at the time, the anticipation was of changes to follow in the hierarchy of the republic – not the republic of the nation but the regime that Hardt and Negri (2009) argue restrained the bourgeois revolutions. The colonisation of Africa in all its

guises of civilising and redeeming the natives advanced the rule of law as one fundamentally related to the proper government of property. This encroachment of what Hardt and Negri conceive as the republic of property is a dynamic process that extends behind open frontiers for these freedoms only to be battened down by intensifying repression. As the republic of property renegotiates the terms of privilege, “Freedom becomes the negative power of human existence, which serves as a bulwark against the descent of the innate conflicts of human nature into civil war” (Hardt and Negri, 2009:11). As such, the frontier is understood not as a static line between the legal and the illegal but a constitutive part of modernity: “The legacy of modernity is a legacy of fratricidal wars, devastating ‘development,’ cruel ‘civilization,’ and previously unimagined violence” (Hardt and Negri 2000:46). Criminality is the perennial outside, the inverse of good citizenship that is the necessary condition for those measures taken by the state to protect the social order. Driving the advance of the frontier are the subjects produced in its grey zone – the unredeemed native resistant to European civilization, the indolent labourer in the colony, and bandits of the Ninevites. From so advanced a stage of modernity as a post-colonial liberal democracy, it becomes apropos to ask – if the history of the frontier has not ended – where does it currently lie? Since it was *trekboers*, runaway slaves, fugitives, *bastards* and bandits who tested the limits of colonial authority, some to the extent of establishing independent clan-groups (in the case of the Afrikaners), the criminal subject and the war against him opens a cartography of the present-day frontier. This frontier plots a geography of the law, greed and individuation in which the rule of property is established and deviant subjects punished and rehabilitated.

Methodological notes

A word about my audience before setting the scaffold of my argument into place: I have two in mind, roughly divided by the methodologies of the proposed study that their respective disciplines would find most relevance in. Sociologists may be galled by a move to incriminate the structures that democracy is beholden to. Those post-structural amongst them may be piqued by how criminal subjectivity unsettles the customary agencies of social change. It is by freeing these abject categories from ethnography of crime that my theoretical argument will be substantiated. Anthropologists, as my second audience and to whom I owe formal deference, should then also find their discipline instrumentally represented. May neither be disappointed.

In following the dynamic of the frontier, Chapter 1 ‘opens’ on the insurgence of the mass democratic movement and the demise of the apartheid regime. The ambiguities of what

violence was politically motivated and what criminal are carried through the transition in the bodies of militants of the insurrection, whose political identities are dislocated by democracy. Colin Chauke, the liberation movement soldier before democracy and cash-in-transit heist gang 'kingpin' afterwards, is the lead example of the problematic. He personifies "the 'great' criminal, [who] aroused the secret admiration of the public... not from his deed but only from the violence to which it bears witness" (Benjamin 1999:281). The extraordinary story of his criminal-political life, as told through the media attention he commanded, poses questions that the narratives of other criminal cadre suggest answers to. 'Encountered' in the field of Orlando East, pastors Jethro and Siphwe reflect on criminal pasts that, unlike Chauke's, end with their conversion to Christianity. If they retain anything of a criminal identity, it is evinced by an antipathy they share for the new social order. While they do not bear out the hypothesised criminal insurgence post-apartheid, their ministry to criminal youth reveals an undiminished but de-politicised resentment of poverty. Orlando East is further sampled as a proving ground of the 'new order' but rather than counterbalancing the puritanism of the pastors, present the conditions of insecurity urging for the closure of the frontier.

The first chapter having cast the criminal subject in the political mould of the struggle against apartheid, Chapter 2 turns to the question of security and how it has encumbered the transition. The criminal subject is introduced in *his* negative image in the law. The paradigmatic subjects of the law – the illegal immigrant and the migrant worker – are subsumed within a law-preserving order that perpetuates racial difference. The criminalisation of the black subject, the transformation to punitive justice, and democracy's unfolding articulation with an insurgent nationalism under the new administration are explored. Jeppestown is the field for much of this discussion, presenting how the problem of social control of free subjects has been answered by the techniques of crime control. Ethnographies of anti-crime initiatives and community policing reveal a heightened state of insecurity that unspools into a generalised rule of law enforced outside the normal juridical order.

The renewed systems of social control presaged by the war on crime have increased the population of criminal deviants in need of rehabilitation. The final chapter chronicles the involution of the frontier towards their redemption. Rehabilitation of convicted offenders is the cornerstone of modern penal policy, spawning quasi-religious discourses that articulate with the morality of work. The missionaries of the frontier are instrumentally represented here by the Former Convicted Offenders Development Initiative (FOCODI), based in Vosloorus, which facilitates pre-release reintegration programmes in prisons. Performances by prisoners of their contrition are also observed. The meaning of punishment gleaned from these engagements with reformed offenders spell a corollary to the disciplinary power transmitted

by the prison – pastoral power. Criminal subjects accordingly derogate their moral deviance and re-affirm normative frontier relations.

The study of an illegal social phenomenon brings with it immediate limitations. Addressing crime is a difficult topic to broach with any informant (a term here of apt connotations). Where it is not always clear whether the person you are speaking to has a criminal history, asking the question would of course be received as an accusation. For this practical limitation of the subject matter, purposive sampling took me to the field sites identified (Orlando East, Jeppestown and Vosloorus as well as at three different prisons) on the basis of a combination of my knowledge of the areas and their socio-historic relevance to the themes and problems of the research. Epistemologically too, the ubiquity of crime and the meanings ascribed to it poses criminality as a general problem. Rather than rooted in the peculiarities of a local context, a mixed methodology of interviews, prison and policing ethnographies and press clippings is used to construct narratives of the criminal subject that in essence is everywhere.

This analysis will be of criminal subjectivity in terms of how criminals self-identify, reinforce or resist normative relations and make meaning of their activity and relate to the circumstance of their offense. An emphasis on the viewpoint of the subjects and the process of their interaction with their environments does not foreclose structural interpretations of societies. Erving Goffman distinguished the subjects of his research into criminals as self-conscious agents whose actions together reveal the ‘interactional order’. The criminal act is disclosed as a theatrical performance communicated on a stage set by a crew and delivered in a discourse held to be common with members of the audience (Cuff 1990:158). As Mokwena observed of his own methodology, “Ethnographic research around issues of youth crime and violence can throw up a range of possible explanations about the cultural context and the feelings, aspirations and worldview of the participants” (Mokwena 1991). In Foucault’s terms, “...it is possible to do a history of the state on the basis of men's actual practices, on the basis of what they do and how they think” (2007:455). An analysis of micro-power then returns inexorably to questions of government and state.

I proposed in formulating this research project that the information I would glean from offenders would offer an insight into their existences: racial identity and more daringly social class. These ambitious theoretical questions on a relationship between crime, class and politics were always going to be difficult to achieve. After the restriction of my research subjects to redeemed offenders, this appeared foreclosed. How could a sample of ex-offenders who have renounced the criminal ‘lifestyle’ be a valid perspective on the politicisation of offenders? What the crime stories and opinions provide are perspectives on men who have been defined by a punitive relationship to law. The interviews then are more testimony to the

pedagogy of reintegration than the criminal manifesto I had hoped to glean. This is especially true of the clutch of interviews conducted with members of the Former Convicted Offenders Development Initiative (FOCODI). References to these interviews are therefore grouped as a thematic category under FOCODI 2009.

Ethical considerations

Criminology under apartheid was a sheltered field of study for the academic isolation of South Africa at the time (Slabbert 1985) and complemented apartheid social control. The 1980s saw an increasing co-operation between the security forces and criminologists (van Zyl Smit 1990). Few people could visit prisons and researchers had to rely on court records, questions in the national parliament and interviews with ex-offenders for much of their data. The advent of democracy has opened the penal realm to the study of crime and penology under certain conditions. The Department of Correctional Services (DCS) accepts research applications once a year for access to prisons to conduct research and evaluates them according to its research priorities that have the rehabilitation of the subjects of the research as their focus. Given my interest in criminality rather than reform, my application would have been read sceptically by the DCS. That was clear from the outset but I did not anticipate the degree to which the university's ethics committee would frustrate the research. The first of three applications to the committee for ethics clearance of my proposed research was made before the DCS's application deadline. By the time it was reviewed and refused for technicalities related to the phrasing of questions in a questionnaire and the difficult legal position speaking to known criminals would place the university in, I could only accede and re-strategise gaining access to prisons. When the revised proposal was also rejected despite the excision of active criminals from the proposed informants, I followed the advice indicated in the committee's response to call a professor who sits on the ethics committee for her "insight on improving my application". This proved to be no more than a lecture on the vulnerability of prisoners and the allegation that my interest in Colin Chauke and proposal to interview his accomplices in C-Max was motivated by book publishing ambitions(!). The university's ethics committee thus presented an early finding of an institutional alignment with the prisons and its role in the mystification of law-breakers as deviants.

Chapter 1

On an open frontier?

Crime as politics

When the apartheid regime unbanned the African National Congress (ANC) and the other organisations of the liberation movement in 1990, the possibilities of revolutionary change in South Africa shimmered in the mass euphoria that greeted the release of political detainees and returning exiles. The brutal racial autocracy had capitulated in no small part to the 'young lions', the militant youth as they were fêted by the liberation movement, who had led the urban rebellion. The insurgents had sustained the struggle despite intense repression by cultivating a vision of a future beyond servitude, and the emergence of Nelson Mandela from prison prised open a millenarian moment for the realisation of that dream. Addressing the crowds who had descended on the City Hall in Cape Town on the day of his release, it became clear that Mandela was wary of the desires he had inspired. He paid tribute to the “endless heroes of youth, you the young lions [who had] energised the struggle” to then declare that a new phase of the struggle had begun, one that called for their demobilisation and their deference to representatives of the liberation movement in carrying their dream of a future beyond apartheid forward. When his speech was concluded, the crowds dispersed from the city centre and the young lions returned home, to the unchanged squalid realities of life in townships. The negotiations with the white minority regime that ensued reached a settlement upon which a new constitutional democracy could be established. But not without making strategic compromises. To allay the fears of the outgoing regime and to disarm the threat of civil war, the 'sunset clauses' as these compromises were dubbed by their primary author, Joe Slovo, allowed for a sharing of power for an interim period of five years. Historical divisions would be reconciled through a process of disclosure, forgiveness and amnesty for the antagonists in the averted conflict while all citizens of the country would irrespective of race enjoy equal rights and freedoms.

The end of apartheid spelled a mass demobilisation of the liberation movement that would in Mandela's later reflection on the Young Lions, misdirect their ardour for change to criminal ends: “The youth in the townships have had over the decades a visible enemy, the government. Now that the enemy is no longer visible because of the [political] transformation taking place, their enemy is now you and me – people who drive a car and have a house” (cited by Scheper-Hughes 1995). The years since his rueful observation have done little to

appease this enmity. Surveying the levels of poverty and inequality in South Africa, even the least jaundiced eye cannot fail to observe signs that the country has not attained democracy without fundamental traits of apartheid surviving. The disparities between white and black South Africans have remained resolute while the poverty gaps within race groups have instead grown wider.¹ More farm workers were evicted from white farms in the first 10 years of democracy than in the 10 years before that.² Grimmer still are the trends in life expectancy, which at 72 years and 51 years in 2002 for white and black South Africans is a gulf that has widened for the corresponding figures in 2009 to be 71 and 48.³ Reasons for the persistence of racism and inequality are complex, linked to the growth of both the economy and of poverty, globalisation, the commodification of basic services and the impact of HIV/AIDS. These sober appraisals of post-apartheid are well documented by political economists and it is not the purpose of this treatise to recapitulate their arguments.⁴ The facts of poverty give a clinical record of the health of the social body, an objective measure of the problem to frame debate, set goals and assure the possibility of a solution. Crime is not factored into estimates of poverty since its causation is indirectly related to how many \$2-a-day people there are. Their propensity to do crime is too complicated by the filters of history, culture, opportunity and the levels of wealth disparity in society to be reduced to how poor they are. What finally disqualifies crime as an index of poverty is its association with violence. Structural violence may be manifest in endemic poverty and protested, but it is never objectified as violence, is endured and the individuals and institutions responsible are seldom brought to book. Violence is instead the attribute of criminals, revealed by the hue-and-cry when a crime is discovered, and their punishment the right of the state to impose.

The criminal onslaught

According to international criminological studies of societies in transition, crime is the outcome of expectations for the resolution of historical wrongs and sacrifices made in struggle against oppressive states (Shaw 2002). The stability of a new democracy depends on how successfully it meets these expectations and moderates a popular sense of disappointment. Applied to South Africa's transition and the insecurity that has followed, this

¹ StatsSA. Income and Expenditure Report 2005/6. HSRC Fact Sheet 1: Poverty in South Africa, 26 July 2004

² Wegerif, Marc, Bev Russell and Irma Grundling (2005) *Still Searching for Security: The reality of farm dweller evictions in South Africa*. Nkuzi Development Association and Social Surveys. Available online: <http://www.socialsurveys.co.za/publications/StillSearchingforSecurityfinal.pdf>

³ South African Institute for Race Relations. *South African Survey*, 2007

⁴ See Bond, Patrick (2000). *Elite Transition*. Chicago: Pluto Press and Marais, Hein (1998). *Limits to Change*, New York: Zed Books

topology has as its first referents the liberation movement cadre. Levels of criminal and political violence escalated in tandem after the unbanning of the ANC and through the heady first years of the 1990s. But while the political conflict was headed-off by negotiation, crime continued unabated. In the interregnum, large, heavily armed gangs launched cash-in-transit and bank heists that intensified in waves until 2006 when rates started to fall and the weakness in the cash distribution chain shifted to ATMs (Hosken 2004). The first suspects to come into view were any of the number of militarised belligerents in the country with scores to settle, whether apartheid's defenders (the army, paramilitary units, the national and Bantustan police forces) or its foes in the armed wings of the liberation movement. Each nursing their own grievances with the process of transformation, either could have been responsible for what came to seem an onslaught. If the heists were carried out by political groups as the transmutation of political to criminal violence suggests, another ascription is tempting – insurgence.

It was not until a spate of cash-in-transit heists in 1997, carried out with 'military precision', that a public representative for the heist gangs was found. In his presidential address to the ANC's fiftieth national conference in December that year, Mandela accused embittered elements from the previous 'ruling group' of fomenting crime to stunt the economy and to erode confidence in the capacity of the party to lead the country.⁵ The criminal that would be the top crime story for 1998, blotting out whatever crime networks of racists Mandela was referring to, was Colin Chauke. Over a week before his speech, Chauke and five other inmates overpowered guards at Pretoria Central Prison and shot their way out. The Mkhonto weSizwe (the armed wing of the ANC) veteran was then facing charges related to a R12.6-million robbery from a cash depot in Pretoria in 1997 while his involvement in a string of highway robberies was being investigated. The most infamous of these fascinated the public for how the heist gang reportedly copied the tactics of Robert de Niro's gang in a Hollywood heist film to crash a cash-in-transit vehicle carrying R17-million and executing the guards. Chauke, however, was acquitted of involvement in this especially ruthless heist (Hosken 2005).

An enthralled media divulged the exploits of Colin Chauke over the course of the 410-day cat-and-mouse game he played with his pursuers. Newspaper articles burnished his struggle credentials, even reporting an allegation that he had been seen at the birthday party of Peter Mokaba,⁶ the then Deputy Minister of Environmental Affairs. The notoriety this lent Chauke

⁵ Address by Nelson Mandela to the closing session of the 50th national conference of the ANC. Available online: <http://www.anc.org.za/ancdocs/history/mandela/1997/sp971220.html>

⁶ As the ANC Youth League president from 1991 to 1994, Mokaba himself presents an interesting case of the power yielded to him for his ability to threaten law and order with militant rhetoric like his

led the national police commissioner to declare him the most wanted man in South Africa and that he would be captured by Christmas. Instead, as the media gleefully reported, the commissioner received a Christmas card from Chauke. He appeared to enjoy the media attention, even calling into a Johannesburg radio station to profess his innocence. His most brazen media stunt was to initiate a covert interview with *City Press*, a Sunday newspaper that published a series of articles about him in February 1998. The editors were admonished by their peers for contacting 'South Africa's most wanted alleged mastermind' and not reporting it to the police. More objectionable in terms of *The Code of Conduct of the Press Ombudsmen* was that they had allowed Chauke to use the newspaper to make the accusation that senior white detectives in cahoots with private security companies were behind the spate of cash-in-transit heists and were trying to pin them on former Mkhonto weSizwe members who had not been integrated into the army (Oosthuizen 2002:136). The *City Press* was not fazed, however, because a 'bandwagon' of suspicions had already been circulating about rightwing involvement in the heists. When he was finally apprehended in January 1999, the Minister of Safety and Security sent his message of relief from London where he was on an official visit and President Mandela issued a statement congratulating the police. His lengthy trial saw throngs of curious onlookers jostling to get a glimpse of the heist mastermind who, with some political training and media savvy, became a cause célèbre. Their fascination with him bore no sentiment supporting his protestations of innocence and if anything, the public's curiosity was fuelled by his presumed guilt. From then on until his death from an illness in 2003, Chauke was locked away in C-Max, the super-maximum security section of Pretoria Central prison for inmates considered beyond rehabilitation.

The government would give no credence to the claims Chauke was making since the Minister of Safety and Security himself visited him in prison before his escape (*City Press* 1998:189). The priority for the ANC was to disown this 80s-era recruit whose walk to freedom resembled more a self-serving dash to loot its rewards. His first conviction, soon after the armed struggle was suspended by Nelson Mandela in 1992, was for involvement in a car theft syndicate which he would later say in his own defence was an operation to supply vehicles for MK operations. His claim to have been an elite unit member in the last military campaign by the armed wing of the ANC were refuted by one of its commanders, Ronnie Kasrils, who described Chauke as a "latter day MK member who joined after the ceasefire" (*City Press* 1998:190). Whatever the merits of his standing as a cadre, there is no doubt that he enjoyed sufficient support within the ANC to be elected as a local government councillor in 1995.

favoured chant, *Kill the boer / Kill the farmer*. The persona of firebrand appears to be one reserved for the presidency of the ANCYL since it has been resurrected by successive presidents of the Youth League to accrue influence.

Public service was not an option he could uphold for the full term, however, as he resigned the seat after three years when his criminal past became known. With some innuendo about a preferred 'undergrounder' membership of the ANC, Chauke offered in his *City Press* interview that his resignation was required for him to remove any conflict of interests as a businessman tendering for multi-million rand contracts from the North West Tender Board. It is more likely that the 'cabal of recalcitrant white detectives in the police force bent on discrediting the ANC' were getting too close.

What makes the adventures and amazing escapes of Colin Chauke so extraordinary is the intersection of politics in his story of crime. The fact that he allied himself with the liberation movement and either under that cover or in the movement's name proceeded to commit crime, indicates mutability between the political and the criminal identity of cadres in the freedom struggle. He could not have been a 'criminal mastermind' on joining the ANC when, as one of the movement's 'young lions' in the former Bophuthutswana, he will have been in the eye of the rebellion upending the bantustan dictatorship of Lucas Mangope and sensed the tactical shift to a negotiated settlement with apartheid. Why he then joined the armed struggle "after the ceasefire" may not so readily be dismissed as opportunism if more can be said for the ordinary man, uncoloured by the scandalising media interest in his story or the moralism of struggle and sacrifice. Kusni Kardut is a case study of the parallel lives of revolutionary and criminal in the context of Indonesia's transition from Dutch colonialism written by James Siegel (1998). Like Chauke, Kusni was popularised by his escapes from prison and his biography was written by the media, telling of his crimes and his relationship to the revolution as well as his parentage for the link Indonesian nationalism drew between the family and the state. He found in the 1965 revolution the respect his poor background denied him though his affinity is not mediated by the politics of the communists he fell in with as much as the acceptance by communist women of his criminal activity. "During the revolution, theft means acceptance... Afterwards, it means being cast out of national life" (Siegel 1998:50). While the public record of Chauke does not match what was reported about Kusni, the assumption must be that the suspension of hostilities between the ANC and apartheid's rulers presented Chauke with a choice: to either follow orders to demobilise, which strategic compromise had riven the Congress movement into two camps, the conciliatory 'doves' and the hardline 'hawks'. Or, he could continue the struggle on his own terms and for his self-enrichment. The struggle had left him with access to a network of ex-combatants and a political vantage to observe how comrades were capitalising on their own freedom. What is publicly 'known' about his co-accused for the R12,6-million Pretoria heist (the value of the loot is a common distinction made in crime reporting) was that they included Lukas Yende, who is serving a double life term for the R17-million Hollywood heist, and Mafika Mahlangu. Both were acquitted of any

involvement in the robbery though Mahlangu, another former ANC town councillor from Winterveld,⁷ re-surfaced after his release as the representative of a company registered in Chauke's name in an eviction dispute with shack dwellers. Without a sense of irony, one gang of ex-soldiers associated with Chauke was dubbed 'Government'. 'Known' for their sophistication and military training, their reach was international with at least Chauke's comrades in Government, Muntu and Mafika Mahlangu, having both trained in Zimbabwe and been captured in Botswana (Mashike 2006).

Besides Chauke and his co-accused, there have been other liberation movement figures that have been implicated in crimes. Despite his unflagging protestations of innocence, the case of the People's Poet and Mandela curtain-raiser, Mzwakhe Mbuli, is also worthy of a mention. While these cases do not implicate the whole movement in crime, there are still many other, unheard-of veterans who are in prison. There were at least one hundred Azanian People Liberation Army and MK veterans in Barberton Prison for various criminal activities (Mashike 2007:391). In a survey of former combatants, Mashike speaks to several who admit to knowing of some cadres' criminal activities but, unsurprisingly, most of his informants profess loyalty to their military and party leadership and abjure any involvement in crime (2007). No study has comprehensively proven the involvement of liberation war veterans in criminal activities and the information gathered by Mashike (2007) offers just anecdotal evidence. However, there is enough evidence to suggest that the separation between the political and the criminal is more complicated than often rendered in national discourse. How a veteran freedom fighter might convert his or her political identity to criminal intent depends on a combination of their disaffection, need, and the utility they may find for their skills or access to weapons. The fact that politicised cadre did transmute their politics into criminal activity is testimony of a transition between politics and crime beneath the trope of reconciliation.

Expectations from liberation being highest amongst ex-combatants, civilian commentators studying South Africa's transition from a security policy perspective cautioned that disgruntled former guerrillas could turn to crime (Mashike 2007). The strategy of negotiation having superseded armed insurrection for the overthrow of apartheid, there certainly seemed to be grounds for widespread disillusionment. The assassination of the MK commander-in-chief, Chris Hani, in 1993 signalled the submission of military command to the civilian political leadership of the ANC. Unemployed MK soldiers were thereafter reduced to demanding some remedy to their plight by occupying the ANC's offices in Durban in 1993 (*Weekly Mail*, 19 August 1993). The integration of liberation movement cadres together with

⁷ SAPA. *Wanted Criminal Colin Chauke Soon Behind Bars: Mufamadi*. 20 May 1998

soldiers of the apartheid-era into a unified, democratically controlled national defence force was meant to contain their potential grievances. Protests by former APLA and MK soldiers soon broke out over the terms of integration in October 1994, however, with veterans of the liberation war being excluded from the transformed army for being too old, too sick or for lacking educational qualifications. They were given a once-off severance payment, access to a counselling programme and the option of enrolment in an eighteen-month vocational training programme to prepare. MK soldiers delivered memorandums of grievances addressed to the ANC in seven provinces and refused to return from leave, threatening to embark on a campaign to cripple the economy if their demands were not met (*Saturday Star*, 15 October 1994). The sheer number of ex-combatants who had to join civilian life was so great, as a result, that planned rationalisation of the South African National Defence Force (SANDF) never had to be implemented (Mashike 2007). Demobilisation implied their retreat to the fringes of civilian life where, shut off from economic opportunities, they became susceptible to the temptation to do crime.

