

“... wood, carved by the knife of circumstance ...”? :
Cape Rapists and Rape in South Africa, c. 1910-1980

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“... wood, carved by the knife of circumstance ...”?:

Cape Rapists and Rape in South Africa, c. 1910-1980

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 prof.dr. W.R. Nasson

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Summary

This dissertation critically evaluates the various nature/nurture debates about rapists with a particular focus on what was historically called the Cape between the establishment of the Union of South Africa in 1910 to the transitional period towards the end of *apartheid*. This study, first and foremost, fills the scholarly lacuna within the historical discipline which places the act of rape as central by paying particular attention to the most prolific group of rapists in this area - coloured rapists. Much of the existing literature on sexual violence unfortunately neglects those racial groups straddled between the black/white divide. In the South African context, contemplating race is a necessity.

Four historical eras form the basis of the chronological spine of the dissertation: colonial, segregation, *apartheid* and post-*apartheid* eras. The Cape judicial records serve as an essential source of information and these are contrasted with media reports throughout the period of the study. The geographical area under investigation incorporates present day regions of the Northern and Western Cape but excludes the Eastern Cape, which would require a much more focused analysis of the cultural differences between the various black groups.

Three questions are posed: who were the rapists, why did they rape and how different are they in comparison to those rapists already discussed within the secondary literature. Chapter 1 introduces the current global literature on rape with a particular focus on theories and myths about why rapists rape. Particular attention is given to other colonial settings. These are compared to conditions in the Cape throughout the dissertation. Chapter 2 narrows the discussion to rapists in South Africa and these studies serve to locate Cape rapists within the South African context. Chapter 3 critically evaluates contemporary views on why rapists rape as well as critically appraising the role of rape statistics and rape surveys in the country. They too fail to explain the historical trends of rape in the Cape. A call is made to rather document the number of rapists as well as rape because of the high numbers of visible serial rapists gleaned from the archives. Chapter 4 begins to critically investigate the changing politico-legal definitions in the country and the sentencing practices in the Cape courts as a way of explaining the continued presence of visible convicted or accused but acquitted rapists. From

these court records, several types of rapists are identified in Chapter 5. These include serial rapists, those straddling the divide between incest and statutory rape, statutory rapists, juvenile rapists, baby rapists and gang rapists. It is shown that the increase in juvenile rapists led to much debate about the state of crime, the conditions in which most coloureds lived and the expected increase in criminal activity if no strategies were to be implemented. Baby rapists were shown to precede the HIV scares and virgin cleansing rituals, currently explaining baby rape. These children were victims of circumstance – easy prey for rapists. Both boys and girls were victims of rape and theories on “cycles of violence”, breeding rapists from a young age, as well as theories on masculinities in crisis, regarding the socialisation of young boys, becomes pertinent. These theories are also relevant when exploring gangs. Gang culture in the present literature is linked to moments of crisis on the mines and on the Cape Flats, but gang culture and gang rape in particular, is shown to pre-date that which is suggested in the literature. Chapter 6 pays particular attention to Cape coloured rapists, the most prolific group of rapists in the Cape. Attention is drawn to the particularly turbulent political and social shifts occurring in the area from the 1960s which correlates with the forced removals era and the rise of vigilante groups as a parallel monitoring system to the official policing system.

The types of rapists identified transcend both classification as well as spatial and temporal boxes. However, the reasons why they rape and the conditions under which they were born and raised – the environmental factors – changed alongside political dispensations which, in turn, ushered in changing legislation on sex and sexual violence as well as social mores. In colonised settings, the rape/race rhetoric largely defined as well as categorised rapists. Imperial notions of sex and sexuality as well as the Black Peril scares shaped much of the discussion in which race – genetics - determined potential rapists. Changing political, social and economic factors largely affected both definition and explanation as well as blurring the boundaries between potential, hidden, and reported rapists. Those previously considered potential or hidden rapists may have contributed to the recorded numbers of convicted or alleged rapists, not necessarily because their numbers increased, but because they were “uncovered” by changing rape legislation or by a more efficient policing generated by general panic. The effects of the *apartheid* State implementing legislation regulating sex, sexuality and people also led to some previous categories of rapists to go unnoticed in cases of rape but prosecutable for immoral offences. However, it is concluded that despite changing

State legislation during the different political eras, it cannot be said with certainty that the individual cases brought before the Cape courts, and which survived in the archives, were influenced by the broader racial rhetoric. The courts were arguably patriarchal, misogynistic and racialised spaces but the judicial system in rape cases acted according to the sometimes questionable evidence presented, and, for the most part, outside of the historically entrenched racial norms shown to exist in the Cape.

Convicted rapists were to be punished and their punishment was to serve as a warning to potential rapists. This could be through passing the death sentence, incarceration or/and corporal punishment. What is apparent is a shift from simply considering the rapist as a pathologised or racially defined rapist to one that is shaped by his context. This made an impact on sentencing trends and strategies on how to rehabilitate rapists, if deemed rehabilitative. No specific racial bias was noticeable, rather class concerns were widespread.

There is a long history of coloured intra-racial rape in the Cape, especially amongst the “lower classes” of coloured peoples. This became even more noticeable within coloured communities during the forced removals in Cape Town during the 1960s. Coupled with this was a rising gang menace and general increase in crime at the Cape. What becomes apparent is the rise of juvenile “delinquents” due to the social dislocations and growing economic deprivation, poor housing and facilities and, much like their black counterparts during migration from the colonial era, a lack of internal or communal policing. While much responsibility for regulating rape was left to the courts, it is clear that no racial profiling affected coloured rapists or their victims. Court procedure also contributed to poor rehabilitation of offenders, often resulting in serial rapists, and provided viable excuses for denying that they had raped. It is also not clear whether the court procedure did not, in effect, only punish poorer offenders, leaving many others unscathed. They did, however, place emphasis on the deportment of both rapist and victim, and this dictated sentencing trends. Class was not simply defined in economic terms but according to the deportment of victim and rapist. Coloureds, it is shown, were economically vulnerable over time and when their condition improved, their priorities were not always conducive to improving it. Their precarious position within the political and social hierarchy undoubtedly shaped coloured rapists. Other racially-defined rapists suffered similar conditions yet community intervention

strategies or even State intervention managed to somehow regulate them. Coloured political activity, and very often inactivity, and internal intervention strategies were short-sighted and short-lived leaving a definable “outcast” of coloureds, seemingly beyond redemption. The caste debate has its origins outside of South Africa but may be pertinent to coloured rapists given the context in which they were born and raised. It cannot, however, be stated that they were “caste” in the role for life, even if one contemplates the theories on cycles of violence. They were cast in the role but there was room for movement under certain conditions. Those who can be defined as caste rapists were in fact the growing numbers of gang rapists who, on entering their new adopted familial groups, could very rarely leave the circle. Entrenched in gang culture is rape and as such, they were “caste” into the role. This may not have been endemic to the Cape but certainly formed a growing number of rapists located and noticeable within the region.

What becomes clear is that rape and rapists in the Cape required critical examination not simply on the traditional axes of gender, race and class, but quite unexpectedly, the notion of rape and caste had become a crucial feature of this investigation.

Abstract

“... wood carved by the knife of circumstance...”? *Cape Rapists and Rape in South Africa, c. 1910-1980*, interrogates the notion that rapists are a product of an inherent nature and/or are nurtured by their environments to commit acts of rape. It also attempts to contextualise the changing definitions, motivations, justifications, and rationalisations given by theorists, politicians, jurists, the medical profession, society, communities, families, rape victims, and rapists. The central thesis questions, a slight adaptation from that of Joanna Bourke, are: “who were the rapists in the Cape?”, “why did they do what they did?” and “how particular are they to the Cape?” By contextualizing existing studies on rape with the accounts within the rich primary archives, Cape rapists are not merely located, defined, and explained, but are also contextualized within broader South African and global categories of rapists in what unfolds as a history of contested (and sometimes competing) notions of consensual sex, sexuality, and non-consensual sexual violence.

Samenvatting¹

‘Houtsnijwerk, het mes of de omstandigheden als gereedschap?’ Verkrachters in de Kaap en verkrachting in Zuid-Afrika, circa 1910-1980, onderzoekt niet alleen het idee dat verkrachters het product zijn van hun inherente natuur of gevormd zijn door omstandigheden, maar poogt de veranderende definities, motieven, rechtvaardigingen en rationalisaties, opgeworpen door theoretici, politici, juristen, de medische wereld, de samenleving, gemeenschappen, families, slachtoffers en daders in perspectief te plaatsen. De centrale vraagstelling, die licht afwijkt van de vraagstelling van Joanna Bourke, cirkelt rond de vragen: ‘Wie waren de verkrachters in de Kaap?’, ‘Waarom deden zij wat ze deden?’ en ‘Zijn deze gevallen exemplarisch voor de Kaap?’ Door bestaande studies over verkrachting te voorzien van een context, met behulp van beschrijvingen die terug te vinden zijn in archieven, kunnen verkrachters uit de Kaap niet alleen worden gelokaliseerd, gedefinieerd en geduid, maar tevens gecontextualiseerd binnen het bredere verband van Zuid-Afrikaanse en wereldwijde categorieën van verkrachters, in wat zich ontvouwt als een geschiedenis van betwiste (en soms rivaliserende) ideeën over consensuele seks, seksualiteit en non-consensuele seks.

¹ Translated by Alfred Schaffer

Opsomming²

“...hout gekerf deur die mes van omstandigheid...”? *Kaapse Verkragters en Verkragting in Suid-Afrika, c. 1910-1980*, ondersoek die idee dat verkragters of ’n produk is van ’n inherente of aangebore aard, en/of dat hulle deur hulle omgewing gevorm word om dade van verkragting te pleeg. Dit probeer ook om die veranderende definisies, motiverings, regverdigings en rasionaliserings wat deur teoretici, politici, regsgeleerdes, die mediese professie, die samelewing, gemeenskappe, gesinne, verkragtingslagoffers en verkragters gegee word, te kontekstualiseer. Die sentrale vraagstuk is ’n effense aanpassing van dié van Joanna Bourke, “wie was die verkragters in die Kaap?”, “hoekom het hulle gedoen wat hulle gedoen het?” en “hoe eie is hulle aan die Kaap?” Deur die kontekstualisering van bestaande studies oor verkragting met verslae verkrygbaar in die ryk en omvattende primêre argiewe, word Kaapse verkragters nie slegs geplaas, gedefinieer, en verklaar nie, maar word hulle ook gekontekstualiseer binne breër Suid-Afrikaanse en globale kategorieë van verkragters in wat ontvou as ’n geskiedenis van omstrede (en soms mededingende) begrippe van konsensuele seks, seksualiteit, en nie-konsensuele seksuele geweld.

² Translated by Johanna Steyn

Résumé³

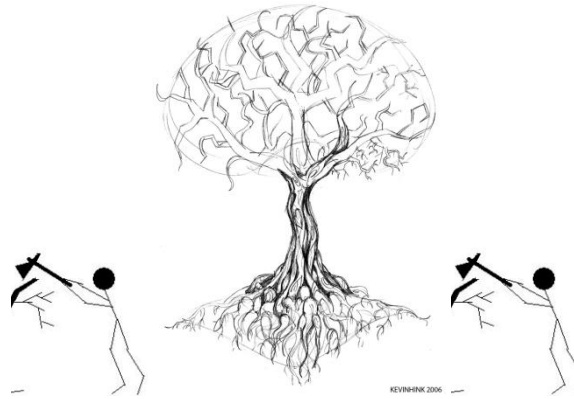
Cette thèse intitulée “... *le bois sculpté par le ciseau des circonstances*”? : *Les violeurs au Cap et le viol en Afrique du Sud, 1910-1980*, a pour objectif de ne pas uniquement s’interroger sur la notion que les violeurs sont le produit d’une nature criminelle inhérente et/ou qu’ils sont des manifestations de leur propre environnement, mais elle tente surtout de contextualiser les définitions changeantes, les motivations, les justifications et les rationalisations offertes par les théoriciens, les politiques, les juristes, la profession médicale, la société, les communautés, les familles, les victimes de viols et les violeurs eux-mêmes. Les questions centrales qui articulent ce travail – en légère adaptation de celles posées par Joanna Bourke – sont les suivantes : qui sont les violeurs dans la région du Cap ? Pour quelles raisons ont-ils fait ce qu’ils ont fait ? Sont-ils spécifiques à cette région ?

En contextualisant les études existantes sur le viol en parallèle avec des témoignages, des dépositions, des jugements et des récits provenant de riches archives, les violeurs de la région du Cap ne sont pas simplement situés, définis et leurs actes expliqués, mais ils sont placés dans le cadre plus vaste de l’Afrique du Sud et des catégories mondiales dans ce qui se lit, ainsi, comme une histoire de notions contestées – et parfois antagonistes – sur les relations sexuelles consentantes, la sexualité et la violence sexuelle.

³ Translated by Eric Levéel

“... it’s always a struggle when they are not academically gifted...” (Hyacinth Bucket, *Keeping Up Appearance*), unless of course you have the unfailing support of mentors, colleagues, family and friends...

Thank you, Dank u wel, Baie Dankie, Merci, Ngiyabonga



Stephen Ellis, Bill Nasson, Sandra Swart: “So much work to keep this trim!”

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and of course, to the research subjects ...

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Abbreviations, Acronyms and Terms

AIDS – Acquired Immune Deficiency Syndrome or Acquired Immunodeficiency Syndrome.

ANC. - African National Congress.

APO - African Political Organisation was founded in Cape Town in 1902 and was later renamed the African People's Organisation in 1919.

amahaiza - Snobs.

amalaita – Bands of men who proliferated in urban areas during the 19th century to escape the control of rural elders.

Anglo-Boer War, 1899-1902 – Also referred to as the South African War, 1899-1902.

Bantu – Reference to black African people.

Black Peril – In this context, the fear that black men would sexually ravage white women.

CAC – Coloured Advisory Council.

CDC – Coloured Development Corporation

CSVR - Centre for the Study of Violence and Reconciliation.

Cape Flats – Low-lying flat area southeast of the central business district of Cape Town where most non-whites were relocated.

Cautionary rule - The court exercises additional care when assessing the credibility of the rape survivor based on the patriarchal view that women suffer from hysteria.

criminal injuria - Unlawfully, intentionally and seriously impairing the dignity of another.

CSC – Cape Supreme Court records.

dagga – Marijuana.

Dopgeld - “booze money” (farm-workers paid a portion of their weekly wages in poor quality alcohol). Also referred to as the “tot” system.

FEDSAW - Federation of South African Women.

FEDTRAW. - Federation of Transvaal Women.

GPB - Official Yearbook of the Union of South Africa.

HIV – Human Immunodeficiency Virus.

HSRC - Human Sciences Research Council.

IPV - Intimate Partner Violence.

Jackrolling – The abduction and raping of young girls.

jus talionis/ lex talionis – Retributive justice.

KAB – The National Archives of South Africa, Cape Repository.

kaffirs – Offensive term in South Africa referring to black people.

kgotlas – Traditional court system or assembly of elders.

MRC – South African Medical Research Council.

Mens rea clause -Investigates the intent of the accused and insists that he must understand that the act is against the law in order for a conviction to be handed down.

moffie - Colloquial derogatory term used in South Africa to refer to gay men.

NGK - Dutch Reformed Church.

NICRO - National Institute for Crime Prevention and Rehabilitation of Offenders.

natives – Colonial terminology for black African people.

PAGAD - People Against Gangsterism and Drugs.

POWA - People Opposed to Woman Abuse.

PTSD - Post-Traumatic Stress Disorder.

PDSAs - Previously Disadvantaged South Africans.

Rhodesia – Modern-day Zimbabwe.

SANNC – The South African Native National Congress was founded in 1912 and renamed the ANC in 1923.

SAPS - South African Police Service.

STI - Sexually Transmitted Infections formally STDs.