An indication of the politicisation of ex-combatants post-apartheid is given in a conservative taxonomy of African democratic forces by Pieter Labuschagne (2010). With his political compass firmly set by events north of the border in Zimbabwe, he sees in the MK Military Veterans Association (MKMVA) a symptom of an analogous degeneration of the state, which he characterises as the ‘Zanufication’ of political control. The Association in 2009 threatened to destabilise the rule of the Democratic Alliance in the Western Cape if its premier, Helen Zille, did not retract statements questioning President Zuma’s sexual practices. The war veterans – so aptly named to fit the Zimbabwean analogy – represent the sinister early signs of militia, Labuschagne warns. “They have ...moved beyond the rules of democratic and civil engagement that should guide members of civil society.” A reference he quotes selectively from is an article written by a former member of the Western Cape veterans association, Basil Kivedo, who criticised the MKMVA’s confrontational entry into politics (Kivedo 2009). Kivedo dismisses the threat to make the Western Cape ungovernable, but not out of liberal concern over nascent militia formation. He rather doubts the loyalty of the veterans to the ANC government to carry out this kind of operation because the “government – especially in the Mbeki era – had treated the fate of cadres as ‘collateral damage’. ...The promised empowerment programmes, training, entrepreneurial initiatives and business opportunities come to nothing unless you are Cyril Ramaphosa or Tokyo Sexwale,” was his real complaint (Kivedo 2009). When Mbeki in 2001 controversially scrapped a 40-year commemoration of the formation of MK in the Western Cape, as Kivedo tells it, there was a sense among war veterans that their sacrifices had been lost with the forgetfulness of reconciliation.

While neglecting the interests of war veterans, the ANC attempted to moderate their expectations by deploying the ‘sense of entitlement’. The moralistic reproof was used within the ANC starting from Mandela’s presidency against errant members of the liberation movement who had overreached the strategic objectives designated by the party. Accordingly, the expectations of the veterans like Kivedo are de-legitimised, and in the minds of less disciplined cadre like Chauke, the reproof may have only served to confirm a resolve to turn to crime. Reduced to individual interest, the political motivations of disaffected veterans and criminals are excised. But it is exactly for this reason that in terms of Frantz Fanon’s therapeutic theory of violence, criminal violence can be considered emancipatory. Fanon was convinced that a revolution against colonial power had to be violent to reverse the historical violence of colonialism and the psychological traumas it engendered.⁸ Writing in *Wretched of the Earth*, his psychoanalysis of revolution “trusts that gangsters...light the way for the people” (1990:69). It is a particularly mechanistic theory of the colonial relation for which Fanon has been roundly criticised (Arendt 1973) and is not borne out by South Africa’s National Democratic Revolution and criminal violence that has affected all communities, indiscriminately. What implores the relevance of Fanon’s theory of violence, however, is his definition of emancipation as self-defence. The self-entitlement alleged of war veterans subverts the legitimacy of defensive action but crucially turns around the same pole – the revolutionary and the criminal subject, both as self-regarding agents.

MK veterans who, out of disillusionment with the demobilisation process and the paltry dividends of peace, decided to commit crime are paradigmatic subjects of a transition from rebellion to ‘self-entitlement’. In this transition, generations of *klipgooiers* of the revolution would have their own expectations of liberation to disappoint. As Mokwena (1991) ominously cautioned the newly unbanned liberation movement, neglecting their needs would carry unresolved issues of justice into the new country. While the ANC disowned its members implicated in crime, conservative white organisations have made the charge of a political motive behind crime, particularly as it relates to crimes against white farmers. In the wake of the murder in 2010 of Eugene Terreblanche by two of his farm workers after a pay dispute, the immediate speculation was whether the killers of the far-right leader were politically motivated.⁹ If there is a criminal example to suit a post-colonial application of Fanon’s theory of emancipatory violence, loaded as it is with symbolic power, this was it. He was the leader of a white supremacist group, the AWB (Afrikaner Resistance Movement) that came to

⁸ As a psychotherapist, the object of Fanon’s first analyses of colonial rule was its psychological dimensions in *Black Skin, White Masks* (1952). After his experiences in the Algerian revolution, from 1954 until his death in 1961, his writing critiqued post-colonial power, signally in *The Wretched of the Earth* (1961).

⁹ Myburgh, James. Farm attacks: An analysis. *Politicsweb*. 14 April 2010. Available online: <http://www.politicsweb.co.za/>

prominence as the last redoubt of white rule. In 2001, he was sentenced to six years in prison for assaulting a black petrol pump attendant, and for the attempted murder of a security guard in 1996 who suffered permanent mental and physical disability. A clear political motive in the commission of Terreblanche's murder should, then, appear plain except that the accused are not members of a political organisation. Had their alleged crime occurred in another time before the onset of democracy, any of the liberation movements would have claimed them as their own. As the trial of the accused continues at the time of writing, their long-term incarceration is the prospective outcome, however. It is an example then too that the emancipation won through violence without the support of popular power may only portend more punishment (Arendt 1973).

Criminal violence *against* apartheid?

In a ceremony held in 1993 in Orlando stadium, Soweto, to augur the demobilisation of MK and formally end the armed struggle, soldiers were recognised for their bravery and sacrifices. For the murder of a feared policeman that cracked the façade of police invincibility in 1978, an MK recruit would receive a medal from Nelson Mandela (Steinberg 2008). Terreblanche's alleged killers were too late to be given the same recognition, the constitutional democracy having 'de-politicised' crime. Liberation had taken from them the power to act in concert with a movement of people, thinking and acting in the same means-end category (Arendt 1973). The mass democratic movement made a theoretical distinction between political and criminal violence on these terms. The difference between the two rests on the ends to which the violence is a means, the socially functional violence associated with resistance to apartheid being justified given the illegitimacy of the regime. It is a pristine differentiation that was not always self-evident, however. In the violent crackdown following the June 1976 uprising by police and Zulu nationalist militia deployed from hostels, what violence was criminal and what political became less distinct. 'Bra X', a gangster from the time interviewed by Steinberg (2008), speaks of the uprising as a moment when criminals could not be distinguished from the rebels. The youth had upset conventions of who was to be recognised as an authority, their parents as well as the police but gangs did not consider them their anti-authoritarian cousins. They appear to have been open to tactical alliances with the police whose control of the communities had slipped from their grasp.

Engineered by the state's racist policies of segregation and miseducation, the social conditions of apartheid's youth produced both political activists and criminals. Experiences of exclusion can give rise to either the anti-social violence of youth or to the "socially functional violence

associated with political resistance”, depending on the context but always as acts of resilience (Palmary et al. 2003:118). In a study of youth culture in the 1980s, Mokwena (1991) offers some insight into the social landscape of resistance to apartheid and how some youth, like Chauke, could have identified as both township militant and criminal. This ‘lost generation’ had come of age in the political turmoil of a repressive state and disintegrating civic structures in black communities. A politicised labour movement had since the mid-1980s staged nationwide strikes that, combined with international sanctions on trade with South Africa, precipitated a crisis in the accumulation of profit from apartheid. The crisis of capitalism exacerbated the social crises in already impoverished black townships, creating the formative conditions of resistance that would mobilise the lost generation into a politicised rebellion by the youth. Without the means to take the struggle to the bulwarks of white privilege, the young lions defied the state’s monopoly on violence and test the limits of its sovereignty. Their strategy to render black townships ungovernable was effective in persuading the regime that it no longer had control over the black population. But as Mokwena points out, the mobilisation of the youth as a result of the poverty caused by apartheid was a preoccupation of Marxist academics (viz. Hyslop 1990 and Bundy 1987) that diverted them from another significant effect of the crisis – a rise in criminal violence in Soweto. Given the absence of legitimate public institutions, he argues, all forms of authority from the family to the school had given way to the street as the primary socialising agent for youth. This fuelled the growth of a restive political culture as well as opening the space for the formation of gangs.

The surge in Sowetan street gangs in the 1980s was an amplification of gangsterism that had existed as a response to endemic violence and the dislocation and alienation felt most acutely by the youth. The first gangs to make their appearance in Soweto reflected the profile of the workforce to the mushrooming mining towns that became Johannesburg. They facilitated the retention of rural and often ethnic ties for young men working in the city and hostelled in compounds for the duration of a term of contract of employment (Glaser 1990). As the permanent population in Soweto grew, the nature of gangs changed. The gangs that would come to dominate the streets from the 1930s onwards identified with the township as their first home, and cultivated a subculture of refusal of authority and work, while defying the uniforms of servitude in their dapper outfitting. Their legacy has been for South African street criminals ever since to be known as *tsotsis*. Urbane and gainfully unemployed where the dominant role models for African youth were beaten into humility by white bosses and wage labour, *tsotsis* embodied a dignity. In Mokwena’s 1991 study of Soweto gangs, township youth identified the traits of the lost generation they thought fostered gang formation and violence as a survivalist culture, violence at home and in the community, and machismo values. Other support networks were open to youth – whether religious, sports or other

cultural groups – but none could compete with the inducements of gang membership. Outside the purview of their parents, religious authorities, school or the state, gangs offered access to ‘dignity’ against otherwise bleak futures portended by the poverty of their circumstances (Jensen 2008, Comaroff and Comaroff 2006a). In the Western Cape, gangs have derived dignity from their identification with the poor, protecting families from the depredations of creditors and other gangs. The Pipe Killers, founded by a school dropout, delivered hijacked trucks to Heideveld on the Cape Flats for residents to loot their cargo. The Hard Livings gang controlled Mannenberg at the time of a long-fought strike in 1986 in the textile industry that employed many workers in the area. In an extravagant demonstration of largesse, the gang's leader, Rashaad Staggie, went around handing R50 notes to the striking workers (interview: Abrahams 2009).

Besides providing material support to their families and communities, gangs challenge their reputation as an anti-social force by their socially functional role in the construction of youth, and unvaryingly, masculine identity. Theirs may be a negative influence on the youth but parasites living off the honest labour of working class communities they are not. Youth gangs are simultaneously a part of their hosts. The *tsotsis* of Soweto rose and fell with generational advance, substituting traditional rites in the passage to manhood for boys raised in townships often without positive role models and waning as their members assumed adult responsibilities (Glaser 1990). Drawing an anthropomorphic map of gang activity in Soweto from the 1940s, Glaser (1998) finds that street gangs emerged where community cohesion was greater and that the pattern of forced removal from Western Areas to the sprawling township did not encourage gang formation. With this finding, Glaser argues that Don Pinnock (1985) was oversimplifying to attribute gang proliferation on the Cape Flats to the original violence of forced removals. These forced removals, carried out from the mid-1960s and the mid-1970s under the Group Areas Act, uprooted coloured¹⁰ communities from areas close to the city centre of Cape Town and dumped them on the Cape Flats in segregated townships, severing the kinship and neighbourhood networks and access to services around which families had cohered. The gangs that emerged in these traumatised communities acted as support networks for youth in the negotiation of local power on the streets. Growing up in Heideveld on the Cape Flats in the 1970s, Mike Abrahams was never a member of a gang himself but managed to gain the respect of gangsters as an activist in the youth movement (interview: 2009). His son who grew up on the Cape Flats in the 1990s did not follow the tact

¹⁰ The racial category 'coloured' is used according to apartheid's classification of people and communities of a mixed-race origin.

of his father and joined the Fancy Boys, a gang that specialised in robbing warehouses.¹¹ He agrees with Pinnock's view on the precedence of gangs in communities forcibly removed from areas declared for whites-only. Gang formation as he experienced it arose from the need for schoolboys to collaborate amongst themselves to walk to and from school together as protection from gangs en route. The nascent group identity was reinforced in the tenements by the lookout they would keep to announce the return of their parents from work. These groups of boys matured by recruitment into a gang or by becoming an independent gang with its own territory. Yet, in speaking of his time in Reiger Park, a township on the East Rand of Johannesburg, Abrahams observes quite different effects on gang formation of the social disintegration caused by forced removal. He moved to Reiger Park in the 1980s at about the same time as two gangs, the Vultures and the Vikings, were forcibly relocated to the township along with communities. Plucked intact from their territories elsewhere on the East Rand, the gangs did not survive the transplant. The boundaries between the two collapsed and for a time after their relocation, their activity resembled just random acts of theft. Abrahams recalls, "In Heideveld the gang boundaries were clear and you would know what to do to avoid being robbed. In Reiger Park, you would not know where you would be robbed."

The question of a political agency of gangs could be posed in no starker terms than in the communities in struggle against apartheid. No historiography of township gangs romanticises their subversive potential despite attempts by gangsters to spin "banditry as a life of political virtue" (Steinberg 2004b). Colin Stansfield, the multimillionaire robber baron at the head of The Firm, threw the 'biggest party in Valhalla Park's history' when the ANC won the first democratic election, appropriating the symbolism of the historic event. Gangs have cast themselves as bulwarks of resistance and even as revolutionary vanguards but these tend to be attempts to justify their activities or disregard the damage their activities inflict on communities (Jensen and Rodgers 2009). They are rather remembered as impediments to the political resistance movement in Cape Town (Schärf 1990) and Soweto (Mokwena 1991). The anti-social violence of the gangs brought them often into open conflict with organised political forces – signally in the campaign by 'comrades' in Soweto against gangs that were abducting girls for gang-rape or 'jackrolling' (Mokwena 1991, Mazibuko 2006). In other moments, political activists kept relations with gangs cordial enough to assure a source of weapons for any armed confrontations with the police that could arise (Kynoch 2005). Abrahams is also reluctant to see an emancipatory potential in gangs, recounting by way of answering the question, the 'unbelievable cruelty' of gang violence. With the distinction

¹¹ When arrested in 2005, the younger Abrahams lied about his age in order to be sent to the adult section of the prison where he knew the prison gang structures are better established and getting a 'number', and thus protection, would be easier.

between power and violence that Arendt draws, the violence done by gangs is often extreme because of their lack of power. The success of the liberation movement would be in no small part how it overcame gang violence and won support from affected communities. Yet antagonistic to the law, and moreover law under apartheid that was illegitimate, their political identity cannot be foreclosed as anomic. Theirs is an alternative narrative of resistance in the war between the state and the subjects of its rule (Jensen 2008).¹² Anti-systemic violence in the struggle against apartheid need not fall into an oversimplified duality of black resistance opposed to white power. Antagonism to the state can be expressed as a destabilisation of the dominant power if not an agitation for alternative authority.

The territoriality of gangs presents a proto-political form of systemic resistance, an expression of autonomy from authority that the young lions in organising mass resistance to apartheid themselves struggled to establish. This contest over counter-sovereignty was played out on the streets when gangs crossed paths with political activists, clashing over territory and protection, and how youth are produced outside of and against regulation by the law. It is this tie between gangs and their turf that is at the root of a 'schizophrenia' of gangs (Abrahams's words). While criminal gangs have a predatory relationship to the neighbourhoods they inhabit, they reproduce the conditions of their formation. The irony of their escape from poverty for gangsters is that they can never leave and are ghettoised. Gang leaders have tried to move to the suburbs but once out of their territory, become vulnerable to challenges to their leadership and reprisals.¹³ Confined then to a territory that they exploit, their livelihood depends on the networks of patronage they cultivate, which support gang leaders have shown at trials. Patronage can easily be construed as popularity: when Colin Stansfield was convicted of tax evasion in May 2001, thousands of supporters took to the streets to protest his conviction. They described him no less than as a philanthropist.¹⁴ Criminal networks can imbricate a whole community but without a political movement to set its 'lines of flight' free of the gravity of the likes of Stansfield, its resistance may destructively be turned inward.

¹² Applying the Deleuzian concept of the 'war machine' to try rationalise the political form of gangs, Jensen (2006) proposes defining their power as 'molecular' and the power of the state, which it resists, as molar. The molar only dominates the war machine to the extent that molecular powers escape being captured in its logic.

¹³ Rashaad Staggie, the leader of the Hard Livings gang, had moved to Woodstock, a suburb of Cape Town that is far removed from the ghettos controlled by the gang. His violent death in 1999 at the hands of People Against Gangsterism and Drugs, a vigilante group exemplifies the vulnerability of gangsters when isolated outside their turf.

¹⁴ SAPA. Gang boss Colin Stanfield arrested for murder. *News24*, 27 June 2001

The gangs of Orlando East

Pastor Jethro (interview: 2009) is a former gang member of the transition years whose experience traverses the simple distinction between anti-social violence and the socially functional violence of political resistance. He hails from Orlando East, was born there and is now a born-again Christian “working with the people inspiring them with the word of God.” He was introduced to me by chance in a backyard room in Orlando East where he was visiting a colleague who was assisting local youth to mobilise the community for the development of the area. He candidly volunteered that he had in fact once been a criminal and moreover, had deserted prospective training in MK to continue the struggle against apartheid informally as a criminal. I made arrangements to meet with him at a later occasion when he brought with him a colleague, Pastor Sipiwe, whose own history is no less intriguing. It was outside a church in Orlando East that I met with them. Both were wary of my interest in speaking to them about a period in their lives when the ‘spirit of the devil’ possessed them. Having told them the rationale for the research I was conducting, neither would agree to the interview until I would say what my relationship to Jesus Christ was. Satisfied with a humanist rendition of my atheism, Jethro deferred to Sipiwe to read verses from the battered copy of The Bible he held in hand. Leafing through its pages, on which more verse was highlighted than not, Sipiwe stopped at the Book of Psalms and recited a passage on how God delivers the faithful from their enemies. After a prayer, Jethro began, speaking with the measure of someone who has often deliberated about his beginnings as a criminal and consigned them to his past.

The socio-political environment of his upbringing during the 1980s was a mix of two forms of coercion as he remembers them: gangsterism and police repression. Gangsterism in the area was rife, requiring every resident to carry a ‘passport’ of gang membership or at least some association to one as protection from other gangs. For boys needing freedom to walk in the streets, gang membership and the ‘bad mentality’ that this fostered could not be avoided. Jethro did not join a gang but together with his friends, formed what effectively was a gang, without a name, to drink and smoke, and commit robberies “with the mentality that we are repossessing what our forefathers have lost to the whites.” The more established gangs were a continual restriction on their activities, while police surveillance of the township was another menace as well. Under the state of emergency, soldiers maintained regular patrols of the streets to enforce school-hour and nighttime curfews. If they found you outside at these times, you would be arrested and detained without trial. Stories of arbitrary arrests and killings filtered through the besieged community by bush telegraph and Jethro felt the outrage and political motivations that such news sparked amongst the youth. But without the freedom of movement or association to organise collectively, he and his peers could not translate the mix

of their disaffection and antipathy to white people into a form he would describe as political. They were aware of others fighting the struggle directly against the government, but they felt no less justified in their struggle for a life better than apartheid intended.

The state of politicised deviance in Pastor Jethro's gang was altered when they came under the influence of a 'politically minded' friend who 'inspired' them to become 'politicians' in the ANC mould. They were less 'inspired' as forced into politics: as he tells it, "Gangsterism pushed me to become politically involved." He was not herewith suggesting a subjective shift of antagonism (in the Fanonist sense, as a flicker before the light of liberation) but the objective constraints gangs placed on political action. For anyone in Orlando East to join the ANC at the time would bring them into conflict with the dominant political force in the area, the gangs aligned to the Africanism of the Pan Africanist Congress (PAC) and the Azanian People's Organisation (Azapo). Their liberationist ideology called for the overthrow of white domination as it was rooted in the first colonial conquest and forbade collaboration with white people, the ANC or any other organisation committed to the non-racial Freedom Charter. The PAC-aligned gang that threatened Jethro was the *amaKabasa* whose particular notoriety varied according when and where the gang formed. The gang gets a mention in Steinberg's *Thin Blue* (2008) as police collaborators operating in Orlando East during the 1980s but they are elsewhere referenced as car thieves based in Alexandra who would target only white car owners.¹⁵ Chicco Twala, a popular musician allied to the ANC, suspects the gang was responsible for a failed assassination attempt on his life.¹⁶

Eunice Zungu (interview: 2010) was an ANC member and professes to represent the true spirit of the ANC in her activism in the Soweto Concerned Residents, which organises especially pensioners amongst residents, around basic services and arrears. Her politicisation took place in direct opposition to the formation of the *amaKabasa* in 1979 after the friendships between youth from two sections of Orlando East suddenly ended. As she tells it, the gangsterism that divided the youth started because of girls. They went to the same high schools and boys and girls from different sides of the township would have relationships. After school, they would converge on open grounds between the sections (where a shopping centre has since been built) to play sport and socialise. As they were leaving to go home at the end of one day, the boys from the section that became known as Boomtown started grabbing the girls from Umlamlakunzi. The Umlamlakunzi boys fought back, beginning a sworn enmity that forbade their ever using the grounds to play soccer again. Their section of

¹⁵ Fred Khumalo. Funny how the cars we drive mirror our vanity. *Sunday Times*, 30 January 2010. Available online: www.timeslive.co.za

¹⁶ Chicco Twala survives hijacking. *The Sowetan*, undated. Available online: <http://www.sowetan.co.za/>

Orlando East would thereafter be referred to as Ghosttown since “that side of town had become a ghost to them.” The boys from Ghosttown formed the Apaches in an all-out war with the gang of the Boomtown boys who raised moniker, the *amaKabasa*. The girls on both sides became afraid of going to school because of “the corruption of the boys” and had to be home by five o’clock everyday. While hiding at home from the *amaKabasa* cars circling the neighbourhood, Zungu describes hearing the gunfire, the screaming and the terror: “If they jumped over the wall into the yard and grabbed you, there was nothing that your parents could do for fear of their lives.” The gang war would continue until leaders of the *amaKabasa* were sent to prison for a double-murder Zungu was “afraid to witness... because you’d be afraid for yourself.” The gang shot dead two boys in front of their parents and ran over their bodies with their cars. The arrests of the gangsters followed years of fruitless charges that even identified the homes of known suspects and police inaction. The fear of arrest was so dramatic, according to Zungu, that it convinced the Boomtown and Ghosttown boys to end their fighting and become political activists falling on either side of the Africanist-Nationalist divide.

The end of the Boomtown and Ghosttown war in 1982 was of course not the end of the *amaKabasa*. It was around 1986 when Jethro was pushed by gangsterism to become ‘political’. The *amaKabasa* called his gang to join them in dealing with Jethro’s Freedom Charterist friend. For refusing, Jethro and his gang came under attack and were forced to flee Orlando East: “If we didn’t run away, we would have got burnt,” he avers. They were given refuge by the “Youth League of Winnie Mandela”, staying at a church close to her house where already past a point of returning home they decided to build the struggle with their new comrades. Preparations were made in 1987 for them to go for military training in Lusaka. Discussions between the recruits and white comrades from overseas who were making the arrangements for their safe passage to Zambia had already confirmed their commitment to the political tasks ahead. Withstanding Jethro’s conviction to liberate South Africa as an MK cadre, doubts about the radical break he would be making surfaced. With just three days before departure, he went to tell his family that he would be leaving the country but was unprepared for their passionate reaction. They had not seen him since his flight from Orlando but their pleas for him not to go were so persuasive that he pulled out of the mission. On returning to their camp at the church, he informed his friends that he could not abandon his family, prompting six others to follow him in deserting. He did not see his desertion from the ANC as an abandonment of struggle as much as its continuation without the sacrifice that submission to organisational discipline entailed. The struggle would instead legitimate his self-interest: “I developed a mentality of crime now rather than fighting the whites with a political struggle. The politics are so dirty, my blood would be shed and I would not be

recognised. I'd rather fight to make money in crime; that's the way of doing crime." Unable to return to his family in Orlando while the area remained an Africanist stronghold, though, Jethro went to stay elsewhere in Soweto, in Senoane. His return to struggle as a criminal would not be a reversion to his original *tsotsi* form as a street gangster. From 1987 until his arrest in 1991, Jethro was a 'professional criminal' committing robberies from houses in white areas. Occasional thefts from black households when unable to get out of the township he rationalised as the result of circumstances of white oppression.