Salisbury – Now Harare, the capital city of Zimbabwe.

sjambokked – Flogged.

skollies – A naughty, dirty or ill-mannered child or a gangster.

swart gevaar – The perceived threat of black African uprising.

tsotsi - A street-wise criminal who operated in South African townships from the 1930s.

U.G. - Government Gazette.

ukutwala – The abduction and forced marriage of young girls.

Umtali – Now Mutare, situated in the Eastern Highlands of Zimbabwe.

Union – Former colonies of the Cape of Good Hope, Natal, the Transvaal and the Orange River Colony (later renamed Orange Free State).

UWO – The United Women’s Organisation.

WF – The Women’s Front.

Chapter 1

Introduction¹

“... wood carved by the knife of circumstance...”? : *Cape Rapists and Rape in South Africa, c. 1910-1980*,² interrogates the notion that rapists are a product of an inherent nature and/or are nurtured by their environments to commit acts of rape.³ Critically evaluating the nature/nurture debate necessitates contextualising the structures under which rapists were born and raised as well as questioning their own agency when committing acts of rape. After all, many more people lived under the same conditions but refrained from committing acts of non-consensual sexual violence,⁴ as far as the records show. This complex debate requires vigorous contemplation of the changing definitions, motivations, justifications and rationalisations given by theorists, politicians, jurists, the medical profession, society, communities, families, rape victims, and rapists. This necessitates a fairly challenging negotiation of a variety of sources: the general academic literature on rape, colonial notions of rape and sex, rape scares and myths, the South African State’s response and management of rape cases through legislation, court procedures in the Cape, community reaction to these cases as reported in the press and individual testimonies of being raped or committing rape according to court testimony.

Certain points need to be clarified. Firstly, there has yet to be an historical study on rapists conducted in South Africa on such a large scale or time frame spanning over seven decades. The literature outside of psychology or sociology warns against giving rapists unnecessary attention. Here I follow the advice of Joanna Bourke’s *Rape: A History from 1860 to the Present* (2007). Prompted by declining statistics on rape reporting, she

¹ Given the sensitive nature of the topic, the format of references will hereafter be quoted as published to retain any intended nuance on the part of the original author.

² This is an adaptation of the observation made by Olive Schreiner which was used by Fanny A. Gross, criminologist and regular contributor to the Cape Argus in an article entitled “Prisoners are people”, in reference to the increase in crime in Cape Town during the 1960s. For the entire quote please refer to S. Venter (ed), *A Free Mind: Ahmed Kathrada’s Notebook from Robben Island* (Johannesburg: Jacana, 2005), p. 42.

³ “The Cape” defined here, refers to the legal jurisdiction of two of the areas under The Cape of Good Hope, the Western Cape and the Northern Cape. It excludes the Eastern Cape as this area would require a rather particular approach to the research questions.

⁴ A distinction is made between consensual and non-consensual sexual violence – sexual fetish compared to rape. See for example the case of Armin Meiwes, L. Harding, “Victim of cannibal agreed to be eaten”, *The Guardian*, 4 December 2003, <http://www.theguardian.com/world/2003/dec/04/germany.lukeharding> (accessed 30 July 2013)

investigated rapists in Britain, America and Australia. Although the title is misleading, it is “the rapist, not the victim, [who] is at the centre of [her] book” for “the rapist is not a ‘social virus’. He is human”.⁵ And he needs to be understood. By focusing on the rapists, Bourke asks, “who are these violent people, and what can we do about them?” She does not glorify the role of rapists nor does she find exonerating evidence for their behaviour, but rather attempts to demystify the “*category of rapist*” (emphasis added)⁶ “to make him less frightening and amenable to change”.⁷ These categories are vast, overlapping and not easily definable. Additionally, one has to negotiate the somewhat porous differentiations between convicted rapists, alleged rapists, hidden rapists and potential rapists.

Secondly, the geo-political boundaries of modern-day South Africa incorporates many racial and cultural groups which have lived rather varied experiences over time. As such, a specific focus will be placed on the Cape because of its rather particular politics, demographics and court procedure. Conclusions may or may not overlap with those rapists born, raised or living in other geographic settings in the country. Further detailed studies such as this, conducted on other provinces, may answer this question.

There are three central thesis questions which are to be answered in this dissertation - a slight adaptation of those posed by Joanna Bourke: “who *were* the rapists in the Cape?”, “why *did* they do what they did?” and “how particular are they to the Cape?”

Contested Notions of Consensual and Non-Consensual Sexual Violence: Global Theories and Myths

The discussion on rapists is indelibly linked to the enormous, varied and conflicting body of knowledge on rape both in South Africa and abroad. Explanations are gathered from global theories, local studies, contested statistics and intermittent surveys. Even in local studies, rape trends, explanations, myths and scares draw from these wider debates. One such

⁵ J. Bourke, *Rape: A History from 1860 to the Present* (London: Virago Press, 2007), p. 5.

⁶ According to psychologists Calvin Langton and Bill Marshall, it is necessary to categorise sexual offenders into broad generic groups for research purposes, C. Langton & W. Marshall, “Cognition in Rapists. Theoretical Patterns by Typological Breakdown”, *Aggression and Violent Behaviour*, 6, 2001, pp. 499-518. These categories, I would argue, ignore the wide range of individual differences exhibited within these groups.

⁷ J. Bourke, *Rape: A History from 1860 to the Present*, pp. i-viii.

very early example can be seen in an article entitled “Hereditary Crime: Criminal Marriages” (1909). It was argued that Prosper Despine, in his work *Psychologie Naturelle*, suggested that criminal blood in families resulted in a lack of morals and increased tendency towards crime.⁸ In both assessing the mental and genetic aspects of criminals, circumstances out of their control were arguably the reason why they behaved the way they did. By 1912, it was said that in most countries, assault of women was recognised as being due to mental defect on the part of the aggressor. However, it was thought that mental defect could not be used to diminish responsibility of the crime but could be considered a worthwhile consideration in the sentencing process.⁹

Only two points of consensus arise from the literature: the majority of reported rapists thus far are men and their victims are women. And secondly, there is a highly contested debate about rape statistics, rapist motivations, rape theories and who can be defined a rapist. But how can the existing literature contribute to answering the three central thesis questions? The following literature review will provide some answers as to “who were the rapists in other contexts” as well as providing some explanations as to “why they did what they did”. This context will prove vital to answering the third thesis question, “how different are the Cape rapists”, investigated in the concluding chapters of this dissertation. Given the inordinate amount of literature on the topic, only that which has some relevance to Cape rapists will be discussed in detail.

Who Were They?: Defining the Rapist

Both rape and definition of rapist have changed over time. Georges Vigarello’s study on rape in France, for example, describes the shift in from the terms “rapt” (abduction) to “viol” (rape) after the French Revolution of 1789. The former referred to men who abducted and raped women, fundamentally committing a crime of theft from another man. Under article 29 of the Penal Code of 1791, citizens owned their bodies and therefore the rapist, “le

⁸ Author unknown, “Hereditary Crime: Criminal marriage”, *The Journal*, 9 October 1909.

⁹ Author unknown, “Note on Relation of Assaults to Insanity”, *Christian Outlook*, 1 August 1912.

violeur”, was committing a crime against the person.¹⁰ This “theft” is echoed both in the literature on rape and colonial conquest as well as more contemporary and traditional debates in contemporary South Africa.¹¹ Rape was a serious offence in European societies which carried the death penalty, not out of concern for the victim but rather to protect the reputation and interests of the family. Daughters were commodities which could be married into good families if she was “unspoiled”.¹²

The term ‘rapist’, however, was first documented in 1883 under which these men were considered a discrete subcategory of human within the medical and psychiatric literature.¹³ By the turn of the 19th century, rapists were therefore considered to be suffering from a pathological disease and were thus explained and treated within this framework. Therefore, place, time and context must be stringently delineated to overcome the “imprecision [which] permeates much of the clinical and psychiatric literature”.¹⁴ The legal definition of rapist therefore serves as a useful foundation but cannot be used in isolation from the medical and social definitions.

Four main groups of rapists are identifiable from the literature: potential rapists, hidden rapists, alleged rapists and convicted rapists. Potential rapists included all men, according to feminist theory, and in particular, black men in colonial settings. Hidden rapists are not necessarily those that have gone undetected but those who have avoided prosecution for a variety of reasons. Alleged rapists share much in common with convicted rapists but have, for a variety of reasons, managed to avoid conviction, or they were indeed innocent. Five particular subgroups are of particular importance to this study: adult rapists, juvenile rapists, baby rapists, gang rapists and black rapists. Convicted rapists can be subdivided into admitters, deniers of non-consensual sexual violence and deniers of any sexual relations with their victims. Regrettably, many studies fail to distinguish between the four main groups of rapists nor to critically substantiate rapist motivations in their own contexts. Nevertheless,

¹⁰ G. Vigarello, *Histoire du viol, XVIe-XXe siècle* (Paris : Seuil, 1998), pp. 107-108.

¹¹ A. Makinana, “Dissent over Traditional Courts Bill”, *Mail & Guardian*, September 14 to 20 2012, p. 21; A. Makinana, “Traditional Bill outcry”, *The Mail & Guardian*, September 7 to 13 2012, p. 19; M. Nkasawe, “Traditional leadership is part of us”, *The Mail & Guardian*, May 25 to 31 2012, p. 35; A. Tilley & J. Williams, “Return of the Bantustan Bill”, *The Mail & Guardian*, April 13 to 19 2012, p. 35; O. Kheli, “Tricky art of negotiating lobola”, *The Mail & Guardian*, February 17 to 23 2012, p. 19; H. Swart, “Traditional Courts Bill out of step”, *The Mail & Guardian*, February 17 to 23 2012, p. 17.

¹² R. Porter, “Rape, Does it have Historical Meaning?”, S. Tomaselli & R. Porter (eds.), *Rape: An Historical and Social Enquiry* (Oxford: Blackwell, 1986), p. 217.

¹³ J. Bourke, *Rape: A History from 1860 to the Present*, p. 13.

¹⁴ Newspaper reviews located in the opening page of Bourke’s study.

they do provide a foundation from which to gain some insight.

Potential Rapists: All MANkind?

All potential rapists are deemed by theorists to be a product of their inherent nature, and/or were nurtured by their environments to act out in acts of rape. According to Darwinian theory, man's natural rapaciousness was innate and inherited from humanity's primordial past. Through the constant feud between the patriarch and his sons for the control and possession of women, survival depended on the outcome of the battle. Instinct theorists emphasized the overriding character of evolution. In certain environments, they argued, man turns to rape. These conditions include poor housing and exposure to immorality during childhood when ethics and morality should have been learnt and instilled. In Britain in 1920, it was natural to consider that rape was a crime affecting the poor, the work-shy, the uneducated and the "abnormal". Unable to adequately acquire suitable mates, men turned to rape "to preserve the species". Conventions and laws were unable to restrain his natural urges.¹⁵

The most contentious and refuted theory on rape in humans and animals comes from Randy Thornhill and Craig Palmer. They argue that in "direct selection", rape is a reproductive act where man desires to reproduce his genes, whereas in the "by-product" hypothesis, rape is considered a by-product of other mechanisms such as man's greater need for sexual arousal, inability to refrain from sexual activity, the need for sexual variety and willingness to engage in casual impersonal sex, and that this manifests in violent forms such as rape. Because this ability to rape is largely inherent, they suggest that rapists are deterred through vigilant protection of potential victims and through strategies which inhibit the possibility to rape such as chaperoning unaccompanied women. They also suggest that chemical castration might be a viable preventative for offenders.¹⁶ The absence of a solid explanation for juvenile rape, the raping of children, the raping of women beyond childbearing age and same-sex rape seems to be the central criticism of this theory and forms some of the central arguments in the collection edited by Cheryl Brown Travis. Emily Martin

¹⁵ J. Bourke, *Rape: A History from 1860 to the Present*, pp. 96-99.

¹⁶ R. Thornhill & C. Palmer, *A natural history of rape: biological bases of sexual coercion* (Cambridge: MIT Press, 2000), pp. 135, 165-166, 191, 197.

goes as far as saying that Thornhill and Palmer's account "actually amounts to an incitement to rape".¹⁷ Women also inherit aggressive primordial sexual rituals, not simply to increase the quantity of successful conquests but to obtain the best possible mate to produce superior offspring – thus quality rather than quantity. This is used to explain why more female offenders target female victims.¹⁸

Sigmund Freud (1856-1939) is of course known for postulating that the biological drives of sex and aggression are the primary forces behind human behaviour, concluding that sexuality has a profound influence upon mental activity. In establishing his three components of personality, which act in the conscious, subconscious and unconscious levels, namely the *id* (inherent components driven by instinct in which the pleasure principle makes individuals seek instant gratification), the *ego* (the rational component in which the individual conforms to societal norms and learns to defer gratification), and the *superego* (internalized moral standards or individual conscience). He postulated that these become integrated in a series of five psychosexual stages that are most crucially developed in the first five years of life. During these transitions, defence mechanisms usually work unconsciously to alleviate anxiety caused by conflicting desires. Excessive use of these defence mechanisms can result in developmental problems and can be indicative of deeper psychological problems.¹⁹

Increasingly, there was a turn towards psychosocial theory by the 1950s. One key figure is Erik Erikson (1902-1994). Erikson and his wife Joan were influenced by the works of Sigmund Freud, Anna Freud, Jean Piaget and Robert Havighurst. In 1950 they published their work on psychosocial theory in which they argued that human development was a product of the interaction between the individual's psychological needs and abilities and societal expectations and demands. Being a Neo-Freudian, Erikson was of the opinion that children contribute actively to their development through their efforts to adapt to their environment and that this is shaped by the individual's experiences, decisions, values and mastering. Particular importance was placed on cultural factors which define social goals, aspirations, expectations and requirements. He also argued that this occurred across the

¹⁷ C. Brown Travis (ed.), *Evolution, gender, and rape* (Cambridge: MIT Press, 2003), pp. 378.

¹⁸ See A. Campbell, *Men, Women, and Aggression* (New York: Basic Books, 1993)

¹⁹ D. Louw, D. Van Ede & A. Louw, *Human Development* (Cape Town: Kagiso Tertiary, 1998); W. Meyer, C. Moore & H. Viljoen, *Personology: From Individual to Ecosystem* (Johannesburg: Heinemann, 1997).

human lifespan. These interactions would contribute to increased social competence and reflect gains in physical, intellectual, social and emotional skills, and that it would define what is considered healthy normal development in a particular society.²⁰

20th century evolutionary history of rape coincided with the development of the socio-biology and evolutionary psychology theories. Gerrit Miller observed very little difference between human sexuality and that of other animals except single-mate bonding and rape because of the psychological and anatomical superiority of humans. The possibility to rape is always present with sexual decisions being passed down through generations, but through marriage sexual violence becomes contained.²¹ Other sociobiologists argued that male humans shared the same propensity to rape like other animal species, except that the former was bound by cultural attitudes towards sexual violence.²² The evolutionary or socio-biology theory of rape appeared after Edward O. Wilson published *Sociobiology: the New Synthesis* in 1975. Evolutionary theorists often cite provocative dress and intimate relations beyond societal norms as reasons why rapists are unable to control their urges.²³ The evolutionary theory is speculative and does not explain why very old women beyond childbearing age or prepubescent girls are raped, nor homosexual rapes. It also fails to explain gang rapes, non-vaginal rapes and the absence of ejaculation in many rapes. It is also considered non-scientific, as findings cannot be proven false. It also fails to explain changing individual motivations or cultural trends over time. It also fundamentally fails to account for shifts in sexual violence over time. It does, however, provide evidence for those who believe that “all men are rapists” and provides a more palatable defence for accused rapists.²⁴

The role of socialisation cannot be under-estimated. Of importance were the learning theorists who stated that behaviour is learnt through the environment. Petrovich Pavlov

²⁰ See for example E. Erikson, *Identity, youth, crisis*. (New York: Norton, 1968); B. Newman & P. Newman, *Development through life: A Psychosocial Approach* (USA: Brooks/Cole Wadsworth, 1995).