The influence of political organisations on the course of a criminal career did not have to be as disruptive as Jethro experienced it. From the Africanist liberation perspective, with its emphasis on resistance as the reversal of a history of dispossession, crime is co-extensive with the politics of struggle. Constituent power, so potent in resistance to apartheid, could be deployed by black cadre across the frontier of conflict with white power wherever it was manifest – ubiquitously in white property. The legitimacy of their actions presented a problem for the Amnesty Committee of the Truth and Reconciliation Commission in considering amnesty applications from ex-combatants. How criminal motives were to be distinguished from political motives, the TRC decided, would be by reference to party-political policy. Applicants from the armed wing of the PAC, the Azanian People's Liberation Army (APLA), which formally adopted a policy endorsing robberies to sustain its political activity, qualified for amnesty for acquisitive crimes. MK applicants did not (Simpson 2004). This left a range of politicised crimes outside the ambit of amnesty. For Jethro's colleague, the translation of politics into crime did not wait on formal sanction. Pastor Sipiwe's story of crime (interview: 2009) tells a similar past life of crime to Jethro's, beginning with a 'normal family life' in Orlando East being brought up by his single mother. In his early teens, he discovered that one of his uncles was involved in a gang they called the Upper 7s. Curious about why his uncle had turned to gangsterism, his uncle told him that it was because of apartheid and that their 'fight' was with whites.

Seeing that his family and neighbours were suffering under the government's racist policies, Sipiwe could not disagree but joined the fight by becoming a member of Azapo in 1989. He soon became disillusioned with the party for not changing the fact of white privilege while black people starved and started speaking with other youth members to convince them of his resolve to "attack whites in their houses." Their first foray into a white suburb ended with his group of novice thieves being accosted by security guards demanding to know what they were doing there. The beating they received as a lesson to keep them out of the suburb taught Sipiwe that they had to be more aggressive and would have to operate at night. Their next

robbery attempt, therefore, was a 'house arrest'¹⁷ in which they broke into a house where a man, his wife and two children were sleeping, tied them up with rope and removed the valuable assets in the family's car. This was the first of several violent robberies that took place between 1989 until he was arrested in 1990 at the age of 15. No one was killed in the house arrests, a statement Siphiwe makes before reaffirming the injustice of apartheid as if these robberies fell short of his political ideals. Then, with barely a pause, he made the startling admission that he became like a 'serial killer', randomly killing white people and "those people that report to the white people, the *i-spya*, those who are against freedom." He was arrested for one of these 'hit and runs' but with the help of a black lawyer, he and his co-accused were granted free bail because as Azapo members resisting apartheid, the killings were politically motivated. This would mean he could only have committed these murders before his first eight-year term in prison starting in 'stout skool' (juvenile detention) in 1990. How 'free bail' could be granted for politically motivated murder also seems improbable. Siphiwe could not be drawn further on this inconsistency and warmed to the objective of his story: "not to focus on the past based on political things" but rather to magnify the extent of his redemption.

Salvation over democracy

The crime that landed Siphiwe in prison for the second time was more heinous in his view for his failure to hold to the principle of theft as repossession and for who the victims were. In 2000, he was part of a gang that went to a church and held the congregation up at gunpoint. For this armed robbery, he was sentenced to 18 years of which he served 9. But it was during this second prison term that he found freedom, "... in Jesus, not in my party or president." Siphiwe's overnight change came from self-inquiry. He started asking himself why he had done the crimes he was guilty of, why he had not gone to school and why he had not settled for menial work. And instead of the reflexive answers to these questions blaming white people, he found himself more convinced than ever that his mistake had been to believe that liberation could come from politics. The proof, he indicated with a gesture to the immediate surroundings, was self-evident: "I don't put my trust in a human being or a president because today, it is worse than it was under apartheid." The pain of imprisonment, he reasoned, was the necessary purification before God could come into his life. After his release, he returned to the church he had taken part in robbing and begged forgiveness.

¹⁷ The legal term is 'robbery with aggravating circumstances'.

Imprisonment also had a profoundly spiritual effect on Jethro. In much the same way as Siphwe's conversion to Christianity had been brought about by an existential crisis, Jethro speaks of life-changing reflections arising from a sense of guilt that he had brought great hardship upon his family and a feeling that his green prison-issue suit was, alongside the brown uniforms of the warders, a sign of his immaturity. He called out to "Jesus, a white man I knew of before" to answer his questions and in what he describes as a miraculous conversion to Christianity, Jethro overnight developed an aversion to all things he identified as 'bad'. The personal revelation was so profound that Jethro considers the punishment he endured in prison to have been divine intervention in his life that saved him from worse eventualities. From one day to the next, he foreswore trading in food inside prison, which is not permitted, and has not smoked cigarettes or consumed alcohol since. To change his self, he realised, he would no longer associate with inmates whose influence was negative. After his release from prison in 1998, he also avoided his old gang members. Some had died while he was in prison though others had made good, marrying and buying houses in other areas. Most, he says, are "finished", living as drunks and hobos.

The fate of other offenders, if they survived the morbidity of Jethro's gang, was a different sort of dissolution of their youthful rebellion. Matjapa (interview: 2009) is a former offender who spends most of his days on a corner in Orlando East playing dice with friends and watching the traffic. He is dissolute, his 37 years leaving their mark on his badly scarred face, and a proxy for Jethro's former gang members if ever they could be found. Though more delinquent than a professed Africanist in the mould of the pastors, he says he started breaking into houses in (white) suburbs all over Johannesburg from his early teens until 1995 to meet his needs, which came to include mandrax and the lifestyle of drug addiction. His parents were aware of his activities, disapproved but being unable to provide for him did not stop him. He was caught he thinks maybe 12 times but never imprisoned, only ever sjambokked and subjected to electroshocks to his genitals in police stations. He says he gave up his accomplices under this torture but adds that they were able to resolve any reprisals that could have followed his betrayal and remained on friendly terms. One of them was a student enrolled at Vista University who paid for his studies by theft and with whom he has lost all contact. The others are dead or, he thinks, in prison. Matjapa recalls one of his former comrades that he knows for certain is in prison, saying his name with the relish I should have heard of him – "Sylvester Mofokeng, a killing machine." Mofokeng does in fact have a place in the grisly rankings kept online of the world's worst serial killers. He is serving one of the longest sentences ever handed down by a South African court (145 years and 10 life sentences, in 1997) in C-Max, the same facility where Colin Chauke was held. Matjapa

assures me that Mofokeng was not yet a killer during their days together of doing house robberies.

In this clutch of criminals during the transition, it is Matjapa alone who regards democracy positively. He describes himself as a drug addict who having never married or had children, lives alone and manages to survive on the R1010 he receives as a disability grant. Though 'finished' in Jethro's terms, the irony would be that unlike the pastor, he is more optimistic about democracy. Being the least politicised of any of the offenders profiled, Matjapa says that democracy is good insofar as it gives grants to people. For the pastors, the transition from apartheid realised a fundamental shift in oppression. If there has been a depoliticisation in crime since liberation, it is evident in the impact punishment had on the pastors. When they entered the prison system, both were sceptical of the promises of liberation presented by a non-racial, constitutional democracy and justified their crimes as political acts. On their release from prison, Sipiwe after his second term, they had both repented. By anointment with the blood of Jesus Christ, Jethro surrendered the radical difference inculcated by the Africanist ideology of his upbringing in Orlando East. He and Sipiwe express gratitude for their years wasted in prison as no less than divine punishment in preparation for their illumination. But their thanks are reserved for God and they do not wish prison on anyone. Their failure to find freedom stems from the impossibility of success in the form of criminality that their struggle took. To use James Siegel's reference to the de-politicisation of crime after the Indonesian revolution, the pastors were 'disarticulated' by the South African transition. "Before the revolution, a revolutionary, afterwards ... a manifestation of something generic, *kriminilitas*, that arose as the possibility of articulating the revolution lessened" (Siegel 1998:50). So their only recourse in a 'transitioned' society that valorises redemption is to personify the freedom gained from their conversion. As Sipiwe states it: "If justice was here, all of us in SA are supposed to live a normal life. There are people who are still crying that there is no freedom. So, people can see freedom in me because I was a criminal first but they can see now that this guy is a changed person

Moral living, according to Pastor Jethro, is acceptance of one's personal circumstances as God-given and working within the law to improve one's lot. While law breaking is inspired by the 'spirit of the Devil', the law is not in his estimation synonymous with morality however. He rather advocates a puritanical form of political reconstruction in opposition to the immoralities he perceives in liberal democracy – a process by inference that would have to be against the law and criminal. Being born-again did not wash away Pastor Jethro's racialised worldview. There are clear racial idiosyncrasies to his miraculous conversion: the 'white Jesus' as the messiah, and his moralisation of criminality as a psycho-social

phenomenon afflicting distinctly black people and communities. In apportioning blame for the plight of the poor, Jethro cut himself short of commenting on white people. Speaking to a white man, I suspected he was keeping to permissible scapegoats. His opprobrium was reserved for African immigrants and women:

Since 1994, I must say that blacks have achieved political power, but they have not got economic power. So far instead of things getting better, I see that things are only getting worse. Illegal immigrants are here, the population is growing and the present government is not able to stop the high rate of unemployment... There are too many illegal immigrants and crime, sicknesses and diseases are escalating, and the spirit of ubuntu is lost because we don't have fellowship amongst ourselves.

Many men don't want to be born-again because the women are pushing them outside their houses. They go to the shebeens, get drunk and when they get home, the woman shouts and because he's drunk he can't take it. Women are talking too much; they are the ones breaking families. They are the ones oppressing men....

The ability of women to wield such power over their male partners he links to the job opportunities opened to them by democracy. As a solution to the problematic feminisation of labour, domestic strife and the crime this has all given rise to, Jethro endorses a return to the 'traditional' Zulu practice of *ukuthwala*, by which women can be abducted and forced into marriage: "We lived together; there was no trouble like now where there are rights. Women had no rights; man was the man and women had to show their head down... It was bad for women but beneficial for children living under one shelter." In his study of male crack dealers in New York, United States, Borgois observes similar polarisation around gender arising from the increasing feminisation of labour since the 1960s. Women from workplaces they passed through are especially targeted in verbal denigration and any man subordinated to a female boss effeminised. Commensurate with their view of employed women, gender relations within their community are regulated by the gang rape of girls. Borgois has difficulty imagining his informants to be capable of the violence they recount with unnerving indifference. His suggested explanation for the sexual violence is, following Bourdieu, a crisis in masculinity: by denigrating women they cannot control and victimising those they can, the gangs misrecognise their own victimhood and culpability.

Given his views on moral living, Pastor Jethro is not a model reformed offender despite his professed redemption. As a subject produced by the frontier he traversed – its gangsterism, prisons and depoliticising closure – Jethro's misrecognition is sustained by the politics of transition, which in his view fell far short of its liberatory promise. Walter Benjamin's

reflection that the rise of fascism in the Weimar democracy of interwar Germany was an index of a failed revolution is an apt rendition of Jethro's own personal transformation (attributed by Žižek 2009:73). In the African context, the *Mungiki* of Kenya offers an illuminating example of how powerful ethical reactions to post-colonial democracy amplify the bifurcation of its law and subverts its design. The *Mungiki* emerged in the early 1990s as a quasi-religious movement of marginalised youth descended from the Mau Mau liberation movement that was accused of illegally taking oaths of resistance to the one-party government of Daniel Arap Moi (Ruteere 2008). It rejected the state's secular national agenda and Christianity as the religion to lead the moral reconstruction of society. Instead, the movement advocates a return to African (and particularly Gikuyu) traditional institutions and mores. Reports of police torture of *Mungiki* members garnered the movement the support of local and international human rights groups but by the end of the 1990s, the reputation of *Mungiki* had become rather more sinister. A spate of brutal murders of Matatu drivers revealed the movement's extortion of 'protection money' from the drivers of these privately owned buses. The criminal enterprise of the movement continued to grow in open conflict with the police as it assumed control of Nairobi slums. An attempt to recuperate the *Mungiki* as part of an alter-globalisation movement in opposition to state and corporate rule published in 2001 is noted by Ruteere as one overwhelmed by evidence of the movement's implication in violence.

Post-apartheid crime in Orlando East

Pastor Jethro has been a Christian activist in his community, ministering to people in whom he recognises his own life experience. These criminal youth and ex-convicts accord him respect but do not receive his message of redemption well; he admits that most see him as a failure, as having been scared by prison. "At the present moment, the ones who are doing crime, we tell them that crime doesn't pay. I ask someone; he says it is because the whites have stolen from our forefathers. I say no, I once believed that but after all, the ones that did all mistakes are gone a long time ago." He is confident that they see him as an example of the change that is possible but the only cases Jethro offers from his evangelical work tell of ex-offenders who, after being initially receptive, relapse and have returned to prison. For an ex-offender who attributes his past criminality to the violence of white people, he is surprisingly unsympathetic to the young criminals active today. The object of his efforts to redeem offenders of their criminality is the "spirit of the Devil", which ontologically is no further from hell than the subject's being:

Prison has taught me to stand under the pain. People don't need pains, even those people involved in prostitution or crime. They have a pain inside of them that's eating them. There is something we need to hear inside of them. We hear the act but not the cause. So when you look at the act, you're missing the bigger part of it.

Are offenders of today not the young brothers of the township militants like him breaking the law in struggle against apartheid? They are, I put it to Pastor Jethro, both generations born of similar histories of poverty and exclusion. He disagreed since criminals are not discriminating in their crimes: "Actually, everyone is a victim. I think blacks are the ones now who are suffering in crime because they are scared of going out into town; they would rather do it around here. I think the tables have turned now, they're pointing blacks now." The problem of the youth of today, in his opinion, is that they are not 'hungry' but 'barbarians' who do crime to be 'popular'. Driving the senseless violence in the commission of a crime is a principle he names *sikoko* whereby respect is earned between gang members the more violent they are in committing a crime. It is a view echoed by Tshepo, a life-long resident of Orlando East and in his own words, defined by the neighbourhood (interview: 2009). The company badge on the jacket draping his tall thin frame read 'pAc JT Systems', a metonym for his political leanings maybe. He is concerned that crime has become as desperate as to be almost needless vandalism with even postboxes, taps and power leads being stolen. "The pinch of poverty is developing a vandal's purpose in people. There's a nasty side of people coming out in this environment. Before these days, elements of deprivation were not as visible as they are today, and this is raising its head now aggressively. There's a culture of accumulation, of vicious materialism." As a student of his community, he has inquired from known criminals why they would rob from other people and invite the fate of prison. Pastor Jethro can at least be heard by these deviant youth. Not Tshepo who has given up trying to talk to them because of their reluctance to be open with him. Their reticence is a way, he reasoned, to make their wrongdoing conscionable. Speculating then why they resort to committing crimes, Tshepo dwelled on the effects of poverty, and the imbalances from the past that persist. In Orlando East, a possible contributor to social pressures he identified is the influx of people from rural areas and outside the country's borders to the cheap accommodation available in the backyard shacks leased by residents. Tshepo is cautious to add that crime cannot be blamed on the occupants of these shacks.

Not all residents of Orlando East agree on the state of crime in the township. While Tshepo points to a pernicious materialism as driving the crime rate, yet other residents have differing views. Eunice Zungu for one thinks that her hometown is much safer now than when compared to her experience of gangsterism in the early 1980s (interview: 2010). Kedibone is

also positive that crime in Orlando is not as bad as compared to other areas in Soweto. She approached me as we exited the gate of Helderberg prison (a visit recounted later) to ask for a lift back to Johannesburg. I learned in the course of our conversation en route that she is from Orlando East and works in Kliptown. She had gone to the prison to visit her only son, a ‘naughty boy’. She had provided him with the makings of a *spaza* shop to give him a livelihood but he squandered the money on parties, she said. He had been sentenced to three months for theft. Perhaps for her relationship to her son she also dispels the perception that crime is rife in Orlando. It is, she averred, much worse in Kliptown where she works in a laundromat next to the Walter Sisulu or Freedom Square in Soweto that memorialises the signing of the Freedom Charter. These ambiguities of criminal formation in Orlando are posed in stark contrast by the proximity of the family homes of Sylvester Mofokeng and Susan Shabangu. It was Matjapa who pointed out the juxtaposition, with a wave of his hand to indicate that the notorious serial killer had lived in a house, there next to the where Shabangu had grown up. She made a name for herself as the Deputy Minister of Safety and Security after instructing police to “kill the bastards if they threaten you”. Orlando East manifestly had produced both the subjects who would travel the open frontier and those who would attempt to vanquish them. It is to the closure of the frontier by the repression of crime that we now turn to in the next chapter.

Chapter 2

Closing the frontier of democracy

In his periodisation of the country's legal history, Chanock dates the beginning of the decline of colonial power at the start of the 1980s. With the transformation of the police and adherence of the Constitutional Court to human rights law, his assessment is that the democratisation of power after 1994 confirmed the demise. His prognosis is more cautious, however, for the formalism of the rule of law. The promise of a rule of law, imbibed and re-interpreted from the jurisprudence of the British Empire, had under apartheid bent to the exigencies of politics and had been an instrument of racial segregation. A more pessimistic interpretation of the "triumph of liberalism" is given by the Comaroffs (2006a). They observe that South African democracy differs from the experience of the de-colonising states of post-World War II, which emphasised executive sovereignty and bureaucratic authority in their constitutional design. Reflecting geo-political shifts since the first wave of decolonisation, the more recently liberated states based their law on individual rights and free association in civil society (Comaroff and Comaroff 2006a, citing David Schneiderman). The result of this has been, despite the profession of rights as inalienable from the individual, the deferral to courts to decide whether the rights of applicants in a case had been infringed or not (a practice the Comaroffs dub 'lawfare'). Law is itself conservative, a stabilising restraint on the impulse for change and a moderation of wayward human action. When the law heralds change, it is a stabilisation of change effected by extra-legal action (Arendt 1973a). Re-making the state for the transformation of South Africa under the rule of law was, then, a restraint on the revolutionary potential of the anti-apartheid movement.

The durability of inequality thus owes much to the smooth transfer of power. A juridical analysis of South Africa's transition by Meierhenrich (2008) attributes the peaceful settlement to principles of lawful process that the Afrikaner and African nationalists at the negotiating table shared. Weakened as the apartheid regime was by international sanctions and popular resistance to its rule, the ANC was given the space to preserve its normative aspects while overthrowing the state's racist form. The normative administration of the law would not be a controversial compromise – the courts had been a terrain where ANC leaders had been able to display their jurisprudence (Chanock 2001), most eloquently in Nelson Mandela's statement at the opening of his trial for sabotage. Black South Africans, moreover, vested surprising levels of confidence in the courts, more so than they did in the police or the white parliament

according to social surveys conducted in the 1980s (Meierhenrich 2008). The ANC saw the future Bill of Rights as an institution of empowerment while the Afrikaner nationalists looked to the Bill as a means to protect minority rights. Both negotiating parties accepted a legal resolution, the ANC compromising on social and economic rights mandated by the Freedom Charter and the old guard winning the guarantees of property and of the rule of law that it sought. Establishing a rule of law based on human rights has been successful precisely in how these are enshrined, parking them as ideals the state will progressively realise. Human rights play a crucial role in social control as membership of the formal polity becomes increasingly a precondition for their enjoyment (Balibar 2001). Landmark Constitutional Court rulings on the right to housing and to water have indeed bowed obsequiously to the state's capacity to deliver services.¹⁸ Where poor communities have revolted against the lack of basic services, protesting against the disconnection of water services or bridging the meters designed to restrict their consumption of water, they have been criminalised precisely because their right to access water is not theirs to claim. With the rule of law affirmed, Meierhenrich surmises: "...The law of apartheid helped democracy survive" (2008:175). Or, the reverse can be true: that the law of democracy helped apartheid survive.

The growing irony of our short history of human rights is the increasing level of incarceration in South Africa and wherever the liberal democratic gains reverse the ideals of their putative design. Human rights and freedoms present restraints on the state's repressive powers, but when deemed to protect criminals they are just as soon dispensed with. New citizens do not typically see the need for a democratisation of the criminal justice system (Gordon 2008) and in a backlash targeting crime, South Africa has followed an international trend to intensify the punishment of convicted offenders. A post-apartheid criminology cannot ignore the legacy of South Africa's history, but where criminal violence is the apparent product of freedom, the authoritarian precedents of crime control in the new democracy follow from its own making.

The ANC's discourse moved rightwards to join the middle ground held by the (predominantly white) owners of property in what has been abbreviated as the de-politicisation of crime. Its adoption in 1996 of the conservative macro-economic policy, GEAR (the Growth, Employment and Redistribution programme) gave the country's development over to the trickle-down effect of private investment to achieve. Investors' concerns about the conditions

¹⁸ A progressive realisation of rights has informed the Constitutional Court's judgements on the right to housing and to water. Minister of Housing v Grootboom Case CCT 11/00 (2000): "[The right to housing] should be progressively facilitated: legal, administrative, operational and financial hurdles should be examined and, where possible, lowered over time. Housing must be made more accessible not only to a larger number of people but to a wider range of people as time progresses" (§45). Mazibuko v City of Johannesburg CCT 39/09 (2009): "[I]t seems clear on the City's evidence that to establish a universal per person allowance would administratively be extremely burdensome and costly, if possible at all" (§84).

for doing business in the country, of which crime is a major deterrent, thereafter eclipsed what the government could do to address the legacies of apartheid. As the government girded itself to create an enabling environment for business, it relinquished control over the social, cultural and economic conditions where the roots of crime find their grip, and undertook to scale up the protection of safety and security into an offensive. Without a redistributive economic policy and job-creating growth, an appreciable dip in the levels of crime was unlikely since the institutions of criminal justice are essentially conservative. In the post-apartheid context, the mobilisation of the police and the prisons to fight crime could only look to conserve the unequal relations inherited from the past and be racially selective. The need for safety and security waived all needs for transformation in a national resolution to stamp out crime. From white farmers decrying farm attacks as a racist campaign to force them from their land, right across the political spectrum to the ANC's resolutions at its Polokwane congress and as far as the Canadian Immigration and Refugee Board¹⁹, a consensus has been reached that more than a threat to personal safety, crime is a threat to the nation. This latter-day consensus commenced a re-arming of the police and the citizenry, reversing the post-apartheid demilitarisation of law enforcement and relegating the need for civilian oversight. The breakdown in the rule of law was blamed on the transformation of the police with the professional uncertainties of particularly white police officers regarding their career prospects inducing a lapse of vigilance (Shubane 2001). Adding to their uncertainty, the use of coercion that is essential to policing was constrained by the political consequences of what would be perceived as a lapse into outmoded methods. As head of the Nelson Mandela Foundation, Kehla Shubane would state the case: "A return to coercion is the missing element in the current government's efforts to control crime..." (2001:196).

Since criminal justice in the first sixteen years of democracy has followed punitive policy directions taken globally since the 1970s, it becomes tempting then to link the diversion from the Reconstruction and Development Programme to the gravitational pull of the Washington consensus. Post-war penal reform in the West had until this juncture aimed towards the reduction of incarceration as a form of punishment. With the crisis of Keynesian economics and the emergence of the market as the supranational antidote, the view that criminals should be tried as individuals with rational choice came to dominate criminology in the United States and Great Britain (Reiner 2007:8). Taking the lead in the turn away from crime prevention was James Wilson whose *Thinking About Crime* (1975) used statistical evidence to argue that the root causes of crime could never be definitively identified and vainly the target of

¹⁹ The Board caused a diplomatic furore when it accepted South African Brandon Huntley's claim that he had been discriminated against by thieves because he is white. See *Two men, two countries, two minorities*, 2 September 2009. Available online <http://www.theglobeandmail.com/news/opinions/two-men-two-countries-two-minorities/article1273775/>

policing. His was a response to a revived marxist school of criminology, the New Realists, that sought to place deviance into a wider sociological context to better understand the criminal identity. He charged that sociological studies of crime had rather distracted crime control from what it can most effectively do – apprehend and punish. Presaging the ‘broken window’ policy and zero tolerance policing that he would later endorse for the clean-up of New York, Wilson contended that sentencing should be prioritised over equivocating on offenders’ culpability. This conservative ‘rational choice’ theory was not contradicted by Left Realist feedback from Anglo-American schools of criminology during the 1980s. Their analyses drew on the socio-economic data that computerised information systems made available to see what causes of crime could be discerned. What the liberalisation of the market had produced, they could statistically show, were patterns of crime that had been contiguous with patterns of inequality (Lea and Young 1996), consumption (Field 1996) and capital investment flows (Wallace and Humphries 1993), or wherever competition for dwindling resources was fiercest (Currie 1996). But not to portray offenders as the passive subjects of a callous system, Left Realists denied that their analyses exonerated criminals from personal responsibility for their actions. While the victims of crime are disproportionately from the working class, criminals could not be given anti-systemic agency. If anything, their activities amplified capitalist values. The unbridled desire to consume, as the one dominant value of neoliberal capitalism, is no less ego-driven and impulsive as crimes arising from an absence of norms, or anomie of classical criminological theory (Muncie 2005, Reiner 2007). Nothing short of a revolution then could in fact combat crime and until such time as that happened, the Left Realists submitted, the punishment of crime was unavoidable.