²¹ G. Miller, “The Primate Basis of Human Sexual Behaviour”, *The Quarterly Review of Biology*, 6(4), 1931, pp. 380-403.

²² See for example R. Wrangham & D. Peterson, *Demonic Males: Apes and the Origins of Human Violence* (Boston: Houghton Mifflin, 1996); D. Barash, *Sociobiology: The Whisperings Within* (New York: Souvenir Press, 1979), pp. 53-55.

²³ L. Ellis, *Theories of Rape: Inquiries into the causes of sexual aggression* (USA: Hemisphere Publishing Corporation, 1989), pp. 14-16.

²⁴ J. Bourke, *Rape: A History from 1860 to the Present*, pp. 114-116.

(1849-1936) is most known for his experimentation on dogs in which a desired response can be shifted during classical conditioning. Associational learning makes the subject associate fear with a specific stimulus and thus leads to systematic avoidance of that particular stimulus. Operant conditioning theorist Burrhus Skinner (1905-1990) enhanced this theory by positively reinforcing the desired response and observing the rate of the positive response and learning curve. He believed that if human voluntary behaviour was rewarded, subjects would emulate the desired response more often. Through positive and negative reinforcements, behaviour could be shaped more effectively. Naturally, questions would arise as to who would decide on what was desirable or not and this could have been manipulated in a racially conditioned environment such as pre-1994 South Africa. Shock therapy used in the treatment of homosexuals serves as a perfect example of possible manipulation. It does, however, provide a very solid foundation to discuss policing rape in South Africa and the punishment of rapists.

Social learning theorist Albert Bandura (1925-) believed that the social environment serves as a stimulus for learning and that imitation (observing other people's behaviour and its consequences) is a means of acquiring new behaviour. He found that children most often imitated models that were considered prestigious. These models controlled resources and were perceived to be rewarded for their actions. Children then imitated this behaviour. He is most known for connecting this theory to observed and learned aggression. However, the problem for socialisation is that inconsistency, contradiction and constantly changing social norms require adjustment to these learnt behaviours. Moral developments also have to adjust accordingly.²⁵ This theory becomes important in this study for understanding the rise of gang culture and gang rapes in the Cape.

Psychologist Neil Malamuth shows that men who have raped are hostile towards male-female and intimate relationships, experience shame about sex as well as feelings of inadequacy. They mask this through anger and the need to control women. They have greater acceptance of interpersonal violence and perceive women as hostile, especially if they are assertive, often mistrusting them. They have, more often than not, been raised in traumatic

²⁵ This theory posits that human behaviour is learned through observation of others and is then used as a guide for action. It explains human behaviour in terms of cognitive, behavioural and environmental influences, A. Bandura, *Social Learning Theory* (USA: Prentice Hall, 1977), p. 22.

environments marred by sexual abuse or witnessed interpersonal violence which fundamentally prohibits them from forming loving attachments. They are pressured into having sex by their peers and this normally results in forced sexual encounters. Their heterosexual performance provides a source of status and self-esteem, manifesting itself in impersonal sexual relationships.²⁶ A lack of empathy or remorse is most visible amongst multiple offenders and they often blame their victims for their actions. Childhood trauma can also lead to psychopathic personality disorder, the complexities of which fall beyond the scope of this dissertation. Briefly, childhood trauma and rape perpetration causation can be explained through three approaches. Neurophysiological theory suggests that trauma produces physiological and neurohumoural responses which affect brain development and results in less impulse control and more self-destructive and abusive behaviour.²⁷ Psychoanalytical theory suggests impaired attachments, especially to mothers during parental absence and parental abuse that affect psychological development, especially in boys. This results in feelings of low self-esteem and increases the risk of personality developmental disease such as borderline personality disorder and narcissism, both of which result in lower empathy and a greater propensity to rape. Empathy lowers the propensity for rape.²⁸ The last theory suggests that traumatised men admire and seek refuge amongst delinquent peers to explore their power and its boundaries in violent behaviour. This is most often seen in gang membership which provides emotional support for aggressive and antisocial masculinity.²⁹

Bandura's observations are also particularly illuminating for the discussion on the effects of pornography for rape as well as the *apartheid* State's obsession with curbing

²⁶ N. Malamuth, R. Sockloskie, M. Koss & J. Tanaka, "Characteristics of aggressors against women: testing a model using a national sample of college students", *Journal of Consulting and Clinical Psychology*, 59, 1991, pp. 670–681; N. Malamuth, D. Linz, C. Heavey, G. Barnes & M. Acker, "Using the confluence model of sexual aggression to predict men's conflict with women: a 10 year follow up study", *Journal of Personality & Social Psychology*, 69, 1995, pp. 353–369; N. Malamuth, "Criminal and non-criminal sexual aggressors. Integrating psychopathy in a hierarchical-mediational confluence model", *Annals of the New York Academy of Science*, 989, 2003, pp. 33–58.

²⁷ M. Teicher, A. Tomoda, S. Andersen, "Neurobiological consequences of early stress and childhood maltreatment: are results from human and animal studies comparable?", *Annals of the New York Academy of Science*, 1071, 2006, pp. 313–323.

²⁸ A. Abbey & P. McAuslan, "A longitudinal examination of male college student's perpetration of sexual assault", *Journal of Consulting and Clinical Psychology*, 72, 2004, pp. 747–756; P. Fonagy & M. Target, *Psychoanalytic Theories: Perspectives from Developmental Psychopathology* (New York: Routledge, 2003).

²⁹ J. Steinberg, *The Number: one man's search for identity in the Cape underworld and prison gangs* (Johannesburg: Jonathan Ball, 2004); R. Jewkes, K. Dunkle, M. Koss, J. Levin, M. Nduna et al, "Rape perpetration by young rural South African men: prevalence, patterns and risk factors", *Social Science and Medicine*, 63, 2006, pp. 2949–2961; S. Mathews, R. Jewkes & N. Abrahams, "'I had a hard life': Exploring childhood adversity in the shaping of masculinities among men who killed an intimate partner in South Africa", *British Journal of Criminology*, 51(6), 2011, pp. 960–977.

pornography. It is suggested that exposure to acts of violence, whether real or staged through violent film or pornography, led to increases in anti-social forms of behaviour because the audience felt the act was condoned. Rape was therefore seen as aggressive behaviour towards women which was learnt by imitating rape and other scenes of rape, through associating sexuality and violence, through acceptance and perpetuation of rape myths such as “women mean yes when they say no” or that “women secretly desire to be raped”,³⁰ and through a process of desensitisation in which the repercussions of raping are relegated to the periphery.³¹

Much attention has been placed on the link between pornography and rape. Feminist theories on rape in the 1970s questioned the role of pornography and rape. To answer the question of what men want, Catherine MacKinnon suggested that the answer could be found in pornography: women bound, battered, tortured, humiliated, degraded, defiled, killed, sexually available, “have-able” and wanting.³² It was also argued that rape could no longer be explained by the psychopathological model. Cultural scripts were said to be the most decisive explanation for rape: rapists were made, not born. The movements also drew attention to the way in which pornography provided “rape scripts” promoting sexual aggression. F.B.I. director J. Edgar Hoover claimed that pornography was a major cause of sexual violence. For the feminists, however, divergent views suggested that it was not the effects of pornographic acts but rather the objectification and dehumanisation of the female body that was problematic. By 1974, Robin Morgan coined the phrase, “pornography is the theory: rape the practice”.³³ Strong correlations were being drawn between watching the dehumanised body, getting an erection and ejaculation, and later acting out these “scripts” in cases of rape.

Erections and ejaculations are also used as evidence to demonstrate that male rape victims “really wanted it”. Many male rape victims feel betrayed by their bodies when they

³⁰ For example, we could refer to M. R. Burt, “Cultural myths and supports for rape”, *Journal of Personality and Social Psychology*, 38, 1980, pp. 217-230.

³¹ See for example J. V. P. Check & N. M. Malamuth, “An Empirical assessment of some feminist hypothesis about rape”, *International Journal of Women’s Studies*, 8, 1985, pp. 414-423; E. Donnerstein, “The effects of exposure to violent pornographic mass media images”, *Engage Social Action*, 13, 1985, pp. 16-19.

³² C. MacKinnon, “Sexuality, Pornography, and Method: “Pleasure Under Patriarchy””, *Ethics*, 99(2), 1989, 326-327, 335.

³³ Coined by Robin Morgan in an essay in 1974, quoted in J. Slade, *Pornography and Sexual Representation: A Reference Guide, Volume 1* (USA: Greenwood Press, 2001), p. 69.

involuntarily get an erection or ejaculate. So too do female victims of rape who experience involuntary orgasm. Some rapists require an ejaculation to mark the climax of the rape. Confusing rape with orgasm, the ejaculation symbolises total domination over the victim. In cases of rape, courts would rarely find assailants guilty if ejaculation had not occurred. This was also debated in psychological circles in the 1960s. Evidence of these biological responses has subsequently played a much smaller role in cases of rape of both men and women.³⁴

In 1983, Ellen Willis remarked that anti-obscenity laws reinforced cultural taboos on sexuality and suppressed feminism, homosexuality and considered other non-conforming sexual references as obscene – this included contraception and abortion. Sex radicals pointed out that pornography could be liberating for women as a means for them to explore their sexuality and enhance their pleasure, criticising anti-pornography feminists for not considering female agency. In any event, conflicting views appeared as to the link between pornography and rape, cause and effect, with some saying and writing that pornography was used as a justification for motives rather than having any direct causal link with rapist actions.³⁵

Activist and theorist Andrea Dworkin, along with Catherine Mackinnon, advocated the passing of law recognising pornography as sex discrimination in Minneapolis in 1983. Dworkin was an ex-sex worker and had personal experiences of the exploiting nature of pornography. The two women believed that pornography and prostitution discriminated against the body and dignity of women.³⁶ These “vices” were of particular concern for the *apartheid* State, with some alarming repercussions in cases brought before the Cape courts. This is further discussed in Chapter 3.

Studies have found that heterosexual men fantasise about rape more than women do. Subduing a woman in pornography tends to excite some young men and some findings

³⁴ J. Bourke, *Rape: A History from 1860 to the Present*, pp. 244-245.

³⁵ *Ibid.*, pp. 141-146.

³⁶ M. Moorcock, “Fighting Talk”, *New Statesman & Society*, 21 April 1995.

suggest that some men are more aroused by violent non-consensual sex.³⁷ “No” becomes arousing and some questions remain as to whether they truly interpret a “no” as a “yes”. This is of importance when they assure themselves that the woman did indeed consent to sex and when they claim that the victim “actually wanted it”. Linda Williams analysed sadomasochism in gay and straight pornography. She argued that sadism and masochism “haunt[ed] masculine sexual identity” although she restricted this to heterosexual pornography, concluding that there was no heterosexual identity to maintain in gay male pornography and thus male submissiveness occurred frequently. There is a slight oversight here of the nuances of gay male passive and active roles in gay pornography in which certain roles within the “scenario” also reflect heteronormativity, nevertheless, her attention was drawn to the domination over women. Here she is depicted as having pleasure, and this is relayed to the viewer.³⁸ She also fails to recognise plural sexualities and dominant heteronormative cultures, as discussed by Marc Epprecht.³⁹

There is little evidence to prove a causal link between sexual fantasy, deviant sexual fantasy and rape. While many men may fantasise about being sexually violent, most do not act this out in practice.⁴⁰ Exposure to pornography as a risk factor for rape perpetration is also widely contested. Studies have been conducted on incarcerated men but the findings can hardly be generalised to the public.⁴¹ Causal links between rape and pornography, therefore, remain inconclusive.

The developmental theorists argued that rapists normally come from backgrounds where manipulation, coercion and violence were learned and accepted ways of conducting

³⁷ D. Byrne, “The Imagery of Sex”, J. Money & H. Musaph (eds.), *Handbook of Sexology* (Amsterdam: Excerpta Medica, 1977), p. 340; C. Crépault & M. Couture, “Men’s Erotic Fantasies”, *Archives of Sexual Behaviour*, 9(6), 1980, p. 565; N. Malamuth, “Aggression Against Women: Cultural and Individual Causes”, N. Malamuth & E. Donnerstein (eds.), *Pornography and Sexual Aggression* (New York: Academic Press, 1984).

³⁸ L. Williams, “Power, Pleasure, and Perversion: Sadomasochistic Film Pornography”, *Representations*, 27, 1989, pp. 46-47.

³⁹ M. Epprecht, *Heterosexual Africa? The History of an Idea from the Age of Exploration to the Age of AIDS* (UKZN Press: Pietermaritzburg, 2008).

⁴⁰ H. Leitenberg & K. Henning, “Sexual Fantasy”, *Psychological Bulletin*, 117, 1995, pp. 469-496.

⁴¹ A. Dworkin, *Pornography: men possessing women* (London: The Women’s Press, 1981); N. Malamuth, T. Addison et al, “Pornography and sexual aggression: are there reliable effects and how might we understand them?”, *Annual review of Sex Research*, 11, 2000, pp. 26-91.

social relationships.⁴² Social disorganisation theorists added that crime and deviance reflected conditions that disrupted the power of social norms. Factors which they promoted as being indicative of rape behaviour included migration, marital disruption and cultural heterogeneity.⁴³ These studies revealed that rapists were chronically unemployed and had difficulty in finding consenting sexual partners;⁴⁴ were suffering from inadequate socialisation or mental illness;⁴⁵ and were raised in a sexually violent environment⁴⁶. These conditions were pertinent in stranger rape but failed to consider acquaintance rape.⁴⁷ They resonate in cases of rape at the Cape.

Systems theorists were critical of the one-directional approach suggested by these theories. They argue that individuals develop within complex systems and that the whole system is more than the sum of its parts. One member of this School of thought, Urie Bronfenbrenner (1917-2005), postulated the Ecological Systems Theory in which the developing child is influenced by and influences his/her environment in a two-way interaction. Therefore, there is a fundamental interrelatedness of the individual with his/her environment.⁴⁸ This suggests, and indeed would explain, why not all those raised in brutal environments may decide to turn to rape and gives some credence to the agency of particular individuals living in a system.

These theories share some similarities with the feminist theory on rape in that both agree that social and cultural learning shape the rapist and that new social changes encourage

⁴² N. M. Malamuth & M. F. Heilmann, "Evolutionary Psychology and Sexual Aggression", in C. Crawford & D. L. Krebs (eds.), *Handbook of Evolutionary Psychology* (New Jersey: Lawrence Erlbaum Ass, 1998), pp. 525-542.

⁴³ P. Blau & R. M. Golden, "Metropolitan structure and criminal violence", *Sociological Quarterly*, 27, 1986, pp. 15-26; R. E. L. Faris, *Social Disorganization* (New York: Ronald Press, 1955).

⁴⁴ See for example W. A. Bonger, *Criminality and economic conditions* (Bloomington: Indiana University Press, 1916).

⁴⁵ For example, M. Guttmacher, *Sex offenses: The problem, causes, and prevention* (New York: Norton, 1951).

⁴⁶ For example, M. Amir, *Patterns in forcible rape* (Chicago: University of Chicago Press, 1971).

⁴⁷ These theories have been adequately critiqued by N. Gager & C. Schurr, *Sexual assault: Confronting rape in America* (New York: Grosset and Dunlap, 1976); J. A. Marolla & D. H. Scully, "Rape and psychiatric vocabularies of motive" in E. Gomberg & V. Franks (eds.), *Gender and disordered behaviour* (New York: Brunner/Mazel, 1979); P. Reeves-Sanday, "The Socio-cultural context of rape: A Cross-cultural study", *The Journal of Social Issues*, 37, 1981, pp. 5-27.

⁴⁸ See for example G. Craig, *Human Development* (New Jersey: Prentice Hall, 1999); D. Papalia & S. Olds, *Human Development* (New York: McGraw Hill, 1995); D. Shaffer, *Developmental Psychology* (USA: Thomson Learning Inc, 2002).

men to exploit women. However, feminist theorists insisted on the socioeconomic and political exploitation of women whilst social learning theorists sought to link cultural traditions to latent aggression in the rapist. They also believed that rape was a sexual act and not simply a rapist exhibiting power over the woman. Joan Scott analyses the effects of the class, race and gender axes. She sees gender as a constitutive element of social relations based on perceived differences between the sexes and sees gender as a primary way of signifying relationships of power.⁴⁹ The debate has a rather long history.

French philosopher and sociologist, Michel Foucault, regarded sexuality as a regulatory technique of power to produce compliant productive bodies. Here, sex is sustained by networks of power. Rape was therefore an assault on the body. As such, he stated that ‘sex’ be removed from the concept of ‘rape’. Rape was therefore likened to assault.⁵⁰ This has been criticised as serving masculine sexuality, obfuscating the existence of sexualized hierarchies in which the female body is most at risk in acts of rape and would continue to enforce patriarchal and misogynistic values.⁵¹

Feminists in the 1970s and 1980s insisted that rape was about power and not sex, and thus rejected individualistic psychopathological arguments for rape. This was continued in the 1990s by feminists such as Ruth Seifert.⁵² Most prominent is the work of anti-rape campaigner, Susan Brownmiller.⁵³ “It is nothing more or less than a conscious process of intimidation by which *all men* keep *all women* in a state of fear”.⁵⁴ It was argued that men were socialised into accepting that masculinity entailed female oppression and this encouraged men to exploit women sexually.⁵⁵ Rapists were simply responding to this existing social inequality. She further created a prototype of the typical American offender: young,

⁴⁹ J. Scott, “Gender: A Useful Category of Historical Analysis”, *American Historical Review*, 91(5), 1986, pp. 1069-1074.

⁵⁰ M. Foucault, *The History of Sexuality. Volume 1: An Introduction* (London: Allen Lane, 1978), pp. 17-35.

⁵¹ A. Cahill, “Foucault, Rape and the Construction of the Feminine Body”, *Hypatia*, 15(1), 2000, pp. 43-63.

⁵² R. Seifert, “The Second Front: The Logic of Sexual Violence in Wars”, *Women’s Studies International Forum*, 19(1&2), 1996, p. 36.

⁵³ S. Brownmiller, *Against Our Will: Men, Women, and Rape* (New York: Ballantine Books, 1975), who incidentally was the first person to coin the term “date rape” despite its existence prior to her 1975 publication.

⁵⁴ *Ibid.*, p. 15.

⁵⁵ R. Morrell’s, *Changing Men in South Africa* (London: Zed Books, 2001), p. 33, clearly critiques this overarching assumption by pointing out that there is not one typical South African man but an array of men who exhibit various types of masculinities that challenge gender hierarchies, who attempt to question gender equalities, and some that accept the status quo.

probably black, suffering socioeconomic hardships and more than likely involved in subcultures of violence.⁵⁶

Rape was therefore seen as power and there was no connection between rape and sex. Politically, socially and economically, upwardly mobile women unsettled male standing within society that resulted in a collective male identity crisis. Some men retaliated by forcing women to have sex with them out of frustration and the desire to re-establish male boundaries.⁵⁷ This is particularly visible in cases where rapists perceived their victims as “considering themselves as better”. Historian Roy Porter described how the successful women’s movement in the USA resulted in “vicious male backlash” in which male vengeance manifested itself in rape.⁵⁸ Interestingly, this period saw the rise of debates against pornography in the USA, another attempt to recoup the loss of sexual dominance over women’s bodies in the fantasy world.⁵⁹ However, South African-born social psychologist, Catherine Campbell and British social anthropologist Henrietta Moore, both regard women as generally having little social and economic power yet they maintain that men still act violently to entrench their male identities.⁶⁰ They have therefore questioned the link between upwardly mobile women and masculinities in crisis.

Philosopher, Catherine MacKinnon, would also disagree with Brownmiller. She points out, “if it’s violence not sex, why didn’t he just hit her”.⁶¹ Bourke further adds, “Men’ are not rapists. Some men are. A few women are. People choose their ‘coming into being’ from within a range of discursive practices circulating within their historical time and place. Their choices construct themselves as speaking subjects”.⁶² This no doubt explains why all oppressed men in South Africa did not turn to rape. One cannot, however, conclude with “an

⁵⁶ Quoted in L. Vogelmann, *The Sexual Face of Violence: Rapists on Rape* (Johannesburg: Raven Press, 1990), p. 4.

⁵⁷ N. Groth, “The Adolescent Sexual Offender and His Prey”, *International Journal of Offender Therapy and Contemporary Criminology*, 21(3), 1977, pp. 253-254.

⁵⁸ R. Porter, “Rape, Does it have Historical Meaning?”, S. Tomaselli & R. Porter (eds.), *Rape: An Historical and Social Enquiry*, p. 222.

⁵⁹ D. Russel, “On Pornography”, *Chrysalis*, 4, 1977, p. 12.

⁶⁰ C. Campbell, “Learning to Kill? Masculinity, the Family and Violence in Natal”, *Journal of Southern African Studies*, 18 (3), 1992, pp. 614-628; H. Moore, “Households and Gender in a South African Bantustan: A Comment”, *African Studies*, 53 (1), 1994, pp. 137-142.

⁶¹ C. MacKinnon, “Sexuality, Pornography, and Method: pleasure under patriarchy”, *Ethics*, 99(2), 1989, p. 323.

⁶² J. Bourke, *Rape: A History from 1860 to the Present*, p. 13.

ahistorical narrative based on supposedly biological and psychological constants”.⁶³ One does have to contemplate other theories such as “every fuck is a rape even if it feels nice”,⁶⁴ or “all men are either rapists, rape-fantasists, or beneficiaries of rape culture” - and by all men, this was restricted to those on the margins of society leaving white middle-class professionals and husbands unharmed.⁶⁵ In the Cape, the court records would strongly support this assertion, as very few records of partner rape or white rapists could be located. This greatly affects any forgone conclusions that could be made about rapists in the archive. But one is always restricted by the sources. It does, however, lead the discussion to rather particular obsession in the colonial setting. The black man...

Returning to Foucault, he made a particularly interesting observation that power organised around the individual body and the collective population’s sex lives, and this led to the purity of the collective in which racism took shape, with sexuality becoming a major field of attention for the discourses on eugenics, racial purity and degeneracy. This, he developed, led to segregation and social hierarchy which guaranteed domination and hegemony.⁶⁶ By the 18th century, issues of sexuality emerged as a “dynamic racism” or “racism of expansionism” in which the virtues of white women were threatened by “native men” in far off lands.⁶⁷ This coincides with narratives on rape in the mid-19th century seizing the European imagination in conquered lands. Foucault explained that sexuality has been originally and historically a bourgeois element in which sexual behaviour has been regulated according to the needs of those in distress.⁶⁸

According to 19th century criminologists, rapacious men were considered degenerate. Developed in Italy, this theory permeated into the British and American academe through the works of sexologist Henry Havelock Ellis. It was believed that physical aspects could reveal information about the person’s inner nature through observational studies such as anatomical

⁶³ J. Bourke, *Rape: A History from 1860 to the Present*, p. 441.

⁶⁴ S. Deevey, “Such a Nice Girl”, N. Myron & C. Bunch (eds.), *Lesbianism and the Woman’s Movement* (Baltimore: Diana Press, 1975), p. 24.

⁶⁵ J. Bourke, *Rape: A History from 1860 to the Present*, p. 416.

⁶⁶ M. Foucault, *The Will to Knowledge: The History of Sexuality Volume 1* (London: Penguin, 1998), p. 141.

⁶⁷ *Ibid.*, p. 125.

⁶⁸ *Ibid.*, p. 124.

physiognomy. This would help in identifying potential rapists. Certain physical traits such as hair colour, ear shape or eyes colour were considered indicators of degeneracy.⁶⁹

Degeneracy was also considered to be hereditary. In the late 19th century, recapitulation theory argued that some people failed to develop and were stuck at a lower level of evolution. This, it was argued, was common amongst non-whites and explained why force was often used in sexual acts. Psychologist George E. Dawson argued in 1900 that this explained the high numbers of rapes amongst enslaved non-white populations. This worsened after emancipation when “ex-slaves were now instinctually carefree”.⁷⁰

The complexities of rape and race beyond biological, evolutionary or socialisation theories are made apparent in Diane Miller Sommerville’s *Rape and Race in the nineteenth century South*. Based on the American South, this work begins to echo the South African scenario in which black sexuality becomes a central obsession. In America, intercourse between white women and black men tended to be tolerated before the Civil War (1861-1865) if discreet and if no child was born out of the union. Some studies have shown that black slaves, for example, were given relatively fair trials if caught having sexual relations (forced or consensual), with white women.⁷¹ But as African-Americans demanded more political rights during Reconstruction (1865-1877), white supremacy was threatened and so increased the number of black men lynched in a bid to “protect the virtues of white women”. Sexual assault was the most common excuse for the practice of lynching.⁷² There is a correlation here with colonial and *apartheid* South Africa.

Black men were lynched by white men and this in turn reminded white women of their dependence on white men. Black men thus symbolised bestial degenerates and white women purified and desexualised beings. The law was considered too tame to dissuade

⁶⁹ H. Ellis, *The Criminal* (London: n.p., 1914), pp. 80-81, 92-93, 101-102, 111-112.

⁷⁰ G. Dawson, “Psychic Rudiments and Morality”, *The American Journal of Psychology*, 11(2), 1900, pp. 193-203.

⁷¹ P. Bardaglio, “Rape and the Law in the Old South: ‘Calculated to Excite Indignation in Every Heart’”, *Journal of Southern History*, 60(4), 1994, p. 751.

⁷² D. Miller Sommerville, “The Rape Myth in the Old South Reconsidered”, *Journal of Southern History*, 61, 1995, pp. 481-518.

potential black rapists. Lynching was considered the best deterrent.⁷³ Those black men who raped outside of lust for other reasons, such as revenge, were considered even more deserving of the noose. This was considered an attack on “the entire structure of white power and authority”.⁷⁴ This continued for almost a century. By 1964, white women were considered “soiled for life” if raped by a black man.⁷⁵ What becomes apparent is the proliferation, existence, and permutation of racially specific rape myths.⁷⁶ In that colonial setting, all black men were considered bestial degenerates and potential rapists of the most brutal kind.

“The Black Plague”, or fear of the lascivious “negro” male, was prevalent in the deep Southern states of America, and greatly resembled conditions in colonial South Africa. Women who were raped also showed signs of withholding details of the rape to avoid being ostracised and to keep their “pride”. In these instances, charges of assault with intent to rape were pressed. Similarly, community reaction to black on white rape was vicious and often resulted in the accused being beaten or threatened by the white mobs charged with their capture. White defence attorneys were bound to offer some legal counsel but they, too, were more concerned about “safeguarding” the white community rather than the needs of their clients.⁷⁷

As Anne McClintock has pointed out, European exploration was a gendered experience marred by gender violence,⁷⁸ most importantly, the “conquest” of native women by colonial men.⁷⁹ In a comparative literature study by Carmelina Nocentelli-Truett, it is observed that the “conquest marriages” between Portuguese men and local women along the Indian Ocean trade routes celebrated racial mixing as a means of consolidating colonial

⁷³ L. Rosser, “Illegal Enforcement of Criminal Law”, *American Bar Association Journal*, 7, 1921, pp. 519-524.

⁷⁴ J. Bourke, *Rape: A History from 1860 to the Present*, p. 105.

⁷⁵ *Ibid.*, p. 101.

⁷⁶ D. Miller Sommerville, *Rape and Race in the nineteenth century South* (USA: North Carolina Press, 2004), pp. 3-5, 257.

⁷⁷ J. Bourke, *Rape: A History from 1860 to the Present*, pp. 89-91.

⁷⁸ A. McClintock, *Imperial Leather: Race, Gender and Sexuality in the Colonial Contest* (New York: Routledge, 1998), pp. 2-3.

⁷⁹ See for example the conditions in Indian conquest during the 18th century in N. Paxton, *Writing under the Raj: Gender, race and Rape in the British Colonial Imagination, 1930-1947* (Piscataway: Rutgers University Press, 1999); R. Hyam, *Empire and Sexuality: The British Experience* (Manchester: Manchester University Press, 1991).

penetration, acculturation and religious conversion.⁸⁰ But the blurring of racial boundaries led to the converse fear that white women would become the prize of “native” men, especially in Southern Africa, which led to many regional debates.

Much of South Africa’s references to the Black Peril were drawn from its northern neighbour. For example, in 1902, media reports in Southern Rhodesia promoted the idea of implementing the death penalty, already in existence within legislation, on blacks who even attempted to rape a white woman.⁸¹ Similar calls followed within the Union following this newspaper article. For example, a motion was passed in the Union Senate by Senator Munnik to make death by hanging the minimum penalty for rape and attempted rape, as was the case in Rhodesia. Eventually, the motion was withdrawn.⁸²

Kenya, Southern Rhodesia and South Africa were Britain’s principal settler colonies in sub-Saharan Africa. Unlike Australia and Canada with a vaster land mass and where native uprising and conflict between the groups was easier to manage and subdue, the African possessions were sites of constant resistance requiring overarching policies to justify systematic violence and promotion of a collective white settler mentality to subdue “the barbarians”. Of particular importance to this dissertation are the effects of perceived and real sexual appetites of “natives” in Southern Africa that strongly point to the links between colonial politics, sex, sexuality, gender and race. Historian Ronald Hyam has suggested that the problem of the 20th century is the problem of racism and that sex is at the heart of that racism.⁸³ Rather than uplift the “non-European peoples” to a “scale of civilisation”, British Victorian imperialism paid more attention to administration that was paternalistic and condescending towards the needs of the people. This was marked by a fear of the many unknowns such as disease and competition for limited resources. It also required vigorous regulation of the “noble savage” as giving political freedom to black men, for example, was giving them permission to sleep with white women.

⁸⁰ C. Nocentelli-Truett, *Island of Love: Europe, “India”, and Inter-racial Romance* (Michigan: Ann Arbor, 2005), p. 27.

⁸¹ See for example, Author unknown, “Salisbury Mems”, *Mafeking Mail and Protectorate Guardian*, 14 November 1902.

⁸² Author unknown, “The Black Peril: Discussion in the Senate”, *Mafeking mail and Protectorate Guardian*, 30 April 1912.

⁸³ R. Hyam, *Empire and Sexuality: The British Experience*, pp. 200-203.

The easily definable “other” of which all white settlers were expected to be wary and therefore control, disguised as the maintenance of cultural norms and racial boundaries, was amongst other things “lascivious”, “hyper-sexual” and biologically programmed, given the opportunity, to ravish any white women in sight. These perceptions, heavily entrenched by various political and legal means, eventually dissipated and became entrenched in societal thinking (as it did in Southern Rhodesian settler culture). Black women in these settings were not spared either. The legal and so-called moral guardians were rampantly raping local women and young girls.⁸⁴ Similar rape tactics were used by the notorious Selous Scouts during the “Bush War” prior to Zimbabwean independence in 1980.⁸⁵ Historian Jock McCulloch demonstrated the effects of Black Peril scares on race relations in Southern Rhodesia between 1902 and 1935, especially in the first three major urban settings and sites of “outrage” of Salisbury (Harare), Bulawayo and Umtali (Mutare). This was not because of any real fear of black sexual lasciviousness towards white women but rather the deeply entrenched fear that black men would ravage white women at any opportunity.⁸⁶ The actual panics occurred between 1902 to 1905 and 1908 to 1911.⁸⁷ He also discussed how the “Southern Rhodesian Black Peril” spread across borders, incorporated other controversies such as miscegenation and prostitution, undermined reforms, affected politics, controlled sexual bodies and was used to curb the increases in venereal disease.⁸⁸ Morality certainly undermined pragmatic politics. All of these have striking similarities with not only colonial South Africa but also with the continued obsessions of the segregationist and *apartheid* governments.