By the time of South Africa’s transition, the consensus reached in Anglo-American criminological studies on the question of imprisonment as a preferred form of punishment had resulted in the imposition of harsher penalties. The ‘Americanisation’ of crime control policy appeared to pay off because by the decade’s turn, confidence in the criminal justice system to clamp down on crime was restored as lower crime rates were reported where the criminological model was adopted (Gordon 2006:187). As a democratising country that adopted the globalisation mantra of fiscal austerity and free trade, the consequences for South Africa have been declining employment and social insecurity. Coupled with expanded personal freedom, the effect of consumer-driven capitalism and the egoistic individualism that it promotes is not only increased property theft, but also a reactive perception of insecurity that gives rise to tough attitudes and policies to combat crime (Gordon 2006, Reiner 2007). It would be reductionist to ascribe developments in South Africa’s own brand of criminology to a rote adoption of Anglo-American trends, especially given very different socio-economic contexts, but the turn to punitive justice is an unmistakeable parallel. Having entered

government on a state-led development platform, this return to repressive law was justified as the only recourse open to the state to immediately address crime. So long as the ANC could justify these measures as safeguards necessary for democracy, repression would displace development in the national interest. With this concession of the public interest to the state's repressive force, the democratic revolution had reached its Thermidor, closing the frontier opened by the transition.

This is to begin to question the truth of the crime situation with a wary eye fixed on the political utility criminalisation holds for the state. There are undoubtedly high levels of violent crime but this is one contestable truth whose deployment in the closure of earlier frontiers demands a critical mind. Laments over violent crime can do nothing else than distrust the ability of the police to prevent crime. By calling for an increase in policing as a strategy to staunch the spread of crime, Shubane and the bourgeois conscience implicitly recognise that the threat of crime is latent in society. This is because a reduction in crime succeeds to the extent that potential criminals in society are deterred by the law. Policing strategies to reduce crime therefore sharpen an unsustainable contradiction: the more effective policing is, the more opportunistic law-breakers are arrested and the more overburdened the courts and the prisons become. As the process of trial and sentencing is debilitated, the futility of repression to reduce crime is exposed (Arendt 1973a:57). The utility of crime rather lies in the scope it gives for legitimate actions taken by the sovereign – the democratic state – to maintain law-abiding order. When speaking of crime and criminals, government and civil society spokespersons carry an undisguised menace. More worrying is the approving applause that calls for police to shoot to kill by government leaders have received.²⁰

The state has sought to reduce threats to democracy to a criminal element with the former president Mbeki one of the most insistent witnesses. In a statement on the xenophobic violence that raged around the country from an epicentre in Alexandra, Johannesburg, in May 2008, he attributed the motives for the violence to criminal intent, thereby depoliticising the pogrom and licensing repressive measures to contain it. And again from July to September of 2007, police investigated a 'third force' (never verified) as the agent provocateurs of a wave of 'service delivery' protests by poor communities across the country. The criminal taint applied to protestors, African immigrants and their attackers is a handy verdict on their subject position that affirms the state's sovereign right to exercise legitimate violence. Violence is the prerogative of the sovereign and "functions as a last resort of power against

²⁰ When the Deputy Minister of Safety and Security, Susan Shabangu, in 2008 instructed police to "kill the bastards if they threaten you," they gave her a standing ovation and she refused to apologise for her statement. SAPA, 10 April 2008. *Kill the bastards, minister tells police*. Available online: <http://news.iafrica.com/sa/649237.htm>, accessed 21 April 2009.

criminals or rebels – that is, against single individuals who refuse to be overpowered by the consensus of the majority” (Arendt 1973b:119). It is of least assurance to poor, black communities whose experience of the law when protesting against their unchanged conditions of poverty has been akin to the violence indicated for the criminal. The rule of law for them has been adhered to within a blushing caricature of apartheid style rule with the rubber bullets and teargas of public order policing a frequent reminder of racist law enforcement while the country’s prisons are overcrowded. Under the spectre of crime, state repression can round on the poor without the sting of betraying the promises of liberation. To be young, black and male would not only fit the profile of the unemployed and poor but also that of the likely criminal suspect.

The making of the punishable subject

The transition from an authoritarian regime proffered the possibility that in line with the allusions to social democracy in the Freedom Charter, the ANC would transform the criminal justice system in line with its commitments to equality and human rights. But authoritarian structures of law enforcement are difficult to disassemble, with institutional racism inhering in the bodies of the police and judiciary, and in the accumulated practice of the law. “A history of state formation in a society is a particularly powerful and durable determinant of how police will be structured and operate” (Gordon 2006:6). Crime prevention was foremost among the nation-building tasks identified by the ANC on assuming power (du Plessis and Louw 2005). By ‘crime prevention’, the party intended to bring crime under control as a long-term development goal, as expressed by its 1995 local government election slogan: ‘Tough on crime, tough on the causes of crime’. The white dominated Democratic Party weighed in with ‘More cops, less crime’, a repressive approach that has with the failure of government’s development policies become the only resort. The National Crime Prevention Strategy (NCPS) of 1996 and the White Paper on Safety and Security (1998) gave meagre definition to what government could understand and implement as measures to prevent crime. According to the Institute for Security Studies’s Prof Johan Burger, the demise of ‘crime prevention’ was fated by its legal definition, which being too broad needed to defer to those government departments responsible for social development. As such, ‘crime prevention’ was unconstitutional because policing can only practically and legally be law enforcement (Burger 2006). There could be no more waiting for the seeds for development to bear fruit, not while news headlines were throwing up one crime story after the next evil-doing other. The new

state came under pressure to demonstrate that it was tough enough to take control of a situation insistently portrayed by opposition parties as one slipping out of its grasp.

Prefiguring the democratic regime's embrace of the free market in 1996 were the first indications that the principles of restorative justice promised by the ANC's election manifesto would be bent in favour of a retributive, tough on crime approach. Freedom presented to the newly democratised regime a problem of how social control could be maintained over free subjects. It would begin outlining the answer with a legislative programme against crime. The Criminal Procedure Act of 1977 was amended in 1995 to stipulate new regulations in the granting of bail to suspects. The amendments empowered courts to postpone decisions on bail until such a time as investigations by the State could determine the charges accused persons would have to answer to.²¹ The onus of proving why bail was justifiable fell on the accused, and could be refused where the likelihood that they would endanger the public or interfere in the investigation of the case against them was established. The same sections of the Act were amended again in 1997 to address a perceived laxity in the release on bail of dangerous suspects. Defendants accused of serious crimes scheduled in the Act thereafter had to prove exceptional circumstances for why they should be released. Several human rights organisations contested the bail reforms in the Constitutional Court, arguing that such severe restrictions on bail heralded a return to apartheid laws permitting the detention of suspects without trial. The Court was not swayed, however, voting unanimously in support of the amendments, reasoning in its judgement that vigilantism was a serious enough threat to public order that bail should be refused in the interests of the suspect's safety (Gordon 2006:252). The threat of lawlessness was thus admitted by the highest court in the country into its deliberations to authorise laws promulgating harsher punishment.

Fast on the heels of the bail reforms, the next phase of the legislative programme to get tough on crime was the reform of sentencing by instituting a regime of minimum sentences to be served for certain categories of crime. The only mandatory sentence in South African legal history prior to 1997 was the death penalty, enforced for murder convictions between 1917 and 1935 (Gordon 2006:253). With the abolition of the death penalty, and goaded by a reactionary public campaign for its re-instatement, government sought to affirm its commitment to tough justice as well as refute perceptions that the government was freeing dangerous criminals from custody. Amendments to the Criminal Law Act were promulgated in 1997 to mandate the minimum punishment that courts should impose for a range of convictions. The punishments to fit these crimes were graded by the severity of violence

²¹ See Criminal Procedure Second Amendment Act, No. 75 of 1995. Available online: http://www.saflii.org/za/legis/num_act/cpsaa1995322/

involved, from life terms for premeditated murder, rape of the most heinous kind and terrorism down to five-years for robbery with a concealed firearm. Inconsistency in the sentences that courts hand down would in this way be remedied but with the same stroke, mandatory sentences undermined the discretion of the courts to assess individual culpability and threatened the constitutional protections against cruel and degrading punishment. Appeals brought against the regulations in 2001 argued on these grounds. Both the Supreme Court of Appeals and the Constitutional Court dismissed the appeals, finding that a judge could, according to the Act, deviate from the mandated punishment on consideration of 'compelling and substantial circumstances'. The judiciary was still safely separate from the executive power of government, in the view of the Constitutional Court, adding that this provision ensured that the punishment served would be proportional to the crime.²²

The next salvo to toughen justice came with the amendment of the Correctional Services Act in 1998 which increased the length of time served before prisoners could be considered for parole, from one-third of their sentence to half, and four-fifths for those sentenced in terms of the minimum sentences legislation. Inmates serving life terms qualified for parole after 25 years (Fagan 2005). All together, the battery of reforms would ensure that offenders suspected and convicted of priority crimes would serve longer terms of imprisonment. But whether they were rationally related to the reduction in the recorded levels of crime would only be as certain as the President's prerogative to renew the minimum sentencing provisions on a bi-annual basis with the approval of Parliament. And every two years since 1998, the legislation was unfailingly renewed despite indications that some levels of violent crime had dropped and despite recommendations from the Judicial Inspectorate on Prisons (JIOP) that they be ended (Fagan 2005).

The punitive policy turn intensified after Mbeki's succession of Mandela as president in 1999. The reform of the penal system from custody to release had been accomplished under Mandela's presidency but the police force to bring criminals to book was itself still lacking. The legislative programme to prosecute violent crime had yet to be complemented by a policing strategy equal to the investigative and evidentiary requirements to secure convictions of serious crimes. The national anti-crime plans prior to Mbeki's war had not yielded the heads of the crime syndicates that they set out to target and these appear to have been more public confidence-building exercises. It would be left to him to realise the design of the punitive legislative programme in a review of the national policing strategy and declare it 'war'. Mbeki officially launched the 'war on crime' in 1999 with the adoption of the National

²² Naser, J.J. Mandatory Minimum Sentences in the South African context. *Crime Research in South Africa* 3(3). June 2001. Available online: <http://www.crisa.org.za/downloads/vvs.pdf>

Crime Combating Strategy (NCCS) that replaced the Prevention Strategy (NCPS). Mbeki would not be the first head of government to launch such a war in peacetime. With the decline of the welfare state in England, waves of paranoia about the crumbling social order gripped the country though urban crime data did not bear it out. Fears of an epidemic of mugging appear to have been transmitted from the United States – from where the Labour government also imported the model of its response (Hall et al. 1978). The government manipulated the moral panic to pose a national crisis that could only be policed by measures akin to a state of war.

War is proportionate to a situation where the security of the ‘public’ must be assured against a pervasive enemy. The ‘enemy of all’ was a juridical status invented by the Romans to classify pirates who menaced the empire’s and merchant ships. Since pirates perpetrated their crimes on the open seas, they presented a juridical problem that jurists resolved with the designation, as authored by Cicero, “the common enemy of all”, or enemy of the human species with whom any treaty was impossible. This led to the “confusion, and in the most extreme cases, to the collapse of the distinction between criminal and political categories” (Heller-Roazen 2009:11). The criminal subject in South Africa today is analogous to the ancient Mediterranean pirate, whose political identity is similarly excised by power and whose Barbary coastline lies in poor communities. The war against the enemy of all is a discursive complement to the other war the South African government is waging: the war against poverty. The government can be presumed to be fighting poverty at least as earnestly as it fights crime in bringing about social development. Both are internal conflicts or civil wars, waged against a categorical enemy until no determinate end because neither belligerent can surrender nor a peace treaty be signed. Yet, the two wars are simultaneously antitheses, because the war against crime is an implicit war *on* the poor. The possibility of development yielding security could be made no more remote.

The plan for war was drafted by the South African Police Services without any civilian participation and unsurprisingly, the emphasis shifted to law enforcement (du Plessis and Louw 2005). The lack of public consultation in the formulation of the NCCS may have garnered the same criticisms from civil society as was reserved for the way the RDP was dumped in favour of conservative economic policies. But as it was, no criticisms of an emboldened policing plan would be made by a public baying for government to take decisive steps to prosecute crime (Newham 2005). The gleaming new Directorate of Special Operations, the ‘Scorpions’, conjured images of the American FBI that with extraordinary powers of search and seizure of assets could scare organised crime. Even as civilian oversight over the police was formally ended with the absorption of the National Secretariat on Safety

and Security into the SAPS Social Crime Prevention Unit (du Plessis and Louw 2005), there was not a whimper of protest from civil society organisations or political parties. Altogether, the public welcomed government's initiative to curb 'rampant' crime. Business Against Crime was identified as the chief civilian ally (Cape Times 2008) and co-operation between government and civil society was valued to the extent that the private security industry could be leveraged to contribute to public security.

Colin Chauke, the 'pirate captain' behind the first wave of cash-in-transit heists, arose at the same time as the clouds of war were gathering. He was the trophy captive for the launch of the war, caught in 1998 and sentenced to 15 years in 2001. As the banking industry braced itself to tackle the onslaught in partnership with the police, the mooted political motivations of the large heist gangs was elided in the analyses of their tactics. The Cash-in-Transit (CIT) Crime Prevention Forum was formed in 1998 after Chauke's wave broke and brought representatives of the banking, petroleum and casino industries together with the South African Reserve Bank and police. In the words of the Forum's chairperson and Senior Manager of the Violent Crimes office of SABRIC (South African Banking Crime Risk Information Centre), Dr Alice Maree, the Forum was a model public-private partnership (PPP) co-ordinating a comprehensive combating strategy (Security Association of South Africa 2010). Where PPPs in other sectors of government administration have been bedevilled by cost inefficiencies, cronyism and delivery of defective low-cost housing, water, waste and energy services, the consistent decline in CIT heists since 2006 was enthusiastically chalked up to the success of the Forum. The SAPS for its own part set up 'Operation Greed' targeting the heist kingpins and the formation of crack military units to match the firepower of the large gangs. But with the decline in CIT crime as a result of improved defensive technologies used in the industry, so has the incidence of ATM bombings increased and the violence of the heists intensified (Gifford 2005, Hosken 2004). According to SABRIC, the same network of military-trained criminals behind the CIT heists and bank robberies was also responsible for the ATM bombings (Maree 2008).

The first phase of a typecast neo-liberal criminology to respond to its perceived threats was the democratisation of the police force into a service and the introduction of community policing. The conscription of communities and other government departments to the identification of criminogenic problems and the deferral to civilian resources to develop solutions to crime echo the second phase of what Pelser identifies as a neo-liberal, international precedent (1999). The push to involve the community in policing is not in-itself neo-liberal but articulates with the nationalism of the democratic state. It is a policy direction that was begun from the inception of democracy and which has yet been re-affirmed in more

robust terms by the popular-nationalist administration of President Zuma. While he was echoing former president Mbeki's statements crime as a 'taint on democracy' that 'claims the happiness that comes with freedom', what really sets Zuma apart on questions of security is his re-politicisation of crime. In his inaugural speech after deposing Mbeki as ANC president at the party's congress in Polokwane, Zuma called for the revival of struggle-era street committees to combat the "counter-revolutionary force"²³ of crime. Just as mobilised communities had defeated "vigilantism and the apartheid system", he argued, so would they be his allies against crime. The call resonated with his partisan audience whose recollection of the community court will have been hidden under the blusher of the national democratic revolution. People's justice featured, as one would expect in townships that were beset by state and internecine violence, abuse of evidentiary procedures and often gruesome executions of convicted offenders (Shaw 2002:30). Dedicated to rendering the townships ungovernable, the revived street committees under democracy would take on a contrary role of bringing security to communities plagued by criminal violence and doing so in partnership with the police to curb the excesses of vigilantism. Zuma's confidence that these were not improbabilities can be reduced to his populist moralism and a dose of nostalgia, but the devolution of the fight against crime to community structures reflects a more important political utility, one that shifts the boundary between the state and civil society. Once the domain of right-wing extremists, democracy's spoilers had been relocated to the black communities where the call to establish street committees would still have resonance. The suburban enclaves protected by private security have on the other hand been cleared of harbouring such counter-revolutionary tendencies.

Zuma's invocation of the street committees is an attempt to catalyse informal practices of social control within communities in partnership with the police. The revival of apartheid struggle agency to intercede in the war on crime is partly an admission that community policing has failed to stem rising levels of crime. The greater failure of the Community Policing Forums, which are the centrepiece of police-community relations, has been their inability to contain vigilante actions. The popularisation of the war on crime by Zuma signals an attempt to bring these dispositions to vigilantism under the ambit of the state's powers of control. The extension of the war on crime is not just popularising a struggle against counter-revolutionaries, it is populating the myth of the crime epidemic and disarming public scrutiny of endemic violence. As adjuncts to the police, their roles are indeterminate and as observations of a community meeting against crime will show, the street committees pose a function of greater political importance by their inclusion in the security model. This affinity

²³ Jacob Zuma, Closing address to the 52nd ANC National Congress of the ANC, 20 December 2007. Available online: <http://www.anc.org.za/show.php?doc=ancdocs/history/zuma/2007/jz1220.html>

between the state and community violence appeals to the ANC's historical arrogation of liberation leadership since it facilitates the incorporation of competing sovereignties of local leaders.

Operation Wanya Tsotsi

Jeppestown sits on the eastern perimeter of the Johannesburg city centre where inner city grime and multi-storey tenements meets the gentle suburbs. The neighbourhood gained notoriety as the site of the 'Jeppestown massacre' on 25 June 2006 when the police cornered a gang that had just robbed a Pick 'n Pay supermarket in Honeydew.²⁴ Four policemen and eight gang members were killed in the ensuing shootout. The eleven surviving gang members that were sentenced to four life-terms each on 27 November 2010 came from what they described in mitigation of sentencing as 'poor backgrounds'. Most were from inner city neighbourhoods while two stayed in hostels. If, like the judge sentencing the accused to four life terms each, said, "poverty could never be justified as a motivation for crime", what can at least shed some light on their motives? The loot from the heist that they were defending was just R41,000, or a little over R2,500 shared equally, so greed can be discounted as a motive. The ruthlessness of this gang is in part a result of the ready availability of illegal firearms, but their do-or-die resolve derives from the immaterial factor of their subjectivity, that in addition to being poor, predisposed them to 'doing' crime.

An anti-crime initiative at the end of August 2009 in Jeppestown offered a glimpse into how at least the civic-minded residents that turned out for the initial meeting and the subsequent march perceive crime in the area. The community centre where the local branch of the ANC convened the meeting happened to be on the same street where the Jeppestown massacre took place. Residents of this sector 2 of the Jeppe police station's jurisdiction were called to discuss the still pendent issue, bullet-pointed on the flier publicising the meeting: Crime. Though all people irrespective of political affiliation were invited to attend, most of the thirty residents seated in the yawning hall were ANC members, identifiable by the party's election T-shirts that they wore. The ward was until the 2011 local government elections one of the few controlled by the Inkatha Freedom Party in Johannesburg but neither the councillor nor any of the Zulu nationalist party's members was present. So it was members of the ANC's branch executive who took up seats behind a table facing the assembly to lead the meeting, take minutes and facilitate the discussion.

²⁴ Eliseev, Alex. 2008. *Chilling glimpse into 'Jeppestown Massacre'*. Independent online, 31 January 2008. Available online: <http://www.iol.co.za/>

In his introductory remarks, the chairperson said, “Police have asked the communities to help protect themselves.” Without the station commissioner from Jeppe Police present to explicate what was intended with so libertarian a request, it was left to the contributions from the floor to speculate. The clearest directive was for the formation of street committees to serve an intelligence gathering function because residents ‘know’ where the criminals stay. Suspicions of where criminals in the area hide out were revealed as two particular streets where no decent person could walk down without fear of being accosted by thugs, and to properties abandoned by their owners and infested with criminals. But criminals are sly, never remaining in one place for too long, argued a man who with his tall frame, protruding belly and tough talk was every semblance of a policeman out of uniform. Street committees alone would be insufficient to curb their activities, he said, and would have to patrol areas wider than the addresses they confined themselves to. His contribution and the forcefulness of its delivery spurred the chairperson to direct the meeting to what appeared to be its preordained purpose – to decide on a march to Jeppe Police Station the following Saturday. His task to arrive at this outcome was complicated by the next speaker who recounted how he had come across a group of drunken men fighting in the street. More than drunk and violent, he realised that they were foreigners – whether Mozambiquan or Zimbabwean, he could not tell. The meeting chairperson immediately moved to moderate the xenophobic turn in the discussion, saying that ‘criminals are just criminal’ and that it had to be acknowledged that there are foreigners with legitimate papers.

Returning to the same community centre for the march six days after the meeting, the same group of people had assembled, only seeming smaller gathered in the parking lot. The slogans some marchers had scrawled on hastily prepared placards were disarmingly neutral: *Let’s Build a Caring Society* / *Phansi ngoBugebeng [Down with thugs]* / *Crime: Enough is Enough*. The dramaturgy of the march brought out its political allegiance and the songs that began from one then two voices were from the ANC’s repertoire. All pretense of it being a multi-party, community initiative were dropped and *Operation Wanya Tsotsi* was declared an outcome of the Polokwane resolutions. Apart from a reprise of ‘Phansi Mello Yello’ (a 1980s struggle standard that refers to the then yellow personnel carriers patrolling the townships), rather more out of the march pageantry than any real antagonism, the marchers ‘applauded’ the efforts of the ‘good’ police. By the march’s end at Jeppe police station, thanks were in fact expressed to those police ‘doing their work’. Yet, the memorandum highlighted problems of corruption in the police service and the loss of dockets, drunkenness on duty and the failure of some officers to wear their identity tags. As far as the victims of crime are concerned, the memorandum asked for better protection of victims and witnesses. Still further demands were made that the station commander receiving the memorandum said the prosecutorial unit of

Jeppes's magistrate's court was better placed to answer, such as the demand for the imposition of harsher bail conditions. As wide-ranging as these demands were, the memorandum was solemnly signed by the station commander and the marchers dispersed.

Hostels and the transmutation of the politics of violence

The memorandum delivered to the police by the marchers included a demand that the police establish street committees to operate as adjuncts to their patrols of the area. A caveat was added to this particular demand, stipulating that "volunteers to the street committees should not be recruited from hostels because there are criminals staying there." The hulks of the migrant hostels loom large in previous inquiries into the subjectivity of the perpetrators of violence in Jeppes town, providing the ready attribute of their political identity to pin their motives to. In the interregnum before 1994, the two Jeppes hostels were caught up in the low intensity war between township residents broadly seen as supporting the African National Congress (ANC) and Inkatha-aligned, Defence Force-aided hostel dwellers. Politically motivated attacks launched from Jeppes were directed towards the commuters on the mass-transit trains stopping at Jeppes train station. Testimonies made to the Truth and Reconciliation Commission (TRC) remember dark days like 13 September 1990 when an apparently military-trained death squad boarded a Soweto-bound train and commenced an indiscriminate massacre of the commuters as it passed George Goch station. 26 people were killed and 45 wounded. Who these men were who boarded the train never came to light in the TRC process and survivors of such train violence could only testify that they spoke Zulu and had boarded the train at Jeppes.²⁵ The correlation between Zulu speakers and Jeppes town came courtesy of the hostels on the southern boundary of the area alongside the railways where apartheid accommodated labour recruited from KwaZulu.