Dane Kennedy also noted that the Black Peril scares were closely linked to political tensions within white communities in Kenya and Southern Rhodesia especially during

⁸⁴ R. Rotberg, *The Founder: Cecil John Rhodes and the Pursuit of Power* (New York: Oxford University Press, 1988), p. 550.

⁸⁵ P. Wilhelm, “Peter Halket, Rhodes and Colonialism”, C. Clayton (ed.), *Olive Schreiner* (Johannesburg: McGraw Hill, 1983), p. 210. The original letter from Olive Schreiner to William Thomas Stead dated September 1896, National Archives Depot, Pretoria, Olive Schreiner Letters Project transcription, <http://www.oliveschreiner.org/vre?view=collections&colid=152&letterid=58> (accessed 1 December 2013).

⁸⁶ This coincides with Sigmund Freud’s, “Character and Anal Eroticism”, A. Richards (ed.), *Freud on Sexuality* (London: Penguin Books, 1983), pp. 205-215, in which he describes Africans, Aborigines, and Pacific Islanders, quite unlike Europeans, as lacking a period of sexual latency in which one learnt how to regulate sexual drives and this explained their hyper-sexuality and lack of civilisation.

⁸⁷ In South Africa, these occurred in Natal in 1886, in the Cape, Natal and Transvaal in 1902-1903, and generally throughout the country in 1906-1908 and 1911-1912.

⁸⁸ J. McCulloch, *Black Peril, White Virtue. Sexual Crime in Southern Rhodesia, 1902-1935* (Indiana: Indiana University Press, 2000), p. 11.

periods of white immigration. White fears far superseded the actual incidence of sexual crime and this, he argued, was contrived by settlers in order to secure political advantages within the settlements and to consolidate white power over locals especially amongst new arrivals.⁸⁹ John Pape suggested that the Black Peril scares created some form of cohesion amongst dissenting white voices in the face of a perceived black sexual onslaught. In effect, it attempted to consolidate a white male identity.⁹⁰ It is anthropologist Ann Stoler who proposed the idea that the Black Peril promoted real and perceived threats to internal cohesion or boundaries of white communities in her study on the Dutch East Indies and Indochina, with brief mention of British and Belgian Empires. Where these boundaries were fragile, panic erupted. She argued that boundaries of race and gender were also a boundary of colonial authority.⁹¹ Sociologist Stanley Cohen pointed out the role of the media in creating and sustaining moral panics such as this.⁹² This anxiety far superseded that of inter-racial murders and had far reaching consequences for inter-racial sex and sexuality, all in the name of protecting white female virtue.⁹³ This hardening obsession culminated in calls for the death sentence for *all* sexual transgressions against white women. Ironically, in mother-country imperial Britain, the death sentence for rape had already been revoked in 1841.⁹⁴

Clearly the panic had little connection with rape but rather with the full control of the sexualised bodies of white women. Legislation was enacted to control white women from even engaging in inter-racial consensual sex.⁹⁵ Naturally, contestation to these control mechanisms was visible over time and had far reaching consequences for the settlers.⁹⁶ This

⁸⁹ D. Kennedy, *Islands of White: Settler Society and Culture in Kenya and Southern Africa, 1890-1939* (Durham: Duke University Press, 1987), pp. 138-146.

⁹⁰ J. Pape, "Black and White: the 'Perils of Sex' in Colonial Zimbabwe", *Journal of Southern African Studies*, 16 (4), 1990, pp. 699-720.

⁹¹ A. Stoler, 'Carnal Knowledge and Imperial Power: Gender, Race, and Morality in Colonial Asia', M. di Leonardo (ed.), *Gender at the Crossroads of Knowledge: Feminist Anthropology in the Postmodern era* (Berkeley: University of California Press, 1991), p. 68.

⁹² See for example S. Cohen, *Folk Devils and Moral Panics: The Creation of the Mods and Rockers* (Oxford: Martin Robertson and Co, 1980).

⁹³ J. McCulloch, *Black Peril, White Virtue. Sexual Crime in Southern Rhodesia, 1902-1935*, p. 4.

⁹⁴ For more detail on rape history in Britain, refer to A. Clark, *Women's Silence, Men's Violence: Sexual Assault in England 1770-1845* (London: Pandora, 1987) and J. Bourke, *Rape: A History from 1860 to the Present* (London: Virago Press, 2007).

⁹⁵ For example, the Immorality Suppression Ordinance No. 9 of 1903, the Immorality and Indecency Suppression Ordinance No. 1 of 1916.

⁹⁶ McCulloch cautions against using an over-arching theory on the Black Peril, as expounded by Stoler, as he demonstrates that white dissention occurred before the Black Peril scares in Southern Rhodesia and argues that relations of race, gender and class were unstable at different periods and in different places, J. McCulloch, *Black*

account of contextualising white ideals, actions and thoughts has been criticised for not contemplating the deeper implications for the other races.⁹⁷ Historian Munyaradzi Mushonga fills this lacuna by contemplating the effects of legislation on black and white sexuality in Southern Rhodesia. He argued that anti-miscegenation laws introduced in 1903 served as a tool of control but also reflected white male desire of the black woman that culminated in the proliferation of mixed race babies in the Southern African state. Indeed, he cites numerous statistics not simply on the coloured populations but also on the number of “European men” living with “stinking Kaffir women”.⁹⁸ White women, he later stated, “driven by both desire and an appetite for the exotic and wild” even blackmailed their “houseboys” into sex, even reverting to threats of “concocted rape charges”.⁹⁹ Theorists such as Frantz Fanon and Robert Young postulated that theories of race in the 19th century were in fact covert theories on sexual desire.¹⁰⁰ According to Fanon, in the colonial context the literal and symbolic become indistinguishable and the collective became the hegemonic.¹⁰¹

All attempts to criminalise white male voluntary relations with black women were systematically rejected.¹⁰² This, according to Mushonga, alleviated any regret that “a white man/rapist” would have had in forcing himself on “a truly defenceless black woman”.¹⁰³ The assumption made here, of course, is that white men and rapists were a definable ‘other’ with only some cases of *truly* defenceless women. Juxtaposed are archival accounts which show the sexual exploitation of black men by white women. Interestingly, the black “houseboys” would report the incidents to the authorities and an investigation would ensue. It was rare that charges were actually laid against the white females who coerced their victims into sex.

Peril, White Virtue. Sexual Crime in Southern Rhodesia, 1902-1935, p. 9. Michael Banton also makes this point in *Racial Theories* (Cambridge: Cambridge University Press, 1989), pp. 77-78.

⁹⁷ D. Jeater, “Review: ‘Black Peril’ in Southern Rhodesia”, *Journal of Southern African Studies*, 28(2), 2002, pp. 465-467.

⁹⁸ For a full discussion on the rise of the coloured population of Zimbabwe, refer to R. S. Roberts, “The Settlers”, *Rhodesiana*, 39, 1978, pp. 55-61, who argues that the high coloured population increased from 1901 to the 1940s not through immigration but miscegenation, clearly in defiance of the immorality laws in place. Also refer to I. Mandaza, *Race, Colour and Class in Southern African: A Study of the Coloured Question in the Context of an Analysis of the Colonial and White Settler Racial Ideology, and African Nationalism in Twentieth Century Zimbabwe, Zambia and Malawi* (Harare: SAPES Books, 1997).

⁹⁹ M. Mushonga, “White power, white desire: Miscegenation in Southern Rhodesia, Zimbabwe”, *African Journal of History and Culture*, 5(1), 2013, pp. 1-12.

¹⁰⁰ See for example F. Fanon, *Black Skin, White Masks* (London: Pluto Press, 1986); R. J. C. Young, *Colonial Desire: Hybridity in Theory, Culture and Race* (London: Routledge, 1995).

¹⁰¹ F. Fanon, *The Wretched of the Earth* (New York: Grove Press, 1968), pp. 38-40.

¹⁰² Reputed to have had several coloured children.

¹⁰³ M. Mushonga, “White power, white desire: Miscegenation in Southern Rhodesia, Zimbabwe”, *African Journal of History and Culture*, 5(1), 2013, p. 3.

Generally, those prosecuted would have a much lighter sentence, not unusual in itself as generally women received lighter sentences, or would simply be deported. Naturally, a logical explanation had to be found and many were simply declared “mentally imbalanced”. Young offenders were sent to work camps rather than be exposed to “habitual criminals” in prison.¹⁰⁴

Idiosyncrasies also existed outside of the Peril mania if the white women concerned were deemed non-conformist and whose assumption of female virtue undermined the usual responses to inter-racial rape. This would include foreign nationals outside of the British realm, women who consumed alcohol, women who were possibly involved in prostitution, were no longer virgins or had children out of wedlock. Also women known to have coerced “boys” into sexual liaisons were reprehensibly treated in the courts. In these instances, clear court evidence shows that the prosecutors spent much time questioning the victims and calling witnesses to contradict their testimony. The accused were all discharged in these cases.¹⁰⁵ Cases of rape between whites were rarely prosecuted unless under extenuating circumstances. Black victims of rape are under-researched because of the customary system and the evidence of black witnesses was generally disregarded.¹⁰⁶

Over time, rape theories have given attention to the various conditions which could mould a potential rapist. But some men remained immune according to legislation and general social mores.

Hidden Rapists

In the colonial setting, and despite the general theories on men as rapists, the literature has suggested that black men were treated with particular suspicion, white men, less so and men of mixed origin almost not at all. One should add that the majority of rapists who appeared before the Cape courts were mixed. There are a few categories of men who also

¹⁰⁴ M. Mushonga, “White power, white desire: Miscegenation in Southern Rhodesia, Zimbabwe”, *African Journal of History and Culture*, 5(1), 2013, pp. 7-8.

¹⁰⁵ J. McCulloch, *Black Peril, White Virtue. Sexual Crime in Southern Rhodesia, 1902-1935*, pp. 30-32.

¹⁰⁶ *Ibid.*, p. 33.

remained hidden from the public eye for other reasons. Given the impossible task of discussing global rape legislations in this section, only pertinent social categories of hidden rapists will be mentioned.

Whether there can ever be false claims of rape, according to certain theories, remains debateable. However, it cannot be denied that some cases were proven to be false but questions still remain as to whether the general social mores about women had more of an impact on the outcome of a case rather than the actual details of the crime.

Women and girls were considered natural liars. This is most visible amongst African-American women, accused of using fallacious rape accusations to entrap men.¹⁰⁷ In the 1830s, Irish women were considered “notorious liars”, hoping to blackmail their victims or entrap them into an unwanted marriage. They would also influence their female off-spring. As such, from the 17th century in Britain, the “cautionary instruction” in cases of rape meant scrutinising the private life of the victim of rape. This was a general trend which continued during the 19th and early 20th centuries in Britain. In the southern states of America, however, this was less apparent in cases of white women against African-American men.¹⁰⁸ Indeed, this rhetoric is quite prevalent in most colonial contexts. By the 1960s, it was believed that women were either suffering from an erotic delusion or psychologically imbalance, or derived a sadistic pleasure from accusing innocent men. Many of these narratives were instigated by psychoanalysts.¹⁰⁹

Other plausible explanations for false rape accusations were social or financial gain. In the event of an unwanted pregnancy, they could compel their partner to marry. They could also get some form of financial compensation. By the 1980s, more middle class families were being thrown into turmoil as psychoanalysts claimed to have refined the art of recovering

¹⁰⁷ This stemmed from the notion that these women were naturally promiscuous and thus could not be raped. This has its origins during Negro Slavery during the 1850s when men were not penalized for raping slave women. These “lascivious” women were blamed for seducing white men, J. Bourke, *Rape: A History from 1860 to the Present*, p. 77.

¹⁰⁸ *Ibid.*, pp. 391-394.

¹⁰⁹ Sigmund Freud’s “seduction theory” suggested that certain psychological symptoms, such as hysteria, would be alleviated if the patient uncovered and discussed childhood sexual abuse. He later discovered that the unconscious could not determine truth from fiction and abandoned his initial theory, *Ibid.*, pp. 69-70.

“previously forgotten memories” of childhood sexual abuse in order to cure psychological trauma. This recovered memory was later termed “false memory syndrome”. Sexual abuse became a metaphor for all that was wrong in a woman’s life. It created, in most instances, unnecessary and traumatic turmoil within families and obscured real cases of sexual abuse. More importantly, it fundamentally entrenched even further a distrust of the testimony of victims of rape during the criminal proceedings.

From the 19th century until the 1980s, children, too, were treated with unjustifiable caution. It was commonly believed that 19th century working-class women “misguided” children suffering from vaginal infection into naming a “sexual offender” because they remained ignorant of the effects of poor personal hygiene and concluded that someone *must have* raped their daughter. Physicians debated whether mothers were more malicious than ignorant, as some would brush the vaginas of their children to further prove the allegation. Literature on sexually transmitted infections was clearly in its infancy as venereal discharges were often misdiagnosed as “irritations” well into the 20th century.¹¹⁰ Therefore, professionals were also unable to decipher adequately between real and perceived cases of sexual violence. Whether through ignorance, malice or pure manipulation, the public was warned that the undue attention given to these “victims” would lead them to genuinely believe that they had been the object of some sexual predator. This was compounded by the moral panic of the time in which men were perceived to have a natural appetite for molesting young girls. Within all of the uncertainty grew a mistrust of the testimony of women and children and those most affected were the poorer classes. Nonetheless, these claims cannot detract from real cases of rape.

Historically, only men who were strangers to their victims could be convicted of rape. Husbands, boyfriends and close acquaintances, for example, could not conceivably rape their partners.¹¹¹ By the 1970s, feminists argued that a woman’s body belonged to herself, therefore shifting attention away from the sexual aspects of rape towards power and domination of wives by husbands. They showed that “stranger rapes” were not as common as

¹¹⁰ Syphilitic discharges were identified from the mid-19th century and gonorrhoea from 1879.

¹¹¹ K. Weis & S. Borges, “Victimology and Rape: the Case of the Legitimate Victim”, *Issues in Criminology*, 8(2), 1973, pp. 71-115; J. Bourke, *Rape: A History from 1860 to the Present*, pp. 305-316.

believed and argued that acquaintance rape victims were also less likely to report these incidences to the authorities or were easily convinced to drop the formal charges because they were financially and emotionally dependent on their husbands and feared for the well-being of their children.¹¹² Wives had limited power over their financial security. It was only by the 1880s in both America and Britain that she could own property, sign contracts and act independently in certain situations. By 1976, Nebraska was the first American state to revoke the marital rape exemption and by 1993, all of the United States had followed suit. Scotland paved the way when it revoked the clause in 1989, and by 1992, it had been revoked in the entire United Kingdom.¹¹³ The corresponding legislation in South Africa was implemented in 1998 under the Domestic Violence Act No. 16. This is particularly important when analysing rape reporting and rape statistics as changing attitudes towards sex and marriage as well as changing legislation on rape in marriage would severely impact recorded rape statistics. Attitudes towards sex in any relationship has severely hampered the reporting of rape within these unions and by extension, has led to a severe absence from official records of this type of rapist. Included in this category would be gay rapists and curative/corrective rapists as the history of homosexuality within each setting would require further investigation.

Date rapists were also less likely to be convicted for rape. The common belief was, if she “got herself into the situation she deserved it!”. After all, she should have controlled his arousal as it was quite beyond his control, especially if there were signs of any foreplay. Why lead him on if she was not willing to have complete penetration? Criminologists Kurt Weis and Sandra Borges pointed out that certain “ambiguous” locations of dates, such as cars, cinemas, and fraternity houses, also served as grounds for dismissal in cases of rape. If drugs or alcohol were consumed, this would provide both alibi and impetus for inappropriate behaviour.¹¹⁴ Inebriated or drugged rapists were more likely to be acquitted or receive reduced sentences.

The temperance movements in the United Kingdom as well as feminists and reformers during the 19th century campaigned against men’s use of alcohol and drugs to

¹¹² J. Bourke, *Rape: A History from 1860 to the Present*, pp. 316-320.

¹¹³ *Ibid.*, pp. 324-325, 327-328.

¹¹⁴ K. Weis & S. Borges, “Victimology and Rape: the Case of the Legitimate Victim”, *Issues in Criminology*, 8(2), 1973, pp. 71-115.

coerce vulnerable women into a life of debauchery, sexual activity, and often prostitution. Their influence grew in the late 19th century and served in campaigns against the sale of liquor. Alcohol was seen as the downfall of respectable women, and that it would leave poorer classes of women vulnerable to the advances of their husbands, fathers, partners, and neighbours. Men who enticed women to drink were found guilty of “aggravated seduction”. One leading reformer, Francis William Newman, even advocated that these crimes “should be simply called rape”.¹¹⁵ Ironically, women were expected to be responsible enough not to consume liquor or face the consequences of their actions if raped. Men, on the other hand, had diminished responsibility if under the influence. From the early 1900s, criminologist Gustav Aschaffenburg postulated that industrial workers were prone to rape because relative prosperity was linked to increased indulgence of alcohol.¹¹⁶ Links between alcohol and rape in urban slums proliferated. Historian Martin Wiener suggested that in the second half of the 19th century, alcohol consumption was to blame for most crime in Victorian society.¹¹⁷ American social reformers also blamed African-Americans and immigrants liquor shops for the proliferation of white slavery in which white women were being sold into sexual bondage. Within the urban streets, the sale of liquor and the mixing of the races were condemned as urban vice.¹¹⁸ According to Gurney Williams in “Rape in Children and in Young Girls” (1913), these sexually-charged urban environments caused drunken men, underfed and living in overcrowded facilities, to commit acts of sexual assault. He also blamed the mothers of these victims for allowing their daughters to socialise with these men as well as sending them unaccompanied to local shops, increasing their chances of assault. These families were often poor and needed to take boarders to supplement the household income. Daughters were often raped by these men.¹¹⁹ Both in America and in Britain, overcrowding, especially amongst immigrants, largely explained, and almost excused, incest and rape. Alcohol abuse and poor living conditions are both pertinent factors in the Cape.

During the interwar years in England and Scotland, the increase in rape prevalence was explained in terms of high rates of unemployment and appalling housing conditions in

¹¹⁵ J. Bourke, *Rape: A History from 1860 to the Present*, pp. 54-56.

¹¹⁶ G. Aschaffenburg, *Crime and Repression* (London: Heinemann, 1913), pp. 117-118.

¹¹⁷ M. Weiner, *Men of Blood. Violence, Manliness and Criminal Justice in Victorian England* (Cambridge: Cambridge University Press, 2004), pp. 268-269.

¹¹⁸ B. Donovan, *White Slave Crusades. Race, Gender, and Anti-Vice Activism, 1887-1917* (Urbana: University of Illinois Press, 2006), p. 49.

¹¹⁹ Quoted in J. Bourke, *Rape: A History from 1860 to the Present*, pp. 126-127.

urban areas. Marie Kopp remarked that migration to urban settings in search of a better life in the 1930s led to a growing level of violence amongst desperate men that manifested in increased incidences of rape.¹²⁰ A similar trend was seen in America by Jacob and Rosamond Goldberg in the 1930s. Lodgers, lack of adequate beds for children and mothers distraction during economic hardships contributed to neglect and to the sexual violation of children. These depraved environments led these men, cut off from their families, and unable to find willing sexual partners, to ignite a possible latent sexual drive and turn towards sexual violence, especially if under the influence of alcohol. But the perpetrators were not restricted to foreigners but also young boys void of any proper moral or religious training. Fathers too, in despair and under the influence of alcohol, seized their daughters, a readily available female, in order to vent their over-stimulated senses.¹²¹

From the 1920s, alcohol was considered a sufficient explanation for rape.¹²² Temperance movements in the United States felt that the social ills brought on by alcohol consumption could be eradicated by advocating moderation. Between 1920 and 1933, there was a complete ban on production, sale, transportation and consumption of intoxicating liquor during the Prohibition-era. This did little to curb bootlegging and gangs made lucrative profits from the sale of alcohol. After the Wall Street Crash of 1929, the Great Depression and increased anti-prohibition movements, the government realised the revenue potential. The 18th Amendment to the Constitution was subsequently repealed and the 21st Amendment ratified on 5 December 1933.¹²³ This provided a much-needed alibi for sexual miscreants. By the mid-1950s, one prison medical officer suggested that there was little need to look for psychiatric abnormality if the rapist was intoxicated as alcohol reduced inhibitions.¹²⁴ Many offenders suggested that they would not have committed the offence if in a sober state. Ensuing experiments have proven that this may well be a socially constructed notion rather than having any chemical credence.¹²⁵ By the 1970s and 1980s, many of these excuses

¹²⁰ M. Kopp, "Surgical Treatment as Sex Crime Prevention Measure", *Journal of Law, Criminology, and Police Science*, 28, 1938, p. 696.

¹²¹ J. Goldberg & R. Goldberg, *Girls on City Streets. A Study of 1400 Cases of Rape* (New York: American Social Hygiene Association, 1935), p. 187.

¹²² W. Norwood East, "Observations on Exhibitionism", *The Lancet*, 23 August 1924, pp. 373-374.

¹²³ <http://history1900s.about.com/od/1920s/p/prohibition.htm> (accessed 5 July 2013)

¹²⁴ W. Calder, "The Sexual Offender: A Prison Medical Officer's Viewpoint", *The British Journal of Delinquency*, 6(1), 1955, pp. 28.

¹²⁵ In an experiment with alcoholic, non-alcoholic and placebo drinks, stark positive responses were observed to violent and violent-erotic slides by those college students believing that they were consuming alcohol, W.

became moot as feminists argued that women had the right to withdraw consent at any stage of a sexual encounter and this gave rise to increased convictions for acquaintance rape.

By the 20th century, fear of drugging turned into a moral panic as more women became victims of alcohol and drug rapes as appearance of Gamma-Hydroxybutyrate (GHB) and Flunitrazepam (Rohypnol) became more common.¹²⁶ This replaced induced unconsciousness when chloroform was used from the mid-19th century. Reported incidences were not restricted to women with some cases involving physicians charged with molesting patients under anaesthetic.¹²⁷

Regardless of the use of alcohol or drugs, it was strongly believed that a woman could simply not be raped. There had to be visible signs of physical violence and resistance to the assault. Psychological coercion was considered preposterous. If there was no wound, there was no rape. ‘Sensible women’, so it was said, would have been able to defend themselves. Previous sexual encounters, too, would determine your fate. A woman who, for example, had previously consented to group sex could never cry rape in a new situation. Mature women, who already had children, were met with perplexed disbelief when they attempted to report cases of rape.¹²⁸ Global perspectives by the 1830s led jurists to believe that it was impossible to rape a resisting woman or a female child.¹²⁹ According to Bourke, by 1890 the medical fraternity was of the opinion that it was impossible for a single man to rape a single woman. In the absence of obvious physical injury, lawyers argued that the woman had not resisted with all her strength. In some instances of physical injury, it was put forward that these were sustained through horse riding or from some other medical condition. This was also indicative of the class of a woman – the better classes would show visible signs of restraint before yielding. Signs of resistance were an extremely important factor in court cases at the Cape.

George & G. Marlatt, “The Effects of Alcohol and Anger on Interest in Violence, Erotica, and Deviance”, *Journal of Abnormal Psychology*, 95, 1986, pp. 150-158.

¹²⁶ These drugs cause a lowering of anxiety and inhibitions rather than causing the victim to lose consciousness. They also create a “memory void” or anterograde amnesia.

¹²⁷ J. Bourke, *Rape: A History from 1860 to the Present*, pp. 56-58.

¹²⁸ This echoes the findings of Craig Palmer and Randy Thornhill: women passed childbearing age are less harmed by sexual coercion than fertile younger sisters, R. Thornhill & C. Palmer, *A Natural History of Rape: Biological Bases of Sexual Coercion*, pp. 89-90.

¹²⁹ M. Ryan, *A Manual of Medical Jurisprudence* (London: Renshaw and Rush, 1831), p. 183.

By 1913, it was established that the female body was “designed to prevent penetration”. It was impossible to “sheath a sword into a vibrating scabbard”. This argumentation continued well into the 1970s. As such, it was thought that rape was, in fact, rare. All acts of penetration by a single man were considered consensual, especially if the victim was a working-class girl. They were considered “more familiar with sex” and better equipped to protect themselves from attack. Their testimony was rarely accepted and any genital injury was blamed on their prior sexual “misconduct”, clumsy comportment on bicycles, poor hygiene or venereal disease. Women who were more “delicate” were more likely to be “overcome” by her assailant. This myth eventually died down in legal and forensic texts but remained within popular culture throughout the 20th century. Gang rape was considered the only feasible scenario in which a woman’s testimony would be granted more credence.¹³⁰ However, it was implausible for two men to rape a girl; it required at least three as “women with skirt up run faster than man with trousers down”!¹³¹

It is in the context of understanding who potential rapists could be and who rapists could not be that attention is now drawn to those accused and those convicted of rape. It is through the testimony of these types of rapists that attention can eventually be given to the motivations for rape.

Alleged and Convicted Rapists

Most contemporary studies on rapists were conducted in North America amongst college students and incarcerated rapists,¹³² both potential and convicted rapists. The global

¹³⁰ J. Bourke, *Rape: A History from 1860 to the Present*, pp. 21-49.

¹³¹ K. Whitehorn, “Rape: Fact and Fantasy”, *The Bulletin*, 31 August 1974, p. 33.

¹³² M. Koss, C. Gidycz, N. Wisniewski, “The scope of rape: incidence and prevalence of sexual aggression and victimisation in a national sample of higher education students”, *Journal of Consulting and Clinical Psychology*, 55, 1987, pp. 162–170; M. Koss & C. Oros, “Sexual experiences survey: a research instrument investigating sexual aggression and victimization”, *Journal of Consulting and Clinical Psychology*, 50, 1982, pp. 455–457; L. Merrill, C. Thomsen, S. Gold & J. Milner, “Childhood abuse and premilitary sexual assault in male navy recruits”, *Journal of Consulting and Clinical Psychology*, 69, 2001, pp. 252–261; V. Stander, L. Merrill, C. Thomsen, J. Crouch & J. Milner, “Premilitary adult sexual assault victimisation and perpetration in a Navy recruit sample”, *Journal of Interpersonal Violence*, 23, 2008, pp. 1636–1653; C. Senn, S. Desmarais, N. Verberg & E. Wood, “Predicting coercive sexual behaviour across the lifespan in a random sample of Canadian men”, *Journal of Social and Personal Relationships*, 17(1), 2000, pp. 95–113; A. Abbey, M. Parkhill, R. BeShears, A. Clinton-Sherrod & T. Zawacki, “Cross-Sectional predictors of sexual assault perpetration in a community sample of single African American and Caucasian Men”, *Aggressive Behaviour*, 32, 2006, pp. 54–

studies on convicted rapists have long provided statistics, descriptions of rapist profiles, probability of recidivism, victim preferences, and location of rapes.¹³³ But they, too, are problematic. Legal analyst, Diana Scully, conducted 114 interviews with convicted rapists and 74 other felons in maximum and medium security prisons in the United States. Interviews with undetected rapists would have greatly enhanced her research findings but this would have proven time-consuming and created many ethical dilemmas under the researcher confidentiality clause.¹³⁴ Added to this, she pointed out that prisoners have the reputation of lying, fabricating and manipulating their testimony, especially when confronted with the prospect of early parole.¹³⁵ The very nature of their testimony is therefore questioned. Nonetheless, she does provide the only definable categories of convicted rapists that correlate with this study on the Cape: admitters (who admitted to raping their victim), deniers (who admitted having sexual contact with their victim but denied that force was used) and those who denied any sexual contact with their victims.¹³⁶ These consistently stable categories are useful and indeed reflect the categories found in the Cape records but questions remain as to the motivation of rapists, the reasons for their behaviour and why they have been allowed to proliferate?

The remaining identifiable types of rapists pertinent to this study include adult rapists, juvenile rapists, baby rapists and gang rapists. The following studies bridge the divide between the theoretical understanding of potential rapists, as discussed above, and those who have been accused and/or convicted of rape.

Nicholas Groth, conducted a study of 500 offenders in both institutional and community-based programmes. This clinical perspective described the act of rape to be a symptom of a reaction to psychological crisis.¹³⁷ It failed to explain and interpret rapist motivations, attitudes, and behaviour at the time of the assault. Criminologist Menachem

67; N. Abrahams, R. Jewkes, M. Hoffman & R. Laubscher R, "Sexual violence against intimate partners in Cape Town: prevalence and risk factors reported by men", *Bulletin of the World Health Organisation*, 82, 2004, pp. 330–337; R. Jewkes, K. Dunkle, M. Koss, J. Levin, M. Nduna et al, "Rape perpetration by young rural South African men: prevalence, patterns and risk factors", *Social Science and Medicine*, 63, 2006, pp. 2949–2961.

¹³³ See for example, M. Amir, *Patterns of Forcible Rape* (Chicago: University of Chicago Press, 1971); C. Alder, "The Convicted Rapist: A Sexual or Violent Offender?", *Criminal Justice and Behaviour*, 11(2), 1984, pp. 157-177; A. J. Schiff, "Statistical Features of Rape", *Journal of Forensic Science*, 14(1) 1969, pp. 102-111.

¹³⁴ D. Scully, *Understanding Sexual Violence: A Case Study of Convicted Rapists* (New York: Routledge, 1994), p. 7.

¹³⁵ *Ibid.*, p. 26.

¹³⁶ *Ibid.*, pp. 27-28.

¹³⁷ A. N. Groth, *Men Who Rape: The Psychology of the Offender* (New York: Plenum Press, 1979), p. xii.

Amir, who studied both rape and rapists in Philadelphia between 1958 and 1960, located the rapist “squarely within the subculture of violence”.¹³⁸ Society, not psychology was to blame. It is worth noting that discussions amongst social workers of the effects of social environments upon rapists in the Cape occurred at the same time. However, as in South Africa, the role of society continued to be downplayed in favour of the pathological explanation. Sociologist Gary LaFree, who conducted a ten-year study on rapists in Indianapolis in the United States during the 1970s and 1980s, noted that “psychological explanations are likely to be more palatable to the public because they portray rape not as a widespread social problem, but as an isolated act of a few sick individuals”.¹³⁹ He also demonstrated other similarities between America and South Africa. He argued that a victim-perpetrator dyad existed in which black rapists were more severely dealt with in cases of black-on-white rape, in which black intra-racial rapes were the least severely punished (thus poorly policed), and in which non-traditional women (those who had sexual relations outside of marriage, wore ‘provocative’ clothing, used alcohol or drugs, had prior ‘acquaintance’ with the defendant), were more likely to be ostracised in the court proceeding. Thus, the criminal justice system entrenched desired gender norms by focusing on the victim of rape.¹⁴⁰

By the 1960s, concerns were raised over the effects of violent sub-cultures, such as gang cultures, in America. Sociologists Clifford Shaw and Maurice Moore, pointed out in 1968 that a boy, raised in gang culture in inner-city slums, separated from his familial ties and from conventional regulatory controls, was subject to the brutalising forces of other gang members and prostitutes in which rape became a common way of life. The impersonal and anonymous urban lifestyle led to a separation of acceptable forms of behaviour from impulse gratification. Over 90% of these rapes were intra-racial and attributed to a ghetto culture in which disenfranchised men asserted their dominance through rape. This was not restricted to African-Americans but also to immigrants; this was also attributed to a feeling of frustration within the politically oppressive white society of the 1960s. This socio-political context encouraged black men to take out their aggression on white women, “the prized property of white men”.¹⁴¹

¹³⁸ A. Paske, *Rape and Ritual* (Toronto: Inner City Books, 1982), p. 10.