Why hostel dwellers were so militant a feature of the political transition is tied to their recruitment – sometimes forcibly – to the IFP. Formerly a Zulu cultural association based in the KwaZulu homeland, the turn to a negotiated end to apartheid opened new political exigencies for the organisation. Negotiations encouraged political parties to qualify the legitimacy of their claim to a seat at the negotiation table. Violence became an instrument to assert parties' representivity and Inkatha secretly colluded with remnants of the dying regime to weaken the hand of the ANC by destabilising black communities. The deployment of a Zulu urban constituency in the hostels thus introduced the political violence that had wracked

²⁵ Testimony of P. Nkondo. Victims of political violence. Truth and Reconciliation Commission. Available online: <http://www.justice.gov.za/>

KwaZulu to the Transvaal, affirming the IFP's significance as a political force beyond the ethnic boundaries of its traditional support base (Simpson et al. 1992). To attribute the outbreak of violence to the agendas of protagonists with respect to a political process does not explain how their enmity was socialised, however. As the object of sociological studies, the system of hostels has been shown as effective barracks for dwellers antagonised by the endemic violence of the squalid living conditions and marginal to the urban landscape in which their residency was only temporary. The Jeppe hostels were similar to the mine hostels that exemplified the humiliations inflicted by the migrant labour system in being a site for the control of urban labour, but as an 'urban hostel' its inhabitants were distinguished by a greater ethnic diversity. Relations to the communities outside the urban hostel were less guarded as a result. Unlike the archetypical closed construction feeding the mining industry's appetite for labour, apartheid inserted the urban hostel in proximity to a range of white-owned industry in the inner city where migrants could find unskilled employment. Government authorities as opposed to a single employer were therefore, responsible for the maintenance of urban hostels.

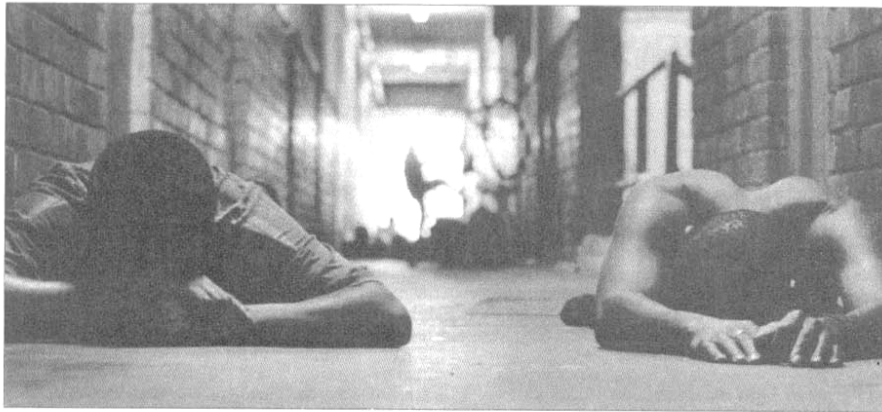
Sitas in his study of hostel residents in Vosloorus on the East Rand (Sitas 1984) sees the control of workers in urban hostels as 'diffuse' and less regimented. Segal (1991) ventures beyond the stereotype of the ethno-nationalist militancy of the Zulu-speaking inmates of the hostel system in an attempt to understand the low intensity warfare from the perspective of these central protagonists. She finds an over-riding trait of hostel dwellers to be the resilience of their connection to the rural home. These rural ties came under severe strain in the 1970s with the collapse of the rural economy (Sitas 1984). The reproduction of labour in the homelands thus became no longer viable as migrant workers sought to carve out a permanent residency in the city. The sea change in the hostel population came with the abolition of the Influx Control Act in 1986, confirming the breakdown in the regime of migrant labour. The abolition of migration control meant that youth could move to the cities before any employment was secured, resulting in a new layer of unemployed workers crowding in with family members and acquaintances in hostels. The sharp rise in the rate of urbanisation brought new pressures to bear on the competition for jobs, deteriorating wages and a growing criminal subculture (Segal 1991). Its most visible effect was the growth of informal settlements, like the George Goch settlement that grew in the shadow of the Jeppe hostels. The access of women to the hostels was also relaxed, testing the systems of gerontocracy managing hostel relations. From the interviews conducted by Segal, women's intrusion into hostel life was particularly not welcomed by the older residents.

This unionisation of migrant workers was in Sitas's view a result of the disintegrating migrant and urban divide, and the basis for the emergence of a militant, worker leadership amongst particularly the metalwork union. By the democratic turn at the end of the 1980s, however, the workerist faith in a workers' vanguard that cut across ethnic divides in the hostels failed as the hostels reverted to a hotbed of ethnic nationalism. The workerist romance was shattered by the violence that rent black communities in a conflict described by the rote logic of racialised reportage as black-on-black. Subsequent inquiries into the violence incriminated the apartheid state while the fissures revealed by interviews with the perpetrators of such violence delineate an antagonism better described as worker-on-worker. Migrants felt the union, while functional to mediating workplace issues, neglected the issues of hostel life. And set against the backdrop of the opening prospects of a democracy after apartheid, spearheaded by a national movement in alliance with unions in the UDF, the group identity of hostel dwellers in competition rather than in alliance with township residents was revived.

Reconciliation could not foreclose the possibility of future conflict from breaking out, however. Writing after the democratic breakthrough, Mamdani (1996) did not present a good prognosis for the future of South Africa because of the tension in the democratic constitution between democratic rights and the seigniorial rights of traditional authorities. While the state and civil society had been deracialised, he cautioned, rural governance remained undemocratic and migrant workers would continue to be marginal and disenfranchised in the cities. As much as they had been the source of ethnic-based political violence in KwaZulu in 1987 and in the early 1990s, Mamdani feared that the hostel dwellers would be a threat to the democratic order. Since the ANC's negotiated concession to federalise local powers, the ruling party went still further to recognise tribal authorities with the promulgation in 2003 of the Traditional Leadership and Governance Framework Act (TLGFA). The Traditional Councils created by the TLGFA are not an exact replica of the Bantu Authorities, being reformed to the extent that 40% of the seats are elected²⁶ and a third at least occupied by women. A map of these councils is a near carbon copy of the map of the former homelands. The Traditional Court Bill would have given a juridical complement to the TLGFA in centralising decision-making power under unelected chiefs in traditional courts²⁷. The TCB was withdrawn on 6 June 2011. Had it been passed, it would have given judgements by traditional courts the same status as those issued by a magistrate's court

²⁶ These elections were "botched" in KwaZulu, North-West, Mpumalanga and Eastern Cape, and have not taken place in Limpopo (Jara, 2011).

²⁷ Aninka Claassens, 'What's wrong with the TCB?', *Mail & Guardian* 2 June 2008. Available online: <http://www.mg.co.za/>



SCARED: Hostel dwellers lie on the floor during a raid at the Jeppe Hostel. Although police couldn't trace the killers they were looking for, four men were arrested for other offences.

PICTURE: NEIL BAYNES

Cops raid hostel after woman killed in robbery

Victim 'may have recognised suspect'

POLOKO TAU

SOME squatted in the grimy courtyard while others lay face down in the corridors as police went from door to door in the Jeppe Hostel searching for a woman's murderers.

But they didn't find Sanna Mamolefadi's killers. What they did find were 11 firearms, 30kg of dagga and rolls of copper. Four men were yesterday also arrested for possession of unlicensed firearms.

The raid was prompted by a robbery at a recycling business in Jeppetown in which Mamolefadi, a 48-year-old employee, was shot dead.

The woman and her colleague were cleaning up the business premises before opening when an armed man stormed in and ordered them to lie on the floor at about 8.50am.

"A while later two other

armed men pushed in people who had been waiting outside," said police spokesman Inspector Richard Munyai. "The men demanded cash. The women pointed to a bag of cash which they took along with her handbag. They also took a cellphone from one of the people who had come to sell paper for recycling."

Munyai said one of the robbers then fired two shots, hitting Mamolefadi in the right side of the chest and under the left armpit.

"She was confirmed dead on the scene. We suspect she could have been shot because she recognised one of the suspects. Two more shots were fired outside before the suspects jumped into a white Opel Kadett and fled with an unknown amount of cash."

'Two armed men pushed in people waiting outside'



UNDER FIRE: Metro police and SAPS officers were forced to shoot at hostel dwellers who didn't co-operate.

PICTURE: MATTHEWS BALOYI

One firearm was found abandoned at the scene.

A white Kadett was later spotted at Jeppe Hostel which led to Joburg metro police and the SA Police Service mobilising about 300 officers. They hit the hostel just before midday.

Screams of "Phuma!" (get out), "Vula!" (open up) and "Move!" were heard as officers forcefully ordered hostel dwellers to vacate their rooms and squat in the courtyard.

Residents, all males, were searched and some had their fingerprints checked on morpho-touch fingerprint devices used to identify wanted criminals.

Rooms were searched and with the help of the Red Ants fridges and liquor were confiscated from those suspected of trading without liquor licences.

Police also took out safes, which they broke into to check

for firearms. "All firearms, whether licensed or unlicensed, will be sent for ballistic testing. Those licensed and found to be clean will be returned to their rightful owners," Munyai said.

Towards the end of the raid a man sat on the ground screaming in agony. He had blood dripping from his hip which police said was from a rubber bullet wound. Munyai said two were injured by rubber bullets. They were shot by police when "non-co-operative hostel residents were ordered to disperse".

Both were taken to hospital. Inner City regional director Nathi Mthethwa said the quick-response raid was because they were busy with a massive joint crime prevention operation with police around the city when a call was received about the robbery.

Police were still hunting for three men in connection with robbery and the murder of Mamolefadi yesterday.

News clipping: *The Star*, 14 October 2009

While rural governance is devolving powers on traditional authorities, the rule of law as experienced by migrants to the city presumes their criminality. The crime story clipped from *The Star* (14 October 2009) iterates a frontier conflict where the subjects are hostel dwellers and the raiders play a convincing commando. It recounts the murder of an employee at a recycling business in Jeppetown that prompts a raid on the hostel where the kind of car

driven by the suspects is spotted. The might of the law then descends on the hostel with a readiness the regional manager of Johannesburg, Nathi Mthethwa (not to be confused with the current Minister of Police) credits to a “massive joint crime prevention operation” that happened to be underway in the city at the time. Police and Red Ants carry out what in the description given is no less than collective punishment with the residents forced out of dormitory rooms to have their fingerprints scanned while their belongings are searched. Where cooperation is depicted by “scared” men forced to lie on the floor, the violent resistance of ‘uncooperative’ hostel dwellers shooting on the police in the second frame is not surprising. All the search yields is some copper wire, 30kg of cannabis and eleven firearms without any trace of the suspects in the murder and robbery being found – hardly the kind of haul justifying the raid. The ostensible motive for the raid hides its true intention to suborn the hostel dwellers to biopolitical control. The confiscation of liquor and fridges from ‘suspected unlicensed traders’ is an uncanny echo of the control of liquor supply to black people by the segregationist republics. The crime story does not reveal that water, functioning toilets and electricity are all luxuries in the hostel. Living conditions are described as ‘unchanged from the days of apartheid’ with government programmes to upgrade the facilities having had ‘minimal impact’ according to a spokesperson for the Gauteng Department of Housing.²⁸ While the development of the hostels is not a government priority, police raids take precedence over any intervention the Housing or any other service delivery related department may make.

Migrancy and Crime

The events of May 2008 would seem to bear Mamdani’s foreboding of a stalled transition out when the hostels were again an epicentre of violence, this time in a pogrom against African immigrants. Refugees from the xenophobic violence were quite insistent that the violence was ethnically motivated, that other ethnic enclaves of the townships deplored the violence against their Zimbabwean brothers (interview 2008). Violence affected only the men’s hostel and the surrounding Zulu dominated area of Alex, they averred. To explain why this was the case they could only venture xenophobic sentiments: “Zulus are uneducated and stupid. ...Zulus are not like you or me – they like to fight.” The mobs that materialised amidst the tenements, squatted workshops and the shanties of George Goch appeared from the traditional weapons they carried and their modus operandi to issue from the Jeppe hostels. Black neighbours and particularly those who could not respond to their questions in isiZulu were assaulted and their

²⁸ Thembelihle Tshabalala, ‘Caught in the hostel trap’, *Mail & Guardian*, 24 May 2008. Available online: <http://mg.co.za/>

belongings looted.²⁹ African immigrants fled or were evacuated to the Cleveland and Jeppe stations to await their relocation to transit camps for ‘internally displaced people’ set up by the United Nations. President Thabo Mbeki authorised the deployment of the army to clamp down on the perceived source of the violence in the hostels in the immediate aftermath. This new outbreak of violence was fomented by a criminal element, the government insisted to the incredulity of those affected. If the stability of democracy was to be tested by migrant workers who continued to turn the wheel of industry, government’s response to xenophobia as only a criminal paroxysm rather than a deep-seated sociological phenomenon is unsurprising. The denialism of Mbeki is only explicable as an inability to admit the anomaly of rural subjects in the framework of democratic citizenship. The hostel dweller who is ethnically defined and lives in a city he or she does not call home, is inadmissible to the democratic polity. The labelling of xenophobia as criminal was then the only logical category the violence could fall into.

Criminality is a source of power. Insofar as the xenophobic attackers acted on a perceived link between African immigrants and crime, they misrecognised their victims as subjects in their own image. The criminalisation of immigrants was, therefore, the condition for the pogrom to take place. The violence divided poor communities in the country’s main urban centres, affirming who belonged and who were imposters. As immigrants sought refuge from the violence at police stations, a second correlation between immigration and crime then counterposed the first: were the mobs only acting in concert with immigration policing that had for years been xenophobic? The link between the law and violence is inextricable according to Benjamin’s critique of violence (1999). Two forms of violence co-determine the law: the law once created by violence cannot be fully constituted and has to continuously be preserved by violence. Criminal violence is subversive of law not for the harm it poses to other individuals or to social well-being but because justice itself is premised on the state’s right to exercise violence. The state demonstrates its power and effective government by ensuring the police and military are sufficiently armed to meet any challenge to its monopoly on violence. This threat transmutes the lawbreaker into the lawmaker. An excess of police violence of course would undermine the ends of the law. But so too would the attrition of the ‘latent presence’ of lawmaking violence lead to the decay of the institutions of democracy. Parliamentary democracies, Benjamin says, “offer the familiar, woeful spectacle because they have not remained conscious of the revolutionary forces to which they owe their existence” (1999:288). It seems as though, on Benjamin’s terms where a just law has to be actively

²⁹ Steve Faulkner, *A Twenty Four Hour Drive Into a Xenophobic Landscape*. Available online: <http://amadlandawonye.wikispaces.com/>

sought in a dynamic equilibrium of lawmaking and law-preserving violence, the precepts of South African democracy had been exceeded.

The co-production of the law by violence is expressed clearly in Steinberg's observations of township policing. Accompanying two constables on a patrol of Alexandra, he recounts how they are cowed into ceremoniously performing their public duty, emptying one man's beer for drinking in public but turning a blind eye to more serious offences to avoid confrontation (2008). Away from the threat of mass reprisals on the street, however, they wilfully impose the law in the privacy of a home in responding to a domestic callout. Where their authority is undisputed, they overcompensate for the public humiliation on the street and enter chivalrously into alliance with women beaten by their partners. Steinberg explains their schizoid law enforcement as a trade-off of authority in the face of civilian sovereignty: "A precondition for policing is the consent of the general population to be policed. In this sense, the cops are always bluffing, and the role of civilians is always to refrain from calling the bluff. It is the citizenry who determine to what extent they are policed" (2008: 35). Benjamin would interpret it as the law-preserving violence they must evince in response to the lawmaking of the restive mob.

The paradigmatic subject of power in the country today is the non-citizen and particularly the African immigrant. The stigma attached to immigrants borrows a large part of its lexicon from the discourses around crime. Criminalisation is instrumental to the legitimatisation of power and taken together with 'immigrants' "make it possible to imagine the category of the virtuous national citizen" (Hassim 2008:4). The inner city neighbourhoods of Johannesburg have since the onset of democracy become home to a diversity of migrants from all over Africa and inwardly, from the city's townships and the rural areas of South Africa. A survey of inner city residents, courtesy of a residential property company's register of their tenants in 2006, found that they were mostly male, 38% of whom had moved to the city within the previous two years. An earlier (2002) survey of residents living in Hillbrow hotels found that of this most transient population sample, 90% were male and over a third were foreign and mostly Nigerian.³⁰ Coupled with this aspect of its demography is the reputation that the inner city has gained of being rank with crime. Whether this reputation is deserved is not altogether clear from the crime statistics because the proportion of undocumented migrants in the population is not accurate and any estimate must extrapolate from already unreliable census data. The most recent and reliable estimate from Statistics South Africa, the 2007 Community

³⁰ Trafalgar Properties, and Leggett (2002) respectively, cited in Silverman, Melinda and Tanya Zack. 2008. *Land Use Management and Democratic Governance in the City of Johannesburg: Hillbrow and Berea*. *Wits Centre for Urban and Built Environment Studies*. Available online: <http://web.wits.ac.za/>

Survey, puts the figure at 580,000,³¹ far below the 2.5 to 4.1-million bandied about by such esteemed sources as the Human Sciences Research Council as early as 1996 (Mike Hough and Minnaar 1996), years before the crisis in Zimbabwean spurred migration southwards. Though their research methodology was discredited (with the HSRC itself questioning the study's methodology), their pronouncement fired the imagining of the "tidal wave" of immigration represented by the media (Vigneswaran 2007:13). Public confidence in the veracity of the figure was not dented and the spectre of millions of undocumented immigrants was raised again in a March 2010 claim by the police of there being three million illegal immigrants in Gauteng.³² The inflation in estimates of illegal immigrants is not just bad science – it is the premise on which government policies on safety and security rest. As much as a quarter of the 2009/10 provincial budget for police was spent on arresting, detaining and deporting undocumented immigrants (Vigneswaran and Duponchel 2009:20) – upwards of R362-million. Without an unregulated and invisible multitude, the policing methods and the budget expended on these exercises, would not be warranted.

It is revealing that the authors of the HSRC research report that inflated the numbers of immigrants in the country were both criminologists. Anthony Minnaar is based at the University of South Africa's School of Criminal Justice and Prof Mike Hough retired from his tenure at Pretoria University's Institute for Security Studies. Reading the January 2004 roll of the Johannesburg Magistrate's Court and finding that over a quarter of defendants were foreigners, Hough produced an ISS report that blamed foreigners for *the* crime wave.³³ Adding grist to his argument was the proportion of immigrants in the country's prisons. Currently, foreign nationals are over-represented in South Africa's prisons – as at 17 August 2010, there were 8,580 foreigners in a total prison population of 160,026, or 5.4%.³⁴ If the ratio in prison reflects the proportion of immigrants in the population outside, there would be about 2.7-million immigrants in the country. Though this seems a reasonable estimate given the 3-million that the police imagine in Gauteng alone, it is still much more than Statistics South Africa found in its Community Survey.

The tie between "hordes" of immigrants and crime is a foregone conclusion, because they are, after all, undocumented and already breaking the law for being in the country. Section 41 of

³¹ Statistics South Africa. Community Survey 2007

³² The Gauteng police chief, Simon Mpembe, reporting to the police parliamentary portfolio committee on 2 March 2010. Cited in 'Police blame illegal immigrants'. UN Office for the Coordination of Humanitarian Affairs, *Integrated Regional Information Networks*. 3 March 2010. Available online: <http://allafrica.com/stories/201003050607.html>

³³ Quoted by van Eeden, Johanna. Crime Wave Swamps South Africa. *Rapport*, 11 April 2004. Available online: <http://www.news24.com/SouthAfrica/News/Crime-wave-swamps-SA-20040411>

³⁴ Department of Correctional Services website: <http://www.dcs.gov.za/WebStatistics/> Accessed on 3 December 2010

the Immigration Act entitles police officers to stop suspected illegal immigrants and detain any one found to be without valid papers (FMSP 2009:4). The Immigration Act, though, does aim to limit the police's role in enforcing immigration laws, preventing the entry of any premises in search of suspected illegal immigrants (s.33) among other restraints. To do this, the occupants have to be suspects of more serious crimes than just the administrative offence of failing to have a valid permit. Consequently, police programmes to combat crime are a common pretext to snag illegal immigrants in their dragnet. Compared to the evidentiary procedures required in criminal cases, a darker complexion and inability to understand Afrikaans or Zulu are suspicious enough, and the inability to produce valid documents, conclusive. The police do not record the numbers of detainees charged with illegal immigration because it is not a priority crime and the scale of man-hours dedicated to arresting and detaining immigrants is muffled by official non-disclosure. Police statistics also do not reflect the true extent of violence against immigrants for the fear foreigners have in reporting crime to the police. Victim studies on the other hand have shown that immigrants are more often the victims of crime than the perpetrators (Vigneswaran and Duponchel 2009:20). Without a valid passport, permit or visa, their expectation must be of their own harassment or detention before any co-operation from the charge officers on duty.

The records of deportations recorded by the Department of Home Affairs are the only testimony to the scale of xeno-policing. They show that deportations had been intensifying since the first three years of democracy saw a 50% increase in the numbers of mostly Mozambiquans and Zimbabweans deported.³⁵ But it is only with the launch of a national policing programme, Operation Crackdown (aptly on 1 April 2000) that the number of deportations showed a steady upward trend (FMSP 2009:8). The new emphasis of the programme was 'visible policing' which entails crackdowns on crime in high-profile, public confidence building exercises. What the roadblocks and crime blitzes of the inner city of Johannesburg have rendered visible is police discrimination against immigrants. In the first, eponymous Operation Crackdown in 2000, the police broke down doors of inner city highrises to arrest so many illegal immigrants that the Lindela repatriation camp was four times its usual capacity and the schedule for the Home Affairs trains to Mozambique from Park Station was doubled. The national police commissioner at the time, Jackie Selebi, touted the success of Operation Crackdown in its 2,000 arrests every three days, a rate of arrest that he promised for the year to follow.³⁶ The South African Human Rights Commission was not as enthused by the police action, flagging its concern over discrimination against immigrants.

³⁵ HSRC. *Migration in south and southern Africa: dynamics and determinants*. Edited by Kok, Gelderblom, Oucho and van Zyl. Cape Town: Human Sciences Research Council Press: 2006

³⁶ Smith, Alex Duval. South Africa faces human rights backlash over crime crackdown. *The Independent*. 1 April 2000. Available online: <http://www.independent.co.uk/>

Police were reported to be forcing suspected immigrants at roadblocks to remove their top clothing to show the telltale vaccination marks proving South African birth. Humiliating immigrants in this way, the HRC ominously warned, would foment xenophobia, a fact the police tacitly admitted to by declaring a moratorium on deportations in the wake of the xenophobic violence of May 2008 (FMSP 2009).