¹³⁹ G. LaFree, *Rape and Criminal Justice: The Social Construction of Sexual Assault* (Belmont: Wadsworth Co, 1989), p. 3.

¹⁴⁰ *Ibid.*, pp. 140, 145.

¹⁴¹ Quoted in J. Bourke, *Rape: A History from 1860 to the Present*, pp. 130, 132-133.

Criminologist G. D. Woods added that “pack rape” epidemics which flourished in the working-class suburbs of Sydney in the 1960s, were the result of social disorganisation due to migration during the interwar years in which unequal distribution of resources did little to alleviate the disruptive process of suburbanisation. Local authorities were unable to provide adequate facilities such as schooling. The environment was particularly aggressive and pack rapists, the Australian term for gang rapists, were simply acting in accordance with the culture of violence present in the area.¹⁴² They did not need to be inebriated to act out violently as this was already becoming entrenched as a cultural norm. These conditions certainly resonate with the Cape context of the 1960s as well as the broader conditions of social dislocation throughout South Africa. These environmental factors were also compounded by developmental failures brought on by familial pathology such as parental separation or divorce, drunkenness, cruelty, immorality and general parental neglect.¹⁴³

These global studies on rapists give some indication of who the rapists are, who they could be, who they are predetermined to be at birth and who they can never be. It is in explaining why they do the things they do, real or theoretical, that many similarities can be found which are relevant to this study. Pathology, being a black man, masculinities in crisis, power and gender, race, subcultures of violence, pornography, prostitution and the social, political and economic environments are recurrent themes which will be discussed in the context of the Cape.

Dissertation Outline

Chapter 2: Theorising Rape in South Africa and the Cape Rapist, will provide a discussion on the secondary literature on rape in South Africa in order to contextualise the detailed study of rapists in the Cape. **Chapter 3: The State and the Judiciary: Legislated Rapists During Segregation and Apartheid** will investigate the changing definitions of rapists within the legislation as well as legislation regulating sexuality. This will provide

¹⁴² G. D. Woods, “Some Aspects of Pack Rape in Sydney”, *Australian and New Zealand Journal of Criminology*, 2(2), 1969, pp. 114-115.

¹⁴³ L. Doshay & G. Henry, *The Boy Sex Offender and His Later Career* (Montclair: Patterson Smith, 1969), pp. 166-167.

context to a detailed study on rape statistics, attached in the **Appendix**. **Chapter 4: Judicial Procedures: Towards Locating the Cape Rapists, c. 1910-1975**, will critically evaluate the judicial process and sentencing practices in the Cape. **Chapter 5: Identifiable Types of Rapists in the Cape Courts, c. 1910 to 1980**, will identify certain rapist types from the Cape court proceedings as well as offer explanations for their behavior. **Chapter 6: The Cape Coloured Rapist, c.1960-1980**, will then turn towards identifying and explaining the coloured rapist in the Cape Peninsula.

Methodology

There is no existing sexual violence timeline in South Africa from which to work, yet the categories of rapists visible in the Cape during the timeframe of this study as well as contemplating the reasons for their behaviour (nature/nurture) must be contextualised according to a particular timeframe. Given the importance of political legislation upon the environment in which rapists were born and raised as well as legislative changes which legally defined rapist, the broad political timeframes of segregation (1910-1948) and *apartheid* (1948-circa 1980) will be used as a foundation. These broad categories are also convenient for two particular commissions of enquiry which have investigated the conditions of the most populous group in the Cape, the coloureds. It is worth noting now that the majority of rapists located in the Cape Court records were coloured. Therefore, the 1937 *Report of the Commission of Inquiry Regarding Cape Coloured Population of the Union* and the 1976 *Commission of Inquiry into Matters Relating to the Coloured Population Group* will provide invaluable context under which these rapists were shaped. Naturally, consideration must be given to the political *zeitgeist* during which these reports were published. Similarly, texts and sources on coloured political participation and community interventions also need to be contemplated. Here, one is confronted with class distinctions in which only the elite voices have been adequately documented. To overcome this problem, considerable lengths have been taken to formulate a narrative about average coloured people's reaction to rape in the Cape through a meticulous perusal of the press (such as newspaper and magazine articles from 1900 to 2007), especially letters to the editor in local newspapers. These, too, are riddled with possible editorial bias and political inclinations. Nevertheless, they do provide an alternative discussion to official records of both commissions of inquiry and court records.

There are also two major distinctions to be made, as suggested in the title. The first deals with contextualising Cape rapists but the second, equally important, of locating Cape rapists within the context of rape in South Africa. This fundamentally answers the third thesis question of how different are they? To achieve this, the state of rape in the Cape within the broader state of rape in the country will be introduced in Chapter 2 and referred to throughout the dissertation.

Over 5000 Cape Supreme Court records and Western and Northern Circuit Court records spanning from 1900 to 1977 (there is a 25 year period in which cases are closed to the public), testimonies of all those implicated in contested sexual violations, whether convicted or acquitted, whether the accusation was founded on a myth (such as the Black Peril) or hampered legislation (for example under sodomy), provides personal testimonies from rapists, victims and witnesses.¹⁴⁴ Surviving records represent a minute portion of the actual cases of reported rape. For obvious reasons, not all of the cases can be referred to in this study. Trends will therefore be referred to but not necessarily documented within the study. Secondly, because the most revealing body of archival evidence is the court record, deliberations on rape trends will be presented to the reader, as they would in a court of law, and might require one to decide, or judge, for himself or herself, whether the specific case is simply anecdotal or indeed a reference to a broader trend. There exists the undeniable problem of making generalisations about acts which so deeply affect each individual involved in a vastly different manner. Not only is the individual act of rape a tricky minefield to negotiate but so too is the complex society in which these rapes occurred.

Here, one is reminded of historian Roy Foster who went to great lengths to suggest an alternative approach to investigating Irish history.¹⁴⁵ Both Ireland and South Africa have a rather turbulent colonial past. Victimhood has become a national past-time for those at the receiving end of colonial conquest. Alternative histories, he argues, requires the historian to break from the “abuser-abused-abuser-abused” cycle, in other words, simply being framed as passive victims of a system. Their personal narratives thus serve as a new testimony to the

¹⁴⁴ It must be noted that this dissertation is a drastically shortened version of the initial manuscript. A vast majority of the archival material will be used in future publications.

¹⁴⁵ R. Foster, *The Irish Story: Telling Tales and Making it up in Ireland* (London: Penguin Books, 2002), pp. xi-xx.

“dominant history”. The lived experiences of people, he further argues, remind us of the “mesh of nuance, complexity and contradiction involved when the stories of nations intersect with those of supposedly emblematic individuals”. He reminds the reader of Hannah Arendt’s assertion that the historian has the task of setting the narration in motion and involving the reader in it. More importantly, he warns against generalisation: “It is also a reminder that the prescriptive and dismissive imposition of frameworks taken straight from one theoretician or another, irrespective of context or temporal conditions, can illuminate very little and may obscure a lot”. The context under which these recorded rape cases unfolded are only made known through an arguably flawed archival repository. Some obvious trends may be gleaned but I remain cautious to avoid unnecessary and largely unusable generalisations to prove or disprove a particular theoretical construct which either prove or disprove the existing discourse. Much more attention is given to the personal and alternative narratives which rise from the sources because of the nature of the study, even if this “can also run the danger of collapsing alternative history into anecdote and psychobabble (or anecdotal psychobabble)”.

Court proceedings have been regulated and documented by those holding power. They are therefore a reconstructed representation of what took place in the court room or during the court procedure. Many are absent from the archives. All criminal cases were initially presented in a Magistrate’s Court. If the lower court felt that a stiffer sentence was required given the evidence, the case was referred to the Attorney-General. He would decide on the charge. This would therefore depend on the evidence, the statutes on rape and other sexual offences. Investigating rape cases only proved ineffective as the option to prosecute on a lesser crime of sexual violence in order to secure a conviction was frequent. It should be made clear that throughout the period investigated, rape was defined as vaginal penetration with a penis with visible signs of physical damage to the victim. Similarly, in cases where a more violent crime had taken place, such a murder, the more “severe” crime became the formal charge. The courts wanted retributive justice and were not always concerned with rehabilitating the criminal except in cases involving juvenile rapists.

Many more cases were dealt with in the Magistrates’ courts, but these archives no longer exist. A sample of each session is housed at the National Archives but the rest have been destroyed. Therefore, only cases sent to the Supreme Court could be verified because

they could serve as case laws in other similar offences. Many of the cases also lacked details, especially if the rapist admitted guilt. Those sent for appeal to the Appellate Court in Bloemfontein, were the most detailed. These would mostly be cases in which the convicted rapist was sentenced to death.

In most instances, inferences had to be drawn from all of the supporting documentation to reconstruct the details of the assault. Depositions, court and medical reports as well as court testimonies required as much interpretation as interviews, surveys, and questionnaires. Most of the cases investigated involved men incarcerated for long periods awaiting trial. Their testimony is no doubt also tainted by those around them including, although historically this was minimal, the advice of the *pro deo* counsel, not always committed to serving the best interest of his client. It should be stated that all judges, juries, attorneys, advocates and medical professional were men during this period and in these courts. Little has changed since then.¹⁴⁶ Even district surgeons, charged with completing the medical examination of raped women, were men.¹⁴⁷ The courts were not only a very patriarchal environment, but also a white environment. However, it cannot be said with any certainty that the Cape Bar itself was a racist environment. This will be questioned in this study. I work from the premise that Cape liberal politics was rather particular and so too was the Cape Supreme Court. During *apartheid*, the admission of the first non-white advocate to the Cape Bar led to the Department of Works constructing a plywood partition for white and non-white advocates to robe before appearing in the court. The court itself was not segregated. The presiding judge refused and in an act of solidarity against racism within the

¹⁴⁶ N. Nyembe & S. Msimang, “Judicial equity rests on gender parity”, *Mail & Guardian*, July 19 to 25, 2013, p. 34.

¹⁴⁷ Well into the 1960s, District Surgeons charged with completing the infamous J88 medical forms detailing physical injuries during cases of sexual assault were restricted to the male fraternity. Charles Andrews, Ronald Williams, and Willie Lombard, three coloured men, were charged for the theft of a vehicle and the rape and theft of belongings of Suzanne Herison, a white spinster. After losing her virginity in a forced sexual assault, she was then expected to be prodded by the District Surgeon, Dr. Cyril Kitchener Edelstein. Outraged and after much protestation, a nurse was then charged with the task of obtaining smears from her vagina. The law had made no provisions for female district surgeons in cases of sexual assault, KAB CSC 1/1/508 and 509 Cape Supreme Court Records, Case 217/1962, *State v. Charles Andrews, Ronald Williams and Willie Lombard*. Interestingly, forensic pathologist at the University of Cape Town reported to the World Health Organisation that by 2001, the District Surgeon system was abolished in all provinces except the Western Cape. Legislative provisions were made that all clinics be able to conduct the necessary examinations in cases of sexual assault but these have not proven effective and many facilities are unable to perform the necessary forensic examinations, <http://www.ghju.uct.ac.za/sexual-offence-bill/Medico-Legal-Services.pdf> (accessed 10 June 2013)

Cape Supreme Court, robing has since then taken place prior to arrival at the Cape court.¹⁴⁸ This act of defiance is rather particular despite jurist Albie Sachs suggesting that the courts of all four provinces were acclaimed to have “on some occasions deliberately rejected the dominant racial attitudes of white South Africans, while at other times they had consciously accommodated themselves to such attitudes [...] The courts were frequently called upon to interpret ambiguous provisions in racially differential statutes, and to review the regulations of statutory bodies and the actions of administrative officials”.¹⁴⁹

The last and most challenging list of sources used is the plethora of secondary literature on rape both from within South Africa and abroad. These have proven instrumental in attempting to explain Cape rapists within a broader context as well as within theoretical debates, at the risk of negating the personal narrative. Needless to say, it is also suggestive of a history of rapists that predates that of this dissertation. Even though the focus in this study is on rapists in the Cape, there are links that need to be made across place and time. Following from this observation, an historical investigation of rapists has also required some attention to research outside of the historical discipline, such as sociology, law and psychology because these texts provide immensely rich material on particular periods of South African history. Unfortunately, the existing body of knowledge on rape seems overwhelming and despite the best of intentions, I fear that some influential works may have slipped through the fissures. Unfortunately, academic choices had to be made, as there are restrictions of time and space within this dissertation. Similarly, due to linguistic limitations, the literature has been restricted to the Anglophone and Francophone worlds, and to a lesser degree, works in the Afrikaans language.

Most importantly, attempting to investigate such a large sample has led to moments of complete desensitisation and a quest for academic idiosyncrasies at the expense of the individual. I apologise profusely to my research subjects. I am acutely aware that these cases are not only cold statistics but that they represent the realities of actual people who have undergone the most horrific of assaults.

¹⁴⁸ D. Pojur, “A British Barrister Abroad: Observing the legal profession...”, *The Middle Templar*, Winter 2011, p. 20.

¹⁴⁹ A. Sachs, *Justice in South Africa* (Berkeley: University of California Press, 1973), pp. 86, 132.

A Note on Terminology

Rape is a contested category infused with political meaning.¹⁵⁰ Legally, socially and individually, the definitions have changed over time. Terms are generally defined in studies on rape, possibly because most focus on rape victims deemed so through essentialist and ahistorical definitions of rape and consensual sex. The identification and motivation of rapists is strongly determined by non-rapist labelling. Through reasonable explanation, rapists and potential rapists can become aware of why they are labelled as such and this constructively allows them to begin the process of reflection, admission and healing. Because this analysis investigates rapists, changing definitions are an important indicator of rapist identification and motives. It is not simply the definition of rape according to politico-legal, social or individual definitions that need assessing but terms linked to sexual acts. That is, if rape is any coercive non-consensual sexual act committed, one needs to constantly define and re-define coercion, consent, sex and sexual violation. By extension, the definitions of rape victim, rapist and rape reveal themselves. This allows for adequate deciphering between acts of consensual but illegal sexual acts, from acts of rape, as well as identifying acts of clearly visible "false rapes" (such as extortion or retribution for undesirable forms of consensual sexual acts). It also excludes the more radical theory that the "sex act is basically an act of violence by the male",¹⁵¹ suggesting all sex is rape. This is a complex process for a researcher and no doubt an even more perplexing and elusive concept for some of those charged with committing rape, at times oblivious as to what they did wrong as the various definitions are certainly not congruent. One small example would be the social definition of rape in Western culture compared to that of *ukutwala* – the sanctioned abduction and sexual act upon an unsuspecting bride in Xhosa culture.

Fortunately, I am restricted by the sources. The terminology of the *zeitgeist* will be maintained. This pertains to racial classifications such as "European", "non-European", "white", "black" and "coloured" as well as derogatory terminology of the sources such as "kaffir", "native" or "delinquent". Broad categories of white and non-white are also used to

¹⁵⁰ E. Reitan, "Rape as an Essentially Contested Concept", *Hypatia*, 16(2), 2001, pp. 43-66.

¹⁵¹ W. Braun, *The Cruel and the Meek. Aspects of Sadism and Masochism. Being Pages from a Sexologist's Notebook* (New York: Lyle Stuart, 1967), p. 8.

reflect the dichotomous, yet erroneous, manner in which race unfolded within the rape debate. I shall make use of general categories as a platform from which to enter into a much-needed detailed discussion: the term black denotes those of black African descent; white refers to all those of European or Afrikaner descent; and Asian to those of Indian and Chinese descent. As far as possible, the terminology of the sources will be maintained as the choice of words does play an important interpretive element in a topic of this nature. I shall refer to rape victims as all who suffered a particularly traumatic sexual act, while admittedly some become survivors of rape.¹⁵²

Rapists will be defined as any person who committed a sexual crime including coerced, unwanted or non-consensual sex according to the legal or social sanctions of that time-period. I am fully aware of the existence of false rape claims through “victim” admission that must be taken seriously. Similarly, it is really only after the legal battle that the label is either imposed (and in some instance assumed by the actors), or legally (yet not automatically socially) exonerates the accused. Rapists, however, embark on a process of justification to assimilate their actions into a non-traumatising and non-violent self by using claims such as “she was wearing a mini-skirt” or “she was begging for it” or assuming consent during date rapes. Bourke describes such actions as eliciting “approving behaviour from the victim by translating forcible rape into romantic seduction”.¹⁵³ In this lies the problem of ascertaining true motivations prior to and during the rape act from post-rape justifications.