Police harassment of immigrants was not restrained even following the outbreak of xenophobic violence, however. 2009's hospitably named 'Operation Chachamela' (Tsonga for 'walking on hot coals') rounded up 350 Zimbabwean refugees sheltering in and around the Central Methodist Church for 'loitering' in a clean-up of the CBD. Statements by some of the homeless refugees record beatings, tazers and pepper spray used against them by the police who also destroyed their meagre possessions. The 'loiterers' were released after a weekend-long detention without charges being pressed.³⁷ Another moratorium on deportations, declared from April 2009 to the end of 2010 for Zimbabweans living and working in South Africa, would again not deter the police. The 2010 incarnation of a crackdown, Operation Duty Calls, declared that Johannesburg's inner city neighbourhoods would again be among the 'crime hotspots' that the police campaign would focus on. In Hillbrow, the theme for this season's public relations visit by the police commissioner was the scourge of 'hijacked buildings'. Syndicates, it was alleged, had moved into buildings either neglected or abandoned by their owners and collected rents from occupants. It is an old trope, first appearing as the pretext for the eviction of residents under the City of Johannesburg's Bad Buildings Programme.³⁸ Buildings were identified as either hijacked by 'crime lords', slums, derelict or unfit for human habitation and necessarily in arrears. Male residents were forced out of targeted buildings by Home Affairs officials and police, forced to lie on the ground to be searched and their fingerprints were taken and cross-checked for outstanding warrants of arrest.³⁹ Whether these actions have been successful in reclaiming the hijacked buildings has not been disclosed, but most arrests made in the 'reclamation' of these buildings were the alleged hijackers' victims – most commonly for illegal immigration. Doctors Without Borders, as one organisation providing healthcare services in the inner city, raised its concern that while conditions in the buildings were unhygienic the raids were not in any way a solution.⁴⁰ Their healthcare services in the inner city were rather disrupted by the intimidation

³⁷ Lawyers for Human Rights press release. *Legal challenge to Johannesburg's "loitering" bylaws*. 4 November 2009. Available online <http://www.lhr.org.za/>

³⁸ Maota, Ray. Plan for inner city. *City of Johannesburg*. 12 August 2010. Available online: <http://www.joburg.org.za/>

³⁹ Wilhelm-Solomon, M Humanitarian crisis close to Home. *Mail & Guardian online*. 14 December 2010. Available online <http://www.migration.org.za/>

⁴⁰ Meaney, Tara. Operation Duty Calls cleans up Hillbrow. *Eyewitness News*. 4 November 2010. Available online: <http://www.eyewitnessnews.co.za/>

of the largely immigrant residents. Upon visiting the buildings in the wake of the raids, the Doctors were told by the Zimbabwean residents, who had been excepted in 2010's round-up, that the police had warned them to start packing before the end of the year and the end of the moratorium on their deportation.⁴¹

Community policing and xenophobia

If security in the township is created by a constant co-determination of police will and community consent, how can the outbreak of xenophobic violence be understood in Benjamin's formulation: as law-making or law-preserving? What was the pogrom but the enforcement of the law and delayed correction of lax immigration control (as commentators and government critics alleged)? At its source was the very institution conceived by democracy to be the bridge between the police and the communities they served – Community Policing Forums (CPFs). The legacy of apartheid had left a gulf of distrust between them, a barrier the police had to overcome if crime was to be effectively contained. The key challenge for the new government in 1994 was to 'shift the constituency' of the law and switch the methods of policing from one of control to service and in doing so, mend the public's perception of the police. To emphasise its new orientation, the South African Police was renamed the South African Police Services and demilitarised, while statutory bodies were established to monitor authoritarian relapses and investigate any cases of misconduct. Accountability at street level would be won, in the vocabulary of policing policy, in 'partnership' with 'communities'. CPFs were formally recognised in 1995 by the South African Police Services Act as the interface to facilitate the partnership. According to the law, each police station has to organise a CPF with its own, independent constitution and code of conduct. A steering committee to co-ordinate the activities of the CPF has to be constituted by an annual general meeting where civilians are elected to supplement the police representatives on the committee. The local CPF is at the base of a hierarchy of community representation that extends up to a national community policing consultative forum via provincial and area-wide boards. When the White Paper on Safety and Security of 1998 proposed that local government oversee the policing of their jurisdictions, CPF leaders were outraged and successfully rallied to defend their positions (Shaw 2002:121). Formalising the inclusion of local government representatives in the community policing forums, it was argued, would hinder the mobilisation of civic organisations to combat crime.

⁴¹ Email correspondence from Roni Amati of Lawyers for Human Rights, whom Doctors Without Borders consulted.

Community policing forums were the invention of the transition that while intended to improve community-police relations, came increasingly to function as stop-gap measures in police law enforcement (Harris 2001). The National Crime Prevention Strategy of 1996 signalled a reorientation of the CPFs by stressing the importance of partnership with the 'community' for the reduction of crime. To this end, the suburban model of community policing proved the more successful. In areas with better-resourced police stations and privileged constituents, the CPFs succeeded in bringing the incidence of crime down by partnering the local police with the private security companies that service these communities' security concerns (Pelser 1999). The community as represented in poorer township CPFs had different expectations and social capital to bring to the task of securing their neighbourhoods. Their capacity to realise policing functions could extend only so far as CPF members could act as volunteers and their track record in reducing crime does not show similar success. Neither have these CPFs succeeded in yielding legitimacy to the police as intended, becoming instead forums to decry the integrity of the police force with certain police stations being described by the communities they served as 'dens of criminals' (Gordon 2006:160). The Minister of Safety and Security in 1999, Steve Tshwete, corroborated these perceptions in answer to a parliamentary question regarding corruption in the police force, admitting that police were three times more likely to commit a crime than a civilian (Newham 2000). Tshepo from Orlando East in the first chapter, questioned what community was constituted in the local CPF because it has never held an AGM that he knew of, and it appeared to him as though few people were controlling it (interview 2009).

The susceptibility of CPFs to vigilante impulses is documented in Buur's study of the Amadlozi, a vigilante group operating in the townships of Port Elizabeth. The Amadlozi was incorporated by community policing forums and police-administered security structures only after their activities become indiscreet, blood staining the walls of the classrooms of their borrowed venues (2005). The ineffectiveness of the community policing model was displayed by the xenophobic violence: where was the Alexandra Community Policing Forum when the xenophobic pogrom was sparked off in the township? According to the United Nations' Organisation on Migration and a local civil society organisation, the CPF set it off (CorMSA 2009, IOM 2009). Their research reports on the causes of the xenophobic violence identified local leadership and CPFs as organisers of the pogrom. A community crime forum in Alexandra two days after the outbreak of violence, with the Gauteng MEC for Community Safety in attendance, was drowned out by calls to drive the 'Zimbabwean criminals' out. It is an incendiary moment captured in a video documentary on the violence, *Affectionately known as Alex* (Filmmakers Against Racism). The MEC and police are shown helpless as the crowd takes over the meeting, lifting chairs and singing President Zuma's signature struggle anthem,

umshini wam'. For victims of the pogrom, there was no doubt about police involvement in the violence: refugees from Alexandra named an inspector from Alexandra Police Station that collaborated with "the chairperson of the claims association" to orchestrate the violence in Alexandra (interview 2008).

A Jeppestown CPF meeting

Jeppe Police Station's Community Policing Forum is made up of four sectors. The meeting I attended was of Sector 2, encompassing Jeppestown and Fairview. Just forty-odd adults responded to the notices pasted to the walls of neighbourhood cafes and the loudhailing a police patrol van had been doing that Saturday morning. Half of the assembled community were women, young and old, who having arrived by the advertised start time, were clustered together in the front rows of chairs. The late arrivals took up the back rows, mostly young men, one of whom sported an Inkatha Freedom Party shirt. The convenors of the CPF being the police, four uniformed officers sat at a table in front of the assembly. All of the police were men but the civilians who joined them at the head to constitute the executive of the sector forum were mostly women. The CPF chairperson was also a woman but since she was away attending to a case of gang rape by school learners at the nearby highschool, the meeting was opened by another member of the CPF. He asked someone to say a prayer before reviewing the agenda, copies of which had been handed out. We would not have to deal with the first three items of the six-point agenda, he explained. The purpose of the meeting was really agenda item 4: the co-option of new members onto the executive. There were no reports to take, minutes to read nor matters arising, he said, because Sector 2 of Jeppe was dysfunctional. This dissolution of the sector's co-ordinating body was embarrassingly evident, he added, in the absence of crime fighting news-briefs from the sector, published in the CPF column of the inner city's free newspaper, *Johannesburg Express*.

The assembled community murmured its indifference with the shortened agenda and the chairperson then handed over to Captain Skosana, the police co-ordinator of Jeppe's four sectors. Switching between Zulu and English, the police captain informed the meeting that of Jeppe Police Station's sectors, Sector 2 was the only one without a working executive committee. The chairperson had relocated to the East Rand, the secretary had resigned and another member had passed away, leaving just four members trying to do the job of representing the community. The solution to the deficit was made clear to Captain Skosana when returning from church one Sunday morning, he was stopped by a concerned resident asking how he could volunteer in the CPF. In their brief conversation, they mooted names of

CPF members who could be seconded to an interim executive committee before the next annual general meeting. Without pay for the sacrifice of their time and energy, the Captain emphasised these volunteers understood well what was expected of them and the task of the current meeting was to open the space for them to make their contribution. He announced their names and the portfolios they would assume in the interim executive and called them forward to join the remaining committee members at the head of the assembly. If there was any disagreement with the process or the candidacy of any of the new members none was entertained.

Polite applause welcomed the newly constituted interim committee. Thereafter, Captain Skosana declared that the first task of the committee would be the closure of a pedestrian bridge between Jeppestown across the railways to an informal settlement on the south side of the sector. Many complaints had apparently been lodged in the past about the dangers of crossing the bridge and its closure was an accepted resolution. The only question opened for discussion by Skosana was how long the interim committee should take to close the bridge off. He suggested two weeks but after some speculative inputs from the floor and a clarification that the bridge in fact belonged to the railways, implying that any expenses incurred would be borne by the bridge's owners, the deadline given to the committee was shifted to three weeks. At this stage, the young Inkatha Freedom Party member sitting at the rear of the assembly indicated to the meeting that he wanted to volunteer to be on the interim committee. The police captain politely responded that the CPF is an apolitical body and could not include party representatives. This explanation appeared to satisfy the spurned volunteer.

Though this was meant to be a meeting of the community with the police on community safety issues, it had degenerated into a platform for Captain Skosana to vent his contempt for crime. With the business of the meeting accomplished, he launched into a tirade against criminals:

We have rights in this country. They say the police cannot shoot a criminal that he has human rights. But if you shoot and kill a person who is stealing, you are not killing a person – you are killing a criminal. Sending him to jail is not right when it costs money to keep him there. That's too expensive. It is better to bury him for the worms to process...

The chairperson allowed the speech to continue until his invective turned to the criminals in Jeppestown, and he was cut-off just as he was about to name the buildings where criminals could be found. So that members of the community could begin making their own contributions, the chairperson called for questions from the floor. These picked up where

Skosana's bombast had ended. An old woman commended the police for the quick response to her early morning panic call reporting an attack on a friend of hers. The attacker was shot dead by police. Complaints were raised as well, ranging from the difficulty to access phones to call the police, scrapyards operating at suspiciously late hours, loud music and shebeens operating out of abandoned buildings. Captain Skosana gamely responded to each question, only to say that the issue of scrapyards was one he would report to the station commander, that loud music should be reported to the cellular numbers of patrol vehicles that he had handed out, and on the problem of shebeens, assured the assembly that police had been instructed to confiscate fridges.

Feeling disconcerted at how the meeting was being commandeered, I reprised the issue of the bridge that had been targeted for closure, querying if no alternative means to secure the passage of pedestrians over the structure ought to be considered and if they should not be consulted before such radical action was taken. Skosana responded that no alternative method to stop the mugging on the bridge had ever been suggested. An alternative solution to his mind was the formation of a neighbourhood watch, in which event he could see the barriers that had been erected to secure communities being removed to restore the convenience of the walkways. While crime had taken away freedom of movement, the immediate problem was to prevent criminals from coming into the sector from elsewhere, he explained. Skosana was hitting his stride again and he related an incident from Dawn Park, another part of the city where he resides. Four criminals had broken into a house, they were caught, beaten, and their throats and arms were cut 'by the community'. "I don't agree with it; we mustn't do it [but] for now we are free in Dawn Park," he said. He proceeded to outline the criminal threat from the informal settlement across the railway line and from those criminals staying in the area illegally. The strategies of dealing with criminals outside and inside the community would have to be different: the muggers on the bridge could be simply barred by erecting a gate. Searching for an example of criminals within Jeppestown, he reintroduced the issue of the two buildings he had earlier been stopped short of blaming. The residents there, he pointed out, were patently illegal occupants of the buildings. Their criminality was self-evident in the lights that burned inside the buildings while no account is paid – "They steal [electricity]!"

The same two buildings where criminals are said to be staying had been specified in the memorandum taken to the police by the anti-crime march chronicled earlier. The march had paused outside these derelict blocks of flats en route to the police station to convey a warning to the occupants. After the march, I returned to one of the buildings, a dingy block of flats on Commissioner Street named Van Der Stel Place (poignantly after the first governor of the Cape colony) in the memorandum. A hawker whose stall crowded the narrow entrance to the

building could not answer the suspicions that criminals resided inside. “If there are criminals here,” he said, “it’s difficult to say.” Three young men descended from the unlit stairwell to buy a cigarette from him. Repeating my question to them, one volunteered: “Crime is a part of life. Criminals don’t exist... You can’t tell a criminal from his appearance. They are hunters for a better life.” I walked a short distance with the three youth down Commissioner Street towards the other alleged den of thieves in the ‘Black Hills’ squat. YOU CAN RUN BUT YOU CAN’T HIDE is tagged in red paint outside. Our paths diverged there as they went in search of beer.

Chapter 3

The Biopolitical Frontier of (in)Security

Going to the frontier to find criminals was never going to be as certain as traversing the Fish or Zwartberge when the jurisdictional boundary of the law has no geographic referent. A post-apartheid ethnography of crime cannot readily identify a field site. “The nature of criminological thought as a form of ethnography [is] very much clearer in colonial and imperial situations. Where the state is white and most of the ruled and most of the criminals are black, the description and construction of criminal otherness is subsumed within a larger discourse about the otherness of the subjects” (Chanock 2001:63). One of the subjects interviewed would state the research problem in his consideration of his relationship to his community as a marked offender: “Criminals hide themselves. People who aren’t working and are able to maintain a lifestyle are suspicious but it’s difficult to expose them. It’s not easy to conclude someone’s a criminal. Even young people do naughty things but does it make them criminal?” Finding offenders necessarily led my fieldwork to the ‘colonial’ outposts of this new frontier – the prisons and the offenders the prisons have marked. The results of these forays into the institutions of punishment could only offer glimpses of the spaces and the subjects they are premised on reforming. Finding these free outlaws was only ever going to be beyond a hypothetical boundary I could neither see nor anticipate crossing.

Ethnography of a crime

The irony of the mugging was that it happened when I was least expecting it, having in previous incursions in the city reckoned on the possibility to negotiate a ‘talk’ with my muggers and glean some useful ethnographic data. Instead of opening the possibility, the attack came suddenly, a block away from the Carlton Centre while I was walking on a crowded sidewalk to get a taxi home. An arm grabbed me from behind around my neck, knocking my glasses from my face and the single strap of my backpack was cut from my shoulder as two more assailants grabbed either arm to wrestle me to the ground. A boy’s face on my right – he could only have been all of 12 years – was the only glimpse of them I could see while his hands ripped my jeans pocket. At my left was someone older, but through my blurred vision, I could discern little else but his form. The tussle lasted until they could hazard the struggle with my trouser pockets no longer – no more than 10 seconds. As soon as my

head was released, they scattered, leaving me disorientated and breathless. I stumbled around to see what remnants of my pockets' contents could be salvaged from the pavement, vainly trying to stop passers-by from picking up the coins that would have been my taxi fare. A concerned man handed me my bent and scratched glasses, I located my keys and stepped into the nearest shop to regain my breath and compose myself. With some relief, I felt the fold of notes destined for a mechanic I had to pay miraculously still in my back pocket. The shopkeeper was concerned and commiserated about the terrible crime situation. "It's the end of the month and with a bag, they thought maybe you had valuables inside," she offered. The man who had given me my glasses, in the formal bearing of a churchgoer, also voiced his indignation: "I'm from Zimbabwe and I never saw this before coming to Joburg." I wasn't taking much comfort at the time, running through what I had lost and counting the costs of replacing library books I had been carrying.

Advised by the shopkeeper to look around the area in the hope of finding the bag abandoned, I set out to find what luck could yield. The search didn't last long as any hope of seeing my notes and books again seemed improbably dim. Headed towards the waiting taxis again, someone called me from across the road. "Mister, I saw those boys who took your bag running that way," he said, gesturing vaguely in the direction of Von Welligh. He was a coloured man, slightly built and the stereotype⁴² of a man whose sleeves hide the telltale *tjaps* of time spent in prison, but I followed him. He turned at the first corner, conferred with a man leaning against the wall, and told me to wait for him there before running down the side street. A few moments into the wait, I became too wary of the money I had yet to lose and moved back to the scene of the crime, there to wait for chance to find me. And somehow, against my expectations, it did with the return of the good Samaritan carrying my bag in a plastic packet with his friend from the corner in tow. They did not wait to hear my astounded thanks, curtly handing over the package and turning without a word back into the pedestrian traffic. If I had the presence of mind, I would have followed them but wanted more than anything to check what was still in the bag and what was missing. My despair gave way to great relief as everything still appeared to be inside, save for a MP3 player and cell phone. The phone's sim card had been conscientiously left in the plastic packet, so small I nearly missed it. Even my bank card and driver's license were not taken. I extracted a book I was reading to show its apt title to the Zimbabwean and a Pakistani storeowner who had taken interest and share the irony: *Crime Wave*. For the rest of the day, what had been a wild ride from gloom to relief sustained some florid gushing about the morality of the criminals. For all

⁴² The relative proportion of coloured prisoners has been double that of other race groups in South African prisons since the 1930s, despite the fact they were not subjected to the same pass laws as Africans (Jensen 2006, citing Don Pinnock).

the research data I recovered, I could only but rue the opportunity lost in failing to speak to my ‘good Samaritan’.

Recounting the incident of my mugging to an ex-offender I interviewed, he thought that my belongings were returned to me because the thieves felt a moral responsibility – ‘like Oliver Twist’ (interview: Mzwakhe 2009). These Johannesburg thieves were not a band of Olivers, though; the classic Dickens character is set apart from the pickpockets he falls in with by his gentle nature. But a moral responsibility is as good an explanation as can be guessed, be it an adherence to a moral code of the gang or to me as their victim. The ex-offenders I have spoken to make no allusions to a moral code governing their by-gone criminality. If anything, they reveal the opposite. Mzwakhe, who broke into houses in Soweto, while he was supposed to be in school, reflects a much less repentant view: “Crime is like a hobby. You just do it because you’re young, it gives you energy. It’s about enjoying yourself. Thugs come from boredom in the ghetto... I was in that space, feeling good to take your things. Not for poverty but for envy, and just joy. We were magazine people; everyone wants to be a celebrity, which itself leads you to immoral acts.” The factor of boredom for boys in the township had by his example resulted from single-parent upbringing. Not that single parents are a bad thing, he said, it was just that they become tired and lack interest in their sons. He relates the growth in crime to the weakness of the family (as an institution) that allows boys the space to get up to mischief. His sister is a single mother and his grandmother divorced his grandfather, a matrilineal heritage he believes he should end. But not in the near future because he is wary of having children... “if we become a race of beggars.”

The interview with Mzwakhe turned into a group discussion when Sizwe from across the road and three more friends arrived in a car. The driver lifted himself out of the car on to a wheelchair and it would transpire that his disability was the result of a gunshot injury he sustained in a car hijacking. Apprised of the topic of our conversation and my research, none of the new arrivals offered that they had ever done crime. The thread of discussion subsequently took a retributive turn, led by Mzwakhe, who is a performing poet and currently an art teacher. Where he had been earlier criticising the crackdown on petty crime and the exoneration of corporate crime, he responded to this new audience by proclaiming the need for justice to be harsh: “Death sentence for the murderers / sodomy for the rapists.” The wheelchair bound driver agreed that the man who had shot him was still able to walk where he is, in prison. The only voice of moderation amidst the general approval for mediaeval punishment was Sizwe’s, who disagreed that crime is fashionable for youth and related much more to survival. It is people close to you, he averred, who do crime. But given what Mzwakhe had earlier said about the fallibility of the justice system, I re-directed the train of

discussion: how could retribution be just? The system of justice, Mzwakhe responded, has to change because the control of crime is a 'speciality' of the community and vigilantes the best enforcers of retributive justice.

Lynching the criminal – 'We are all free'

Sputla's experience of community justice and of the formal justice system illustrates how both forms of repression trade on a common construction of difference. The 'speciality' of vigilantes is the apprehension and punishment of criminal suspects in whom they cannot recognise their own image. Phendule Chipululu (interview: 2007) or Sputla to his friends is a 31-year old graffiti artist who was born and raised in the West Rand township of Kagiso. His art is activism and through his involvement with a cultural trust, he was able to broaden his medium by linking with Kenyan cultural activists he met while attending the World Social Forum (WSF) in 2007.⁴³ Sputla was afterwards responsible for bringing artists from a cultural group in the Nairobi slums to Johannesburg for a street culture festival organised by the trust. But it is neither the rapturous performances the Kenyans put on at the festival in December 2007 nor the WSF that bookmarks Sputla's recollection of the year. His life was violently disrupted in the first week of March when he had come to Johannesburg for the week to busy himself with a report on the WSF and to prepare for a workshop planned for the following weekend. He would stay over in a house maintained by the trust close to Johannesburg's inner-city neighbourhood of Yeoville which was not out of familiar territory having stayed in the inner city many times before, but nothing could prepare him for what happened that Friday afternoon as schools were closing for the weekend.

Taking a break from writing his report on a colleague's laptop in the house, he was on his way to the corner Internet café when two schoolboys started at his approach. One called to him to *wait there* before running off while the second lingered behind keeping watch. Sensing something was afoot, Sputla rather hurried onward to the Internet café. Thinking nothing more of the incident, he busied himself with his email until a group of men burst into the café. Following the accusing finger of the schoolboy he had seen earlier, they pulled him from his chair and dragged him outside. "Sikutholile! [We've got you!] Where's the cellphone?" they shouted as more men and schoolboys swelled the group to a "community" more than fifty strong. They were in no mood to accept any denials and wielding sticks, sjamboks and

⁴³ The World Social Forum is the standard bearer of alternative imaginings of world politics and globalisation, in direct opposition to the World Economic Forum. The first WSF was held in Porto Alegre in Brazil in 2001. The seventh WSF was in Nairobi in 2007.

whatever they could lay their hands on, beat him. Desperately trying to save his valuables, he managed to wrest his house keys from a hand that had snatched them up but lost an iPod on which he had saved all his documents and pictures from the World Social Forum. He was still clutching the keys when the beating abruptly ended and he opened his eyes to look into the barrel of a gun held by a policeman as the mob dispersed.

If the police patrol had not happened upon the scene, Sputla believes, he would have been killed. The officers' concern, however, was not for the victim at the scene of the crime as they immediately demanded to know where the evidence of the theft he was accused of could be found: "If you don't tell us where the gun is we are going to leave you with the mob to finish you off." Denying having a gun, he led the police to the house where some laptops belonging to members of the trust lay suspiciously without their owners on the table. Sputla explained to whom they belonged and the conditions under which he was staying at the house but without anyone there to corroborate his story, the police proceeded to search the house while he cleaned the blood off his face and changed his clothes. Though their search yielded nothing more sinister than a bread knife and no gun nor cellphone, they placed him under arrest and took him to the Hillbrow police station to charge him with armed robbery. He was taken thereafter to a clinic to receive medical attention. None of Sputla's assailants were arrested or even their identities recorded.

The Criminal Procedure Act requires that every accused detainee appears before a magistrate within 48 hours of his arrest. Sputla, however, had the added misfortune of being arrested on a Friday. The 48 hours therefore expired while the courts were closed, delaying his rightful appearance before a magistrate to the following Monday. But after he failed to appear on the Monday, then Tuesday and Wednesday without any word being heard from him, friends waiting in the courthouse began to worry about his whereabouts. Had he been brought to court, left at the police station or taken to Diepkloof Prison? Little would be made clear by disinterested police until the court roll reached its end each day by when they made the assurance that Sputla would be found. When he eventually did emerge from the clanging bowels of Westgate Magistrate's Court for the first time, it was five days after his ordeal. He explained that he had been unable to respond to roll calls for those detainees due in court as a result of his injuries and had remained in the holding cell. This first appearance, though, would be just the beginning of a fight to have Sputla bailed out. The case against Sputla was based on one witness's statement identifying him as the man who had taken the learner's cellphone at gunpoint a week prior to the mob attack. The charge of armed robbery he was accused of is a serious (Schedule 1) offense for which bail is precluded and the magistrate's only concern was to set a date for the trial to commence. Without the investigating officer

present at the court, this could not be done and the magistrate remanded the case to the following week. While the investigating officer was present at the second court hearing, he was unable to provide the complainant's statement and the case was remanded again so that investigations could continue. Sputla's anxious sister called the Yeoville police detective assigned to the case to find out what progress was being made with the case. The case then advanced as far as he could query her and her brother's nationality.

While the Yeoville police made speculative attempts to investigate the case, Sputla was moved from the holding cells at Hillbrow police station to Diepkloof Correctional Centre, popularly known as Sun City. He could only be granted bail on submission of exceptional circumstances motivating for his release. On application by his lawyer for a special bail hearing for this purpose, the magistrate set a date another nine days in custody later when, weighing up 'circumstances' that were no more exceptional than testimonies to his permanent address and good character, bail of R3,000 was set. His circle of friends in the cultural trust had been able to raise the anticipated amount so that he could, twenty-six days after nearly being killed and arrested, be released. Bail conditions required that for the duration of his trial he would have to report twice a week to the nearest police station. It was a routine he kept to until the end of his trial in August, going to either the police stations in Kagiso and Yeoville. The trial was hampered by the State's inability to produce the complainant to make his testimony in court, slowing proceedings from one postponement to the next until the magistrate had to concede to the dropping of the charge. Sputla had thought of pressing charges of assault, theft and wrongful arrest but the cost of retaining his lawyer foreclosed a just resolution.

Sputla was a casualty of what is classified as 'community justice', a term with roots deep in the convoluted history of the 'people's war' against apartheid. It emerged then as a self-help measure to find just resolution in a context where the police were illegitimate and the courts inaccessible (Haysom 1990, Scheper-Hughes 1995). The liberation movement imposed a particularly harsh form of punishment in its exercise of community justice as part of its strategy to render the townships ungovernable, most famously expressed by Winnie Mandela: "Together, hand in hand, with that stick of matches, with our necklace, we shall liberate this country" (Jeffery 2009:155). Now, a welter of civic outrage calling for harsher action against crime, decrying the rights accorded to criminal suspects and impatience with the due process of law, has recreated the climate where justice is no longer demanded but accessed by retributive violence. Community justice today claims no less a moral right to act on behalf of a 'community' than when invoked in the struggle against apartheid. Where the police and the courts are seen to be ineffective enforcers of the law, affected South African publics have

reacted to their insecurity by seeking justice from those sources apart from the state that their particular class has access to. The elite has been settling its anxieties by retreating behind higher walls and into gated communities, acquiring armed response, and writing letters of outrage to the editor to leverage the state into taking some action. Or, they emigrate (Gordon 2006:250). In poor communities, without the economic or cultural power to demand the provision of security, 'justice' has been improvised by a spontaneous rallying of a mob as in the case of Sputla or by organised vigilante groups (Hamber 1999, Harris 2001, Buur 2005).

A just resolution to the community violence inflicted on Sputla was an unlikely possibility, not least for its limitation to those with the status and resources to fund legal representation. What justice can there be for the spontaneous eruption of citizens' anger aimed at the apparent culprit in their clutches? To all intents and purposes, a street thug targeting school children had been caught and the police decision to place him under arrest only justified the beating that was meted out. Had the police been infallible law enforcers and followed the writ of the Criminal Procedures Act, they should have arrested participants of the mob. At the scene of the crime, however, the police accepted the law as created by the violence of the mob, the only evidence needed by the police to establish the reasonable guilt of Sputla being his victimisation. By arresting him, the police interpreted the mob's actions no less than as means justified by their end of preserving the law. The police thus endorsed vigilantism, aligning their actions with the criminal violence that was committed that day. Rather than shrugging off the incident as a miscarriage of justice arising from police ineptitude, it highlights how a 'partnership' between the law and vengeful community justice could be brokered. The trend in post-apartheid South Africa to increase the punishment of suspected and convicted offenders gave to vigilantes a subject of the law for them to punish with no less legitimacy.

Why Sputla was singled out would never come to light over the course of the investigations that followed the attack. Xenophobia is a proffered culprit to blame given its contemporary resonance in poor townships except that the attack on him took place in a setting where difference is the norm and Sputla is South African with an identity document and an older brother in the West Rand metropolitan police department to prove it. The one marker distinguishing him from the country's main ethnic groups is his Chichewa family name, which he owes to the Malawian origins of his father. Otherwise, in appearance and speech he is no less 'other' than were his assailants. If anything instigated the violence, he ruefully thinks, it was schoolboy mischief. Scheper-Hughes offers in her analysis of community justice during the liberation struggle a situation in which black communities were "over-mobilised against themselves" (1995). Three youth in her case study of a community court are

saved from necklacing for the theft of R400 by the intervention of ANC and PAC youth committee members. To understand what social and cultural forces mobilised the mob that beat Sputla, the perception of crime as a social problem is a motivating cause. This is a state of crime in the country unlike the section in the SAPS Annual Report that celebrates the decline in murders. It is a climate of fear pervading liberation with its own logic of social control.

Prison Captives

Is the South African government winning the war on crime? After all the war talk and budgets invested, the expectation must be that the police are succeeding. To answer this question, one has to rely on crime statistics, which are notoriously inaccurate even in the best scientific conditions. The classification of what constitutes crime, how it is reported and seeded in public consciousness make crime statistics more of a political barometer than an empirical measure (Hall et al. 1978). Statistics in themselves are created according to decisions taken by state departmental officials who interpret what behaviour is deviant and which crimes should be treated as priorities (Kitsuse and Circourel, cited by Slabbert 1985:16). Casting still further doubt on the accuracy of crime statistics are the levels of under-reporting of crime. The ratio of crimes reported to the police that result in conviction can be estimated as low as 2% according to the 1999 British Crime Survey. Crimes figures nonetheless are fodder for politicians and when the statistics were not matching the projections made by the National Crime Combating Strategy (NCCS), President Mbeki instructed the police to embargo their publication, which lasted from 2001 to 2003.

The pressure on the statistics to confirm a stabilisation of crime rates after their two-year long embargo was too intense to make them in any way objective. Murder is taken to be the benchmark indicator for crime levels since the evidence is difficult to bury and can be verified by the intake at the mortuaries. So it is reliably known that the murder rate declined from 1994 to 2003 by 36%, which is consonant with the National Victims of Crime survey's finding of a halving of the number of murders from 1998 to 2003 (Gordon 2006:92). There are indications, however, that the decline in the murder rate was overstated. The murder rate and culpable homicide are typically sympathetic: whatever changes there are in the murder rate, these tend to be reflected in the rate of culpable homicide. This relationship changed from 2000 when the numbers of culpable homicides showed indirectly proportional increases to the feted decline in the murder rate (O'Donovan and Redpath 2006). The reclassification of murder as culpable homicide would appear to have bolstered police performance. The rates in

commercial crime and auto theft, which are also amongst the most reported categories of crime for insurance claims and taken therefore as more accurate, also decreased. These improvements suggest that the reports of a crime wave are overstated and what has stoked the perception of rampant crime is a reporting wave. Yet another criminologist refutes the allegation that the reported decline in the murder rate was achieved by reclassifying homicides (Altbeker 2005). The trend in the murder rate had since the disputed 2000-2006 reporting period been inverted with the official national SAPS statistics from 2007 to 2008 showing an increase (Pillay 2008). The indications are that the statistics are less fiddled than they may once have been.

The impact of the legislative programme and the war against crime has meanwhile been unmistakable in the rates of incarceration. A statistical profile of the prison population currently in South Africa reveals some of the traits that Wacquant (2001) observes are the consequences in every country that has adopted the neoliberal, free market model: a rise in the prison population. Between 1996 and 2003, the number of prisoners rose from 280 per 100,000 people to 402 in 2003, a 44% increase. This massive growth was due to the bail reforms and the minimum sentencing regulations. Between 1995 and 2005, the average term of inmates went up from around seven months to 126 months (O'Donovan and Redpath 2006). This growing inefficiency of the courts in processing cases was a direct result of the evidentiary requirements to qualify the application of the maximum sentence that a court can hand down, that of life in prison. Since regional courts did not have the jurisdiction to impose life sentences, these cases had to be referred to the high courts for what would necessarily become a re-trial and verification of the lower courts' verdict. The resulting congestion in the high courts prolonged the duration from first appearance to sentence: in 2005 this was an average of four months. By 2006, this had nearly doubled to seven months and a re-trial of so-called s52 offenders as long as ten months (O'Donovan and Redpath 2006). The Criminal Law (Sentencing) Amendment Act passed in December 2007 that superseded the minimum sentencing regulations aimed to relieve the caseload in the high courts by extending the jurisdiction of regional courts to impose life sentences.⁴⁴ It is a forbidding prospect given the old mindsets and attitudes that still haunt the South African bench.

The overriding concern from the perspective of the Judicial Inspectorate on Prisons (JIOP) and human rights organisations has been the aggravated overcrowding of the country's prisons. The chief of the JIOP in 2004 consequently recommended that the sentencing regulations should be dropped or else inmates' basic rights would be infringed in cells that

⁴⁴ Department of Justice and Constitutional Development. Minimum sentencing legislation. 13 March 2007. Available online: <http://www.info.gov.za/speeches/2007/07051516151006.htm>

were 164% over-capacity at the time. Overcrowding of prisons did not, however, deter the implementation of tough justice. If slowing the passage of offenders through the penal system had an overcrowding effect, this was to be understood as no more than transitory and would decline once a comprehensive sentencing framework was in place and small-time offenders could be sifted from the system to serve sentences of community service and enrolment in rehabilitation programmes. The emphasis the DCS places on the proportion of sentenced offenders to the total prison population relates to the ratio's use as a measure of the criminal justice system's efficiency. The attempts by the Department of Correctional Services to filter petty offenders out of the prison system have not brought about a reduction in overcrowding principally because of the buoyancy of the numbers of awaiting trial detainees (ATDs). The number of unsentenced prisoners increased by 151% between 1994 and 2003, as compared to the 42% increase in sentenced prisoners (du Plessis and Louw 2005). As of 2009, 43.3% of the total prison population was awaiting trial⁴⁵, of whom youth offenders and those accused of property crimes were proportionally more represented (see Appendix 1). According to the JIOP's Annual Report (2007-8), government reduced the number of prisoners from 190,180 in April 2003 to 161,639 in December 2007, but goes on to lament that the downward trend in the ATDs from 2000 to 2006 had come to an end. The prison inspectorate's worry over an upturn in ATD numbers is borne out by the latest data: the number of unsentenced prisoners at 31 March 2009 was 49,477 (29.94%), woefully in excess of the stated benchmark of 25,000 for the DCS. The change in the profile of the prison population accordingly reflects a declining proportion of prisoners serving short-term sentences in a 'crowding-out' of petty offenders by those serving long terms (Fagan 2004, O'Donovan and Redpath 2006). Given that most of these petty offenders are youth sentenced to 3 to 5 years, the full extent of this offender population goes well beyond the walls of prisons. A higher turnover of inmates serving shorter sentences multiplies the number of subjects the penal system produces.

The pastoral power of punishment

The assumption that offenders would have an antipathy for order, or that their views on justice would stray from conventional opinion on how crime should be punished is a myth that reinforces the commonly held perception of criminals as deviants. In a test of this assumption, researchers have found convicted felons to be, on the contrary, preponderantly conformist (Benaquisto and Freed 1996). Moreover, they have found that prisoners subscribe to the myth of inmate lawlessness but disassociate themselves from the anomie they ascribe to

⁴⁵ Estimate on 31 March 2009, Department of Correctional Services website.

their fellow inmates. In Durkheim's functionalist account of punishment, it is no less a moral deviance of criminals justifying punishment than necessary for the maintenance of normative reality.

In my own test of this assumption of criminality as moral deviance, conversations with ex-offenders have shown them to be preponderantly conformist. Like Pastors Jethro and Sipiwe whose incarceration in the transition years saw their resignation of politics, the ex-convicts of crimes post-apartheid in the Former Convicted Offenders Development Initiative sample group all aspire to be re-integrated with the community (FOCODI 2009). All the nine ex-offenders of FOCODI that were interviewed are black men from Vosloorus, the East Rand township where the organisation is based, and except for two come from poor, single-parent homes or were orphans. All had been released from prison within the previous two years from sentences for property crimes ranging from six months for shoplifting to twelve years for 'house arrest'. I had designed a line of questioning to direct the ex-offenders to consider their politicisation when they were still active, free criminal subjects. Any political form that their crime might have had, however, was elusive and revised by years spent in regret. None of the nine FOCODI interviews reflected anything near the same tribulation as Mzwakhe's recollection of his crimes or his libertarian views. He is tellingly also the only former offender interviewed who does not identify as such, his house break-ins having been committed while he was still in school. Instead of a remembered 'joy' in theft, the FOCODI members are self-described 'good offenders' in contrast to the recalcitrant 'section Bs' they were imprisoned with who would steal from the 'working prisoners'. 'Rehabilitation' is a fact accomplished in part by their involvement with FOCODI: "Until becoming involved with FOCODI, I was always a suspect" ('David' 2009). FOCODI is a 'motivational organisation' to assist their reintegration back into their community (Moses 2009). It has also been a conduit to jobs since each of them – excepting the organisation's co-ordinators – was unemployed. FOCODI has been able to secure them short-term employment paving roads, digging trenches and planting trees under the municipality's implementation of the Enhanced Public Works Programme.

Mpho was the only FOCODI ex-offender who said he has never worked. He was sentenced to twelve years for the one violent crime in the sample group – 'house arrest' – when he was just twenty years old. Having served seven years of his sentence, he was paroled in 2007 and has not been able to find work since. The violence he perpetrated he attributes to the modus operandi of the crime: "Breaking into a house knowing that someone is at home opens the chance for something terrible happening." Despite his crime and the seven years he spent in prison, Mpho did not show a tic of aggression and was unbelievably equanimous about his sentence. Prison, he averred, is better than living with no safety net in freedom, and he gave

an almost welfarist commendation of the educational opportunities open to inmates. While he had failed matric, in prison he achieved certificates in electrical engineering and computer literacy. His sentence was fair, unlike the sentences of fellow inmates who had been betrayed by criminals *out there*, “living life like they are innocent.” That was just not him and in his opinion, he deserved the punishment.

Solomon had been caught stealing from the road freight company where he had been employed as a check-in clerk. It is a crime he regrets, motivated he says by plain greed. Like Mpho, he lauds the opportunities for self-advancement that his three-year sentence in prison gave him. Having only reached Grade Ten of high school, he managed to pass matric and obtained a certificate in landscaping while in prison. Yet, he hates the ‘brutal’, ‘disruptive’ and ‘wasted three years of his life he spent in prison. To describe what effect imprisonment could have on a person – “a man loses his manhood after eight-years of abuse” – he told the story of another son of Vosloorus. Moses Sithole had raped and killed 38 women after his release in 1994 from a five-year prison term for three rapes. According to Solomon, Sithole was innocent of these early crimes and it was only after serving time in prison that he started doing what he had been wrongfully accused of” (FOCODI: Solomon 2009). If the purpose of the prison is the modification of offenders’ behaviour, it has in Solomon’s opinion manifestly failed and prisons have become ‘universities of crime’. Recognising that prisons are failed institutions, producing recidivists and impoverishing prisoners’ families, why do they exist? Foucault’s answer is that they are not failed institutions insofar as they are deeply rooted in disciplinary practices that are generalised throughout society. In *Discipline and Punish* (1995), he argues that punishment is instrumental to a system of domination because it guarantees the repressive authority of the state, marks the perpetrators of crime to facilitate their continued surveillance and ensures that law-breaking mindsets are not infused with political objectives. The limits of Foucault’s analysis are exceeded, however, when the aberrant subjects resist the forces of normalisation and remain resolutely undisciplined. In the apartheid prison, the Number was the form that this resistance took. The advent of democracy, however, precipitated a disintegration of the gangs and their emigration to the street while the escalation of the prison population under democracy’s aegis increased the violence of incarceration and weakened the gangs.

To distil a political strategy from the range of experiences of punishment presented by the members of FOCODI, the ‘rehabilitation’ of the subjects is its most apparent effect. It is expressed in a subordinate clause of the Freedom Charter’s principle of equality before the law: “Imprisonment shall be only for serious crimes against the people, and shall aim at *re-education*, not vengeance.” In the case of Mpho, the one ex-offender of a violent crime, it is

his emphatic remorse and gratitude that is exemplary of a type of power that Foucault develops after his exposition of the prison as a disciplining institution (1995). The power of surveillance that the prison defined articulates and is extended by what he calls pastoral power. Based on Jesus Christ's comparison of Christian teaching to the care a shepherd has over his flock, Foucault (2007) theorises this pastoral pedagogy as a form of power over the minds and behaviours of subjects. To the early Christian missionaries in colonial South Africa, the redeemed indigenous peoples represented their metaphoric flock, whose salvation could be distinguished by the adoption of European behaviour, dress, language and culture. When the interests of the colonial state in saving native labour converged with the Christian mission to save the native soul, pastoral power to convert the native to European mores was contracted by the state from missionaries as it sought to re-establish control over the flock it had freed with the emancipation of the Khoikhoi in 1828. Criminalising vagrancy and desertion from work was only one part of the solution; the refusal to stay in designated native areas and to submit to the work regime had to be rehabilitated. The intensification of production around the mining industry tasked the local state with finding a lasting solution to the sharpening shortage of labour. To do this, the state secularised pastoral power as the administration of imprisonment came increasingly to bear on reconstructing the aberrant traits of the native subject. "Less interested in the infliction of punishments, the state became preoccupied with institutions aimed at transforming the very inner character of the individual" (Crais 1992:126). The reorientation of the prison system to a 'correctional' ethos complemented the carceral design of townships to facilitate the surveillance of their populations. Their arborescent design ensured that traffic to and from townships could easily be regulated and labour discipline enforced. Both forms of power, surveillance of the black labour force and the biopolitical regime to rehabilitate those subjects who resisted, aimed to make of the African subject a good worker.

Rehabilitation and reintegration at Devon Detention Centre

Missionaries were the chief proponents in the European colonies of enlightened views. They had found a vocation in ministering to the downtrodden in the shadow of the 'dark satanic mills' of the industrial revolution in England and the enclosure of common land. The problems of widespread pauperism had not until the rise of an evangelical movement led by Anglican and Methodist ministers been deemed anything more than a matter of charity for the churches. No Christianly intercession could dispel the unnatural miasmas emitted from the urban slums that were blamed for the diseases associated with urban squalour and the

torpitude of their populations. Labour militancy in the Nineteenth Century was also a new phenomenon with impoverished workers smashing the implements of mechanised production in London and south rural England especially. The state sought to defuse the social crises by strengthening the provisions of existing poor laws to bring relief to the destitute. Much less than charitable, the new poor laws aimed to give the able-bodied poor relief in workhouses run by parishes. “By coupling virtue, piety, the work ethic and human progress with salvation, and associating idleness and dependence with sin and damnation, evangelical belief became the necessary religion for the Industrial Revolution” (Mostert 1992:285). With the formation of the ecumenical London Mission Society and the Wesleyan Missionary Society of the Methodist church, Christian revival became the outlook and ethic of imperial Britain, and the historically wronged heathen of Africa joined the English poor as the subjects of its redemption. A paternalism towards Africans taught how egregiously immoral the wrongs were that black labourers endured in the colony but this was not to undermine the moral duty of work and obedience to one's master.

FOCODI runs pre-release programmes at two prisons on the East Rand, Boksburg and Modderbee and at Devon Detention Centre, still further eastward past the hungry maw of Gauteng province over an unmarked boundary with Mpumalanga province. It is a minimum-security prison where prisoners are sent prior to their release on parole so that they can prepare for reintegration with free society. I was invited by ‘Victor’, a founding member of FOCODI, to join him for the new intake of inmates into the pre-release programme he has been running at Devon for Khulisa, a social development organisation (NGO) dedicated to “diverting youth from the criminal justice system.”⁴⁶ Since a law passed in 2005 required that all paroled offenders complete a certificated pre-release course, the demand for Khulisa’s youth transformation programmes was assured.

Victor is a study of the accidental criminal – en route to Devon, he recollects his years as a political studies and industrial sociology student at Wits University in the mid-1990s someone whose ambition while studying at Wits University was to be an advisor to the president. He professed no political affiliation, however and after leaving university, he co-founded an organisation for unemployed workers that advocated for the liberalisation of labour laws. It was in the course of a march by the organisation that he shot someone in Jeppestown in a loss of his seeming clerical calm (FOCODI: Victor 2009). The seven years he spent in prison for second-degree murder were easy, he said, save for the three months he spent in a communal cell; the rest were spent in ‘paradise’ where inmates are allowed to cook, have a TV and receive guests, including women warders who, he averred, take inmates out to tend to more

⁴⁶ <http://www.khulisaservices.co.za>

than their gardens. His request for a transfer to the minimum-security facility was helped by his acquaintance with a deputy director-general in the Department of Corrections. As an educated prisoner, he gained favour with the prison head and spent his time teaching and writing student papers for UNISA-registered inmates. He was entitled to move freely around the prison, which allowed him to make some income from selling telephone cards.

Victor has been a practitioner of reintegration at Devon Detention Centre for two years and the guards at the gate of Devon Detention Centre knew him by name. The prison is set out like a prototype gated community, except the brown brick houses are occupied by the warden of the prison and the grounds and gardens are tended by the inmates of the prison that stands at its centre. The level of security is so low that a barbed-fence enclosure is all that stands between these men and freedom, and women warders sit at ease in the courtyard chatting with inmates. Gaining access to the prison proper was no more rigorous than a courteous introduction to the prison social worker and completing the visitor's register in the (absent) Prison Head's office and again at a last check-in desk. Save for the palisade fencing lining the courtyard, the venue for the pre-release programme could have been mistaken for a school hall. Inmates stood idle in the sunshine in their orange uniforms, paying our passing scarce attention. The sixteen men who came to attend the pre-release course were called from their cells and filed into the hall to form a semi circle facing Victor. It was their first session of the course that would, with Victor's recommendation to the parole board, certify their candidacy for parole. The course is made up of 6 sessions over the next 6 weeks and as Victor explained, is designed to restore their self-esteem. The individual challenge to all of them after their release was to 'prove to communities that they are ignorant to call for criminals to be killed because you're cruel'. "Prisons like *Bhubesi* [Leeuwkop] have inflicted harsh punishment" – there were nods of agreement – "and the time served should be recognised by communities. How long have you spent in prison?" he asked, going from one to the next – '12 months ... 20 years' – and punctuating each answer with the fact that this was past. "What life and family is waiting for you outside the prison?" he asked each again. Most said they have children and girlfriends waiting for them in communities from Yeoville, Klipspruit, Meadowlands, Jeppestown, Diepkloof, Ivory Park, Orange Grove and Newlands. "So no one here's not going home," Victor summed up, his role being to walk them through the transition to freedom. He presented himself as testimony to successful transformation from a convict to someone who has met with the Minister of Corrections, Ngconde Balfour at the Boksburg Prison.⁴⁷

⁴⁷ The minister's visit took place two months previously and was covered in the *City Press*, he said later, as we drove past the prison on our way to Vosloorus. Either the minister's name or Victor's

Victor handed out copies of the Khulisa text, 'Guides to personal change', animated by a *clipart* graphic on the front cover of a bird flying out a head-shaped cage and with a foreword by Reverend Steyn from Khulisa. The 10-step programme to redemption that the book outlines has no transcendent saviour more than the secularised faith that self-belief can resist the temptation to do crime. Maslow's hierarchy of needs features in the guidebook to qualify the deprivations of imprisonment, and Victor explained that the self-realisation at its apex is what they must achieve once released. Victor dwelled on the chapter, 'Searching for Employment', asking each inmate to recount what work experience they had. He lauded the wealth of valuable skills amongst them: worked in a restaurant/ self-employed / factory worker / carpentry / trader / technician / salesman / taxi rank official / fruit and vegetable trader / administrative assistant / panelbeater / tiler / plumber ('Do you know how many RDP houses government is building?') / printer / soccer player / caddy. One inmate reported that he had never worked; perhaps the youngest in the group, he had been sentenced while in his teens to 20 years and managed to get his matric during his incarceration.

The final chapter in the Khulisa course textbook is 'My First 24 hours of Freedom'. It is a guide to avoiding conflict when flying into a jealous rage when discovering your girlfriend has left you for another man, Victor suggested for example. His advice was for them to remind themselves of all the other women in their racial variety: 'Asian, African, Chinese, white women...' The pre-release programme has its own soundtrack, a selection of Motown and pop classics that will be the motivational tapes for what effectively is an ex-offenders anonymous meeting. The lyrics to Diana Ross's 'I'm coming out' were read in chorus till Victor thankfully cut the desultory exercise short with a call that indeed, all of them would be coming out.

Open Day at Heidelberg Correctional Centre

Modern-day penal policies are steeped in the redemptive discourses and the relationship between the prison and Christian missionaries is so intimate as to be institutional. Thabo was also an inmate 'coming out' of prison (interview 2009). While the pastoral power revealed by the methodologies of Khulisa is ostensibly secular, his personal transformation bears the strong religious overtones of a missionary heritage. I knew Thabo before his conviction for the attempted theft of a computer from an organisation in downtown Johannesburg. The reason he was sentenced to three years for this minor felony was a suspended sentence he had

dating of the event is incorrect because Balfour was replaced as Minister of Correctional Services in 2008.

for an earlier conviction of a theft from his girlfriend. She was from Alexandra and when he had grown tired of the relationship, he took her CD player to pay his way back to his home in distant Evaton West in the Vaal area where he shared a house with his mother and his younger brother. His mother was a domestic worker who would come home only on weekends, her regular absence leaving Thabo and his brother without supervision. He acquired a mandrax (methaqualone) smoking habit, which he stopped in 2005 after passing out while a pot he left cooking on the stove caused a major fire. Twenty-four years of age at the time of the interview, Thabo was three months away from the end of his sentence. His father having passed away in 2005, he would be assigned to the care of his electrician grandfather and schoolteacher grandmother on his parole.

Heidelberg is a town about an hour's drive south east of Johannesburg with a prison on its outskirts. Without a map and only the vaguest directions, finding the prison was complicated by the high fences and gates of residential complexes that line the road into the town. One stop for directions later, there was no mistaking the prison's double fence perimeter. At the first gate, it was a perfunctory wave-through to the parking area under a cluster of pine trees; at the second gate, there was the visitor's register to sign. The tobacco and news magazines that I had brought were not permitted – 'toiletries only' – and these joined the growing pile of snacks and fruit in a box at the official's feet. While queuing to be patted down for any contraband, members of an evangelical Christian organisation arrived, laden with boxes of pamphlets. They bypassed the search procedure and are met by three inmates in orange uniform who relieved them of their cargo. The propaganda had evidently been given prior approval because they heaved the boxes off directly to a cellblock across the forecourt, 'Section B'.

At the visitors reception I was again searched before the name of whom I had come to see was recorded and I took a seat alongside a mother all the way from Lenasia to see her son. It was not long before I recognised the stooped figure in the bright sunshine of the day peering into the gloom of the reception to see who had come to visit him. Thabo had aged from the slight youth I knew him as and I mentioned my impression on greeting him. He was disappointed to hear it. We walked towards the prison forecourt where benches had been laid out for the picnicking family groups and settled on one in the shade of a tree. The Heidelberg Correctional Centre's Open Day was a picnic for those few prisoners lucky enough to have family and friends able to travel so far to see them. I was the only visitor who had come to see Thabo though he said that his cousins had come before to visit him. The majority of prisoners received no visitors who could treat them to braaied meat, pap, chips and cold drink and other provisions that were sold from a prison spaza shop. Those whose guests had left were not

compelled to return to the inmates' common areas behind the walls of the two cellblocks and they relaxed in the forecourt in pairs.

Though conditions at Heidelberg were better than at 'Sin City', where he had spent two weeks before his transfer to the medium security prison, Thabo described it as tough, with time spent 'thinking too much' and bouts of depression. Lock-up is at 3pm, wake-up 6am and clean up and head count before breakfast. From 8am to 3pm prisoners are allowed to exercise or take courses. Dinner is what slices of bread can be saved from the lunch meal. He had become prone to depression after his mother passed away in 2008 and he had not been permitted to attend her funeral because he was still in the first six months of his sentence. Yet the prison's social worker was responsive to another family crisis. Neighbours had informed Thabo that his brother had dropped out of school and had gotten involved in gangsterism. The Department of Social Development did track his brother down and he was returned to school. In addition to his new-found role as elder brother, Thabo had also 'improved himself' by obtaining a certificate in HIV peer counseling and developed his musical talent on keyboards and guitar, together with a choir run by another inmate. He was looking forward to their performance for the prison's Open Day, and was constantly scanning the mouth of Section B for the signs of the choir. When a row of orange overalls filed towards the picnicking prisoners and their guests, Thabo eagerly excused himself and joined them for four songs of celebration, proclaiming 'Ekhaya lami [My home]... VICTORY'.

'Serious Fun and Sun City'

Having only discussed the making of masculine criminal subjectivity, how gender relations are produced by the frontier may seem a corollary of male domination. The believed character defect of black women on the colonial frontier was licentiousness rather than an inherent criminality, rendering them sexually available to white masters. Feminine subjectivity in the instances of the frontier as it turned inward to the burgeoning cities retained this moral threat. The presence of women in the labour hostels after the lifting of influx control was blamed by older occupants for corrupting the customary relations between the men and their rural homes (Segal 1991). A cultural performance by women inmates of Diepkloof prison popularly known as Sun City confirmed that moral defect remains the basis of women's wrongdoing. A San Francisco-based arts organisation had workshopped the performance with inmates and was inviting the public to *bear witness* to the moral reconstruction of female offenders. The media turned out in numbers for the event, unusual for their disinterest in anything otherwise planned for a Saturday afternoon. The venue for the performance of the show was a hall

adjoining the women's cellblock. It was packed with school children on a life-skills field trip, the families of some of the performers and a smattering of journalists throwing furtive glances to the faces of the dignitaries, eyes narrowed in speculation at the one tall blonde woman's possible celebrity. After some crowd animation and words of thanks to the Prison Head, the microphone was passed to the creative mind behind the project. The exercise, she explained, was to get incarcerated women to tell their stories and to "take responsibility for what they have done... You're more than a drug smuggler. You are more than a whore. You are more than even a murderer."

The performance that followed was infantilising and it will suffice to describe it as pedagogical, for the performers as well as the learners who had come for moral instruction. A store of wrongdoing on stage was taken to be aversion therapy for the next generation. The imperative to 'say no to drugs' is no more authoritative than when spoken by a remorseful drug dealer sentenced to seven years in prison. The first lesson was communicated by letters written and recited by the inmates to their mothers. These were full of remorse, declarations of love and regret. Maria, a convicted drug mule, spoke of her time in prison in the same register as FOCODI: "Prison life is what you make of it," offering what she needed – rehabilitation. Other letters were confessionals: "I was greedy, self-centred and robbing people. I've learnt a lot of different skills which I'm going to apply when I am released. I believe I'll succeed because I am a hard worker." A link between welfare and rehabilitation was also evident in the 'dream' an inmate related of opening up an HIV/AIDS project. A rollout of HIV projects could well be the outcome of increased incarceration. The letter recitations gave way to a maternal interlude where all the *girls* descended from the stage cradling imaginary babies in their arms as they sang *thula umntwana*. The media loved the display of feminine contrition with two broadcast video cameras and one for the San Francisco memory bank, and a gaggle of photojournalists ardently clicking away. A second musical interlude laid bare the religious undertone: 'Now that I lay me down to sleep, I pray the lord my soul to take'.

After the adventures of the brigands of the colonial frontier, finding only the missionaries and their flocks on the putative new frontier of property was disappointing. The ex-offenders I have had the opportunity to speak to were mostly conformist. But as *ex-offenders* who could discuss their previous lives of crime tinged only with remorse, and moreover as a license then to justify retributive justice, indicates a historical process that superseded their constitutive alterity. Mzwakhe's lyrical evocation of house-breaking as 'joy' is as close a knit between desire and the commission of crime as is yielded by the interviews conducted. His recall of his criminal youth is a phenomenology of youthful rebellion that remembers the bodies

implicated in ‘pernicious materialism’ and ego-driven individualism that Reiner (2007) and Tshepo (interview 2009) declaim. The prison would appear to be the repository of society’s best intentions and not the pivot on which dominant power could turn. And yet in each of the cases of pastoral punishment presented, the much wider problem of endemic criminality remains irresolvable. Certificated courses and re-education programmes in the prisons and personal transformations like Thabo’s do not make a successful correctional system. Most inmates, by his estimation, do not participate in these self-improvement programmes and their chosen fate is personal dissolution in the system. While this research was limited to the reformed face presented by the prison system, I could only envy the privileged access that Christian evangelists are given to prisoners.

Conclusion

The frontier tradition provided the master narrative for the constitution of the racial categories that defined the white republic of apartheid. As near-sighted and ideologically driven as Legassick pointed this out to be, has its application to the problem of crime and security not reproduced some of the same spurious certainties? Or has it cast the contemporary protagonists in a conscionably opposed virtual reality of heroes and villains? The frontier hermeneutic is stretched where it imputes that crime reinscribes apartheid race relations. The criminalisation of the black subject under apartheid was a tool of social control. Considering hostel dwellers as the post-1994 analogues in the instance of Jeppestown and African immigrants as targeted by police raids in the inner city of Johannesburg, their criminalisation enables a technique of governance that is not inherently racist. The reinterpretation of race in criminal terms is rather a trait of white paranoia, as the comments of Annelie Botes quoted in the introduction attests. The frontier derogation of race pertains to her racialised white world whereas criminalisation appears more as a selectively deployed tool of repression. The frontier also portrays a Manichean world view in which criminal subjects are arrayed against forces of reaction. How then to account for moderate voices who hold that crime is not as serious as before liberation or as it affects the security of elsewhere?

These limitations seem minor when set against the general outcome of these forays across the putative frontier of democratic law. There does appear to be definite resonance in what the hermeneutic yields in explicating how crime encumbered the transition from apartheid and has come to characterise the existing conditions of democratic freedom. Violence figures as an intrinsic feature of the colonial as well as the democratic frontier. It ordains to the criminal the role of the law-maker in Benjamin's *Critique of Violence*, which in the transition verged on the cusp of systemic implosion if not revolution. Only through the negotiated compromises made by nationalists could the lawful violence of the state re-establish the rule of law and the republic of property. The closure of the frontier had effects that have been evidenced by the disarticulation of Colin Chauke and the pastors from Orlando East. Their repudiation of crime as a mode of politics speaks to their dislocation in the democratic country they share no enjoyment of freedom in. The analogous contradiction on the colonial frontier was experienced by the 'unfree', who freed of the bondage of slavery could not escape the coercions of laws forbidding their idleness or itinerancy. As much as missionaries were commissioned by the colonial state to rehabilitate the unfree, the pastors surrendered their radical difference in favour of a transcendental faith. This excision of his politics that motivated his criminal activities targeting white people is exemplary of the de-politicisation

of crime. But the fact that Pastor Jethro apparently offsets his contempt for whites on to women and African immigrants is rather testimony to his *re*-politicisation.

A prevailing state of insecurity is the second compelling feature of the democratic frontier. There is no clearer sign of the existing frontier in South Africa than the security cordons around real estate developments. The coils of razor wire and palisade fencing mark a boundary around privilege, guarded by private security companies against a surprise attack. In transitioning from an authoritarian past, the administration of democracy concerned itself with addressing the historical legacy through renewed systems of social control. It is the actions to repress crime that reveal the South African democracy's greatest insecurities. Most emphatic is the indefatigable Captain Skosana from Jeppe Police station, whose comments on criminals are akin to the dehumanisation of the San in the early colonial period: "But if you shoot and kill a person who is stealing, you are not killing a person – you are killing a criminal." The ethnography of crime control in Jeppetown shows migrancy to be a resilient faultline on which the political conflict of the interregnum can be rendered as a conflict between criminals and the law. The requested exclusion of the occupants of Jeppe Hostel from participating in street committees by the leaders of the anti-crime march, '*Operation Wanya Tsotsi*', and the barricading of the pedestrian bridge over the railways to thwart criminals' incursion from a neighbourhood informal settlement point to a transmutation of political violence. Criminalisation thus facilitates a re-interpretation of difference that while 'de-politicised' perpetuates a threat to security from familiar foes. The xenophobic violence that erupted in May 2008 is the clearest evidence of this. The criminalisation of hostel dwellers – despite the paucity of incriminating evidence seized by the police raid documented in Chapter 2 – illuminates the selective application of the rule of law. As applied to all perceived threats to the democratic order, crime is the means by which the state is able to sustain the bifurcation of its power.

If the abiding imperative of frontier law-making is the protection of property and the creation of the conditions and the subjectivity for future accumulation, then the punishment of crime retains its political and economic utility. The pedagogy of correctional detention teaches the morality of employment. Offender rehabilitation programmes also reinforce normative gender relations. The performance by female prisoners in 'Sun City' of their moral rehabilitation emphasised their remorse and willingness to make amends by celebrating maternal virtue. The pre-release course run by Khulisa for male inmates, in contrast, required no such contrition. The punishment of serving time in prison was taken to be sufficient compensation for their wrongdoing while the theme of the course affirmed gainful employment as a sufficient condition for self-esteem.

So after entering the thicket of personal and political corrections, is there anything of a residual criminal ethic? Having been able to reach *ex-offenders* only, hoping for a criminal manifesto to be forthcoming was perhaps naïve. The notable exceptions in the sample group are Pastor Jethro and Mzwakhe: an African traditionalist and reborn Christian, and a libertarian advocating retributive vigilante justice united in their contempt for the rule of law. Mzwakhe's lyrical evocation of house-breaking as 'joy' is as close a knit between desire and the commission of crime as I found. His recall of his criminal youth is more forgiving than the barbarity Jethro sees in contemporary criminality, or the view of 'pernicious materialism' and ego-driven individualism that Reiner (2007) and Tshepo (interview 2009) declaim. Yet, Mzwakhe concurs with the harshest forms of punitive justice – "rape for the rapists". The most articulate expression of a criminal identity then must be the comment solicited from the occupant of the Jeppestown building roundly condemned to be a source of much of the crime affecting the suburb: "Criminals don't exist... They are hunters for a better life." Criminal subjectivity is circumstantial, a temporary manifestation of the latent potential in any society to cause crime – the specificity of South Africa's experience just makes the better life that much more elusive and the hunt that much more compulsive.

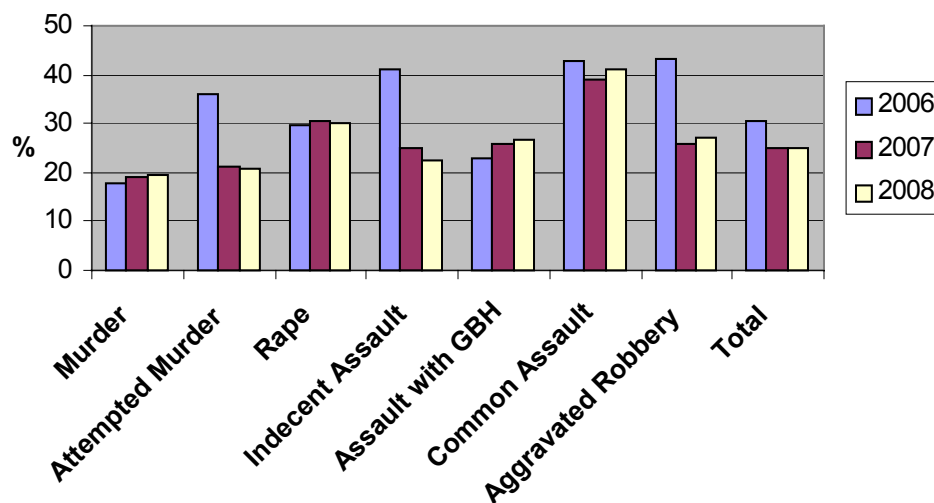
Appendix 1 : Prison statistical profile of awaiting trial detainees (ATDs), youth in prison and incarceration rates

A statistical profile of the ATDs reveals some of the traits that Wacquant (2001) observes are the consequence in every country that has adopted the neoliberal, free market model, viz: a rise in the prison population (Wacquant 2001). Youth offenders and those accused of property crimes are proportionally more represented amongst the ATDs.

The emphasis the DCS places on the proportion of sentenced offenders to the total prison population relates to the ratio's use as a measure of the criminal justice system's efficiency. But what trends will be discernible in the numbers of unsentenced prisoners are also indicators of law enforcement as well as repression. The profile of charges against unsentenced prisoners may then be tellingly read in comparison with the rest.

The charges standing against unsentenced detainees in what is reported in the National Offender Profile 2008 are categorised differently on the DCS website's statistics page (figures for sentenced prisoners correlate otherwise seamlessly). The Profile defines the types of crime listed in Table 1 as those involving personal contact and higher levels of violence, which overlap the general crime categories (economical, aggressive etc.). To make these latest statistics comparable to the DCS's 2008 Offender Profile, therefore, the percentage of ATDs per crime category is used.

Figure 1: Percentage ATDs per violent crime sub-categories for 2006, 2007, 2008



Source: DCS (2008)

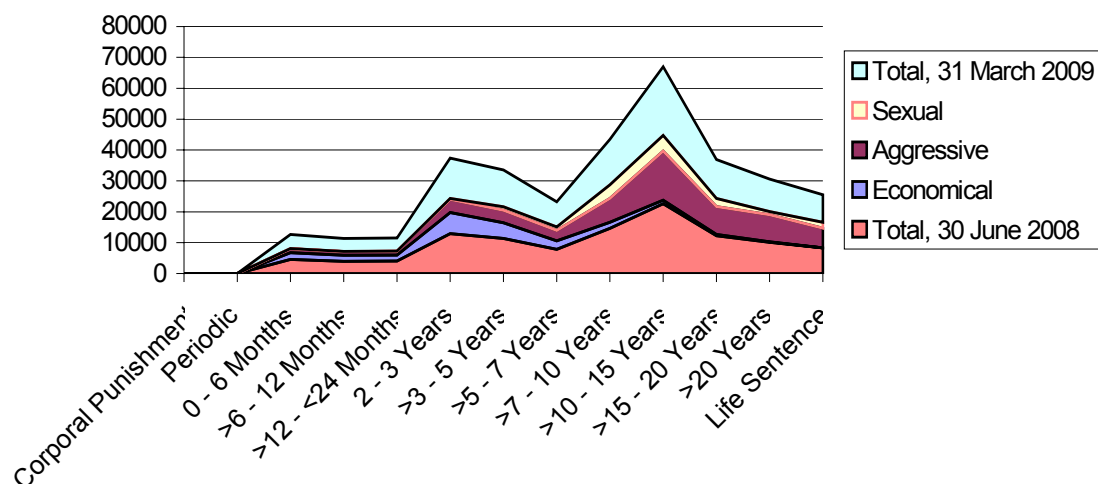
The downtrend in the proportion of ATDs until 2006 continues in 2007 and 2008 for most of the categories of violent crime reflected in Figure 1. The upturn in ATDs is evidently conspired by increased detention of suspects and lower conviction rates in less serious crime categories. The latest data tabulated in Table 1 suggests that the numbers of ATDs were disproportionately detained for economical crimes. ATDs in the 'Aggressive' and 'Sexual' crime categories, under which the violent crimes reflected in Figure 1 would most likely be included, fall below the ATD proportion of all offenders.

Table 1: Inmates per crime category as on 31 March 2009

	ATDs	Sentenced	Total	% ATDs
Economical	15094	25752	40846	37.0
Aggressive	23835	63625	87460	27.25
Sexual	6957	18368	25325	27.47
Narcotics	1292	2629	3921	33.0
Other	2299	5379	7678	29.94
Total	49477	115753	165230	29.94

Source: DCS website

Economical crime includes theft, mugging, house-breaking, fraud and larceny, or those kind of crimes associated with suspects too poor to pay their bail. While thieves bulk up the numbers of ATDs, it is those convicted perpetrators of aggressive crime that dominate the prison population. This is a result of the lengthier sentences these detainees are serving and the 2-3 year sentences that are most commonly handed down for economical crimes (see Figure 2). The shorter prison sentences for thieves also means that with a higher turnover of inmates, their population migrates across the prison walls more frequently and is probably, therefore, greater.

Figure 2: Offenders by sentence as on 30 June 2008¹

Source: DCS (2008) and DCS website

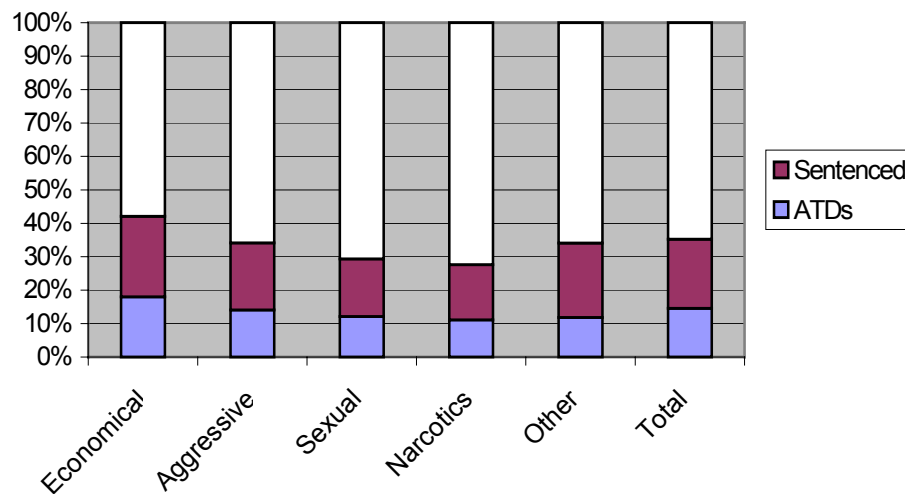
Youth in Prisons

Scrutinising the generational differences in the prison population crimes adds some further distinction to which population groups are prosecuted for what types of crimes. A breakdown of the latest data

¹ The almost identical correlation (a mean deviation of 28.63) between the total number of sentenced prisoners on 30 June 2008 and as reported for 31 March 2009 – ostensibly a 9-month difference – is suspicious. It may point to a slow turnover of cases in this period.

available reveals that the proportion of youth sentenced and accused of economical crime (42.08%) is greater than their proportion of the total offender population (35.22%) (see Figure 3).

Figure 3: Youth (18-25) proportion of total offender population



Source: DCS website

Society Incarcerated

With a high-estimate of the national population in 2008 to be 48,687,000 according to Statistics South Africa's Mid-Year Population Estimates (2008), the total offender population of 165,230 on the 31st of March 2009 will mean that 0.33% of the South African population is incarcerated and 0.23% are sentenced. These ratios are exactly as calculated for the National Offender Profile of 30 June 2008 (DCS, 2008). Accordingly:

- 1 out of every 295 South Africans living in the country is incarcerated and 1 out of every 421 is a sentenced offender.
- 1 out of every 145 males in South Africa is incarcerated.

The population of youth is estimated by Statistics South Africa to be 9,936,400 (15-24 years) of which 59,855 (14-25 years) is incarcerated. Approximately, 0.6% of south Africa's youth is, therefore, in prison. Accordingly:

- 1 out of 166 young south Africans are in prison.
- 1 out of 145 male youth in South Africa is incarcerated.

These ratios lend themselves to international comparison. The World Prison Population List (Walmsley, 2006) indicates the following population rates:

- The United States has the highest prison population rate in the world at 1 out of every 136.
- Canada, whose carceral regime will be the object of study for comparative relief to south Africa's, has a very low incarceration level of 1 in 935.
- In Southern Africa, Botswana has 1 out of 288, Lesotho 1 out of 640, Namibia 1 out of 374 and Swaziland has 1 out of every 402 of its citizens in prison.

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