For the purposes of this study, legal and social definitions of rapists are clearly defined throughout. Certain consensual acts were reported as rape, sexual assault, indecent assault, sodomy, abduction and so on. This is done to avoid legal or social repercussions as dictated by law during certain political dispensations or because the legal definition of rape excluded certain sexual acts from being tried as rape. One example includes prosecution under the sodomy laws or indecent assault because homosexuality was considered illegal.

¹⁵² This is subjective. Alison Botha was savagely raped and brutally stabbed by two white Afrikaans-speaking men on 18 December 1994 on a beach in Port Elizabeth. Left for dead, she managed to survive her attack and identify her assailants. She discusses the long path to physical and psychological healing and the eventual realisation that she had gone from victim to victor in her biography, *I Have Life: Alison's Journey as told to Mariaane Thamm*, (Parktown: Penguin Books, 1998).

¹⁵³ J. Bourke, *Rape: A History from 1860 to the Present*, p. 15.

The English equivalent was laws against buggery. From the case studies, considerable effort was made to distinguish between consensual and coercive acts in which some form of emotional or physical threat compelled the victim to submit to an unwanted sexual act as well as sexual acts that were clearly forced and brutal. Indeed the latter preoccupied the Cape Courts in rape cases, before more attention was paid to the psychological effects of emotional intimidation, although this occurs within a broader context of change also observed by Bourke during the course of the 20th century.¹⁵⁴ Similarly, much effort was required to distinguish between cases of rape and those involving sexual voyeurs or exhibitionists.

The most difficult category of rape involved statutory rape in which consent was clearly given. The age of consent varies across place and time. Early theorists suggested no age limit should be placed on consensual sex because sex was a natural form of human development. Statutory rapists either argue that the girls looked older than they were or were sexually promiscuous. In America during the 1960s, the latter often resulted in non-conviction because of the notion that non-virgins were already “spoilt goods” and thus no “damage” had been committed by the rape. The legislation was clearly designed to protect virginity rather than to protect the child. The focus subsequently shifted from ‘promiscuous girl’ to the ‘predatory male’. In cases of consensual underage sexual acts, the onus rest on the prosecuting authority to take action.¹⁵⁵ Statutory rape certainly questions the morality of the transgressor but differs somewhat from the ‘conventional definitions’ of rape. The same holds true for mentally challenged individuals.¹⁵⁶ There was an overarching difficulty in deciphering between certain consensual acts, paedophilia, homosexual acts and violent rape. Cases of incest required proof of consent. In some instances, to avoid both parties being convicted, they would be tried as rape. In the USA, incest laws were implemented in 1892 and in the United Kingdom in 1908. What constituted incest also varied in place and time. This proves particularly illuminating in trying to establish rape categories for statistical

¹⁵⁴ J. Bourke, *Rape: A History from 1860 to the Present*, p. 12.

¹⁵⁵ *Ibid.*, pp. 79-83.

¹⁵⁶ Considered always “ready for it” in the 1880s because they were considered lacking in intellectual capacity, driven by “animal instinct”, H. Husband, *The Students’ Handbook of Forensic Medicine and Medical Police* (Edinburgh: E. & S. Livingstone, 1883), p. 114. Psychiatrist Hugo Paul argued in the 1960s that they could not be raped as they were ill-controlled and sexually loose, *Cry Rape: Anatomy of the Rapist* (New York: Dalhousie Press, 1967), p. 13. Thus the likelihood of anyone believing the claims of rape by an “imbecile”, were minimal. However, an Australian study in the 1990s has subsequently proven that women with intellectual disabilities are more likely to be raped than non-disabled people, J. Brook, “Sexual Abuse and People with Intellectual Disabilities”, *Social Work Review*, 9(3), 1997, pp. 16-17.

purposes. To overcome this obstacle, all cases in which a complaint of sexual coercion was made by the actual victim or a third party, such as a family member or witness, was deemed to be a case of rape. The latter, however, required some interpretation when there were clear indications that the third party had ulterior motives such as extortion or repulsion towards inter-racial liaisons. There is also a glaring absence of partner rapists because legislation made no provisions for rape within marriage. Lastly, definitions will act as a heuristic device to unpack, problematise and historicise these various voices rather than trying to unravel the complex nature of terminology.

Chapter 2

Theorising Rape in South Africa and the Cape Rapist

Various historians have used a variety of terms to denote their own interpretation of broad historical eras in South Africa.¹ I shall make use of the broader categories of “colonialism” for the period pre-1910 because notions of sex and sexual violence stemmed from the imperial sex-rhetoric. “Segregation” will refer to the period 1910 to 1948 during which legislation and social mores continually hardened against non-whites, “*apartheid*” for the obvious 1948-1994 period and “post- *apartheid*” for the period post 1994. The transition period in the country should really be a category in its own right but the “post- *apartheid*” category simply serves as a reference point and does not fall within the timeframe of this dissertation. It is necessary, however, to briefly contemplate the post- *apartheid* era in order to contextualise the current study. This serves two purposes: categories of rapists may have expanded to include previously hidden rapists but motivations and reasons for rape are clearly located in the country’s turbulent political past pre-1994. Types of rapists and motivations for rape did not suddenly arise after 1994 and they have not dissipated either. Therefore, there is a process of continuity that needs to be made apparent beyond the timeframe of this dissertation. This chapter will evaluate the local literature on rapists.

Locating, Explaining and Contextualising South African Rapists

From Colonial Era to Segregation: The Lasting Legacy of the Black Peril Scares

Political analyst Lisa Vetten pointed out that Black Peril hysteria has obscured the realities of sexual violence in South Africa and failed to redress the real issues of gender

¹Robert Ross uses the terms “Unification”, “Consolidation” and “Apartheid”, R. Ross, *A Concise History of South Africa* (Cambridge: Cambridge University Press, 1999); William Beinart refers to “War and Reconstruction”, “Segregation and Urbanisation”, “Apartheid”, “Reform Era”, “Insurrection, Fragmentation, Negotiations”, W. Beinart, *Twentieth Century South Africa* (Oxford: Oxford University Press, 2001); Leonard Thompson prefers “Diamonds, Gold and British Imperialism”, “The Segregation Era”, “The Apartheid Era”, “The Political Transition”, “The New South Africa”, L. Thompson, *A History of South Africa* (Jeppestone: Jonathan Ball Publishers, 2006).

violence. “A comprehensive history of sexual violence in South Africa has yet to be written. Nonetheless, where snatches of such history may be glimpsed, they point to a long and ugly relationship between rape and race. Public outrage about rape has less often been motivated by pure concerns with women’s rights than with efforts to control and regulate both black men and white women”.² It is therefore assumed that race completely regulated rape policing.³ This study will seek to prove otherwise. But the myth does have deeply entrenched historical roots.

In South Africa, rape and rapists were considered in the context of imperial thoughts on sexuality that distinguished between the locals and the “Europeans”. Western thoughts from the 1830s revolved around the belief that black women and men were sensual and unrestrained, indeed a sexual danger to themselves and others. White men, away from the restraints of a Victorian conservatism, were excused for acting out their sexual fantasies on local women because the women appeared to be ‘available’ and easily wooed. Two issues were foregrounded that promoted a particular view of the rapist: blacks were seen as inherent sexual predators and in the absence of white women, white men raped because local women were easily available. White rapists were excused, in a sense; black rapists were framed within a biological and social evolutionary framework.⁴ Similarly, a change in white women’s behaviour towards the lascivious “native” could in turn result in condemnation of the changing distance white women were supposed to maintain from the “hot-blooded African male”. One typical example was that of the close relationships between “madams” and “houseboys” which served to explain why “natives” were becoming “cheeky” and “out of place”.⁵

Black Peril scares occurred in Natal in 1886, in the Cape, Natal and Transvaal in 1902-1903, and generally throughout the country in 1906-1908 and 1911-1912. What made

² L. Vetten, “Violence against Women in South Africa”, S. Buhlungu et al (eds.), *State of the Nation, South Africa, 2007* (Cape Town: HSRC Press, 2007), p. 435.

³ Azeem Badroodien, “Moral panics, delinquency, and race making in Cape Town in the 1940s”, research seminar at Stellenbosch University, 17 September 2012.

⁴ Naturally, these myths on African sexuality and by extension narratives which condone or condemn rape and the rapist, are challenged by later works such as F. Fanon’s *Black Skin, White Masks* (London: Pluto Press, 1986).

⁵ See for example J. C. Martens, “Settler Homes, Manhood and ‘Houseboys’: an analysis of Natal’s Rape Scare of 1886”, *Journal of Southern African Studies*, 28(2), 2002, pp. 379-400.

Black Peril scares unusual in South Africa were the duration and the political impact of the public's response to these very threats: in particular, the impact it had on the moral economy of the white races.⁶ Historian Norman Etherington connected the first recorded rape scare, the Natal moral panics of the 1870s, to the desire of the dominant classes to maintain control.⁷ Sexual assault of white women was considered an attack upon and appropriation of white men's property and authority. The fear of losing control stemmed from the emergence of competitive black agriculturalists and transporters and the establishment of uncontainable migration workers on the Kimberley mines. Subordinate white women also took revenge for white male connection with "females of the subject people" by encouraging the advancements of virile black men.⁸ In this sense, the fear of black rapists was symptomatic of political and economic loss and a challenge to the power dynamics between the races. Jeremy Martens attributed the 1886 Natal scares to "white panics" during economic depression in Natal in the 1880s that heightened competition between settlers and black competitors and between white men and white women. This threatened to undermine the position of white men. Black men engaged in domestic work and white women's "inappropriate" behaviour towards them compounded this threat to their manhood. As a result, Martens argued that the 1886 scares were contrived by white men to reassert their dominance over black men and white women.⁹

In a study on the Witwatersrand between 1890 and 1914, historian Charles van Onselen referred to the Black Peril as a "collective sexual hysteria" which embittered race relations in the Transvaal during economic recession and which affected white middle and working class families.¹⁰ He also showed that the Black Peril on the Rand coincided with labour unrest between white working class men and semi-skilled black labourers, which led

⁶ D. G. N. Cornwell, "George Webb Hardy's *The Black Peril* and the social meaning of 'Black Peril' in early Twentieth-Century South Africa", *Journal of Southern African Studies*, 22 (3), 1996, pp. 441-453

⁷ It should be pointed out that the first recorded account of a rape scare in South Africa is mentioned by Ian Glenn in his account of the British ship the *Grosvenor* which ran aground in Southern Africa in 1782. In this instance, the panic arose in Britain that the shipwrecked English women would be ravaged by the "Hottentots", I. Glenn, "The Wreck of the *Grosvenor* and the Making of South African Literature", *English in Africa*, 22(2), 1995, pp. 1-18.

⁸ N. Etherington, "Natal's Black Rape Scare of the 1870s", *Journal of Southern African Studies*, 15, 1988, pp. 36-53. Similar observations are made by S. Dubow, "Race, Civilisation and Culture: The Elaboration of Segregationist Discourse in the Inter-War Years", S. Marks & S. Trapido (eds.), *The Politics of Race, Class and Nationalism in Twentieth-Century South Africa* (Harlow: Longman, 1987).

⁹ J. Martens, "Settler Homes, Manhood and 'Houseboys': an Analysis of Natal's Rape Scare of 1886", *Journal of Southern African Studies*, 28(2), 2002, pp. 379-400.

¹⁰ C. van Onselen, "The Witches of Suburbia: Domestic Service on the Witwatersrand 1890-1914", *Studies in the Social and Economic History of the Witwatersrand, 1886-1914* (Johannesburg: Raven Press, 1982), p. 45.

to the strikes of 1907 and 1913. He argued that this peril was linked to recession, political uncertainty and industrial action. The thought of white women working alongside black men was used to justify the repressive Mines and Works Act of 1911, which was heavily supported by the white Labour Party and the news media who fed the displaced frustrations of its white middle class readership.¹¹ It was argued that black education and exposure to “white men’s” material would lead the black man down the forbidden path of desire for white women’s bodies. A similar fear led to the ban of certain liquors for black people.

The 1902-1903 scares were firmly linked to the rise of white prostitution after the South African War of 1899-1902. They failed to discriminate between white and black clients. Poor whites flocked to urban settings as the rural areas were ravaged by war. In the 1937 *Report of the Commission on Mixed Marriages*, it was said that because of the large numbers of troops in the country, quite a number of loose European Continental women flocked to urban settings for prostitution. Because they did not discriminate against “natives” and coloureds, public scandal arose in 1902 and brought about legislation for the suppression of immorality in all colonies of the Union by 1903. It was argued that their behaviour could be a contributing factor to the increase in sexual assaults as non-white men were now being accustomed to sexual contact with the previously forbidden white woman. The prostitutes were not being persecuted for miscegenation because they were aware of birth control, and as a result were not producing mixed race offspring.¹² In the Afrikaner Republic of the Transvaal, inter-racial marriage was illegal but cohabitation was not, while in the Cape the British were obliged to recognise official marriages.

The 1906-1908 panics were more than likely fuelled by anxiety following the Bambata Rebellion¹³ in Natal in 1906 as well as the increased visibility of sexual relations between the races.¹⁴ This, however, was followed by a general social reaction to the scares in 1911-1912, which led to the Commission of the General Missionary Conference of South Africa, which investigated Black Peril in the Union during 1912, as well as the State

¹¹ C. van Onselen, “The Witches of Suburbia: Domestic Service on the Witwatersrand 1890-1914”, *Studies in the Social and Economic History of the Witwatersrand, 1890-1914*, pp. 45-54.

¹² RP 30/1939, *Report of the Commission on Mixed Marriages in South Africa*, pp. 13-14.

¹³ The Zulu uprising against British rule and taxation.

¹⁴ RP 1907, *Report of the Native Affairs Commission 1906-1907*, pp. 25-26.

Commission of inquiry into assaults on women in 1913, which subsequently declared the panic spurious.¹⁵ This enquiry will be discussed in greater detail in this study.

Tim Keegan's investigation of this moral panic also established that the irrationality of the "crisis" was largely encouraged by a fear of the loss of white authority to subservient blacks, and largely attributed to the sexual frivolities of "lapsed whites". Poor whiteism challenged racial and cultural control mechanisms desperately being solidified and thus segregationist policies could be truly effective only through moral rehabilitation of these "degenerate" whites.¹⁶ The role of increasing poverty amongst whites and some economic growth amongst blacks was not simply a contributing factor in female assaults but was also considered to be an attack on the required racial order.¹⁷ Historian Lindie Koorts, for example, points out that D. F. Malan initially considered the "White Peril" more threatening than the Black Peril but these views changed from the 1930s "in a quest for a coherent racial policy".¹⁸

Historian Sandra Swart has investigated the growing racial anxiety in the northern Orange Free State and south-western Transvaal during the "Five Shilling Rebellion", the Boer rebellion of 1914. She argued that while concerns in Natal and the Rand during the perils at the turn of the 20th century was of a single black man as a sexual predator in urban areas, rural concerns were more about the agricultural prowess of the black family and the effect this would have on the white male small-scale farmers.¹⁹

According to Saul Dubow, South Africa embarked upon its own scientific research to combat the restraints of its own peculiarities. The problem of race and class dynamics in the

¹⁵ RP 39/ 1913 *Commission Appointed to Enquire into Assaults on Women*, pp. 3-11.

¹⁶ T. Keegan, "Black Peril, Lapsed Whites, and Moral Panic: A Study of Ideological Crisis in Early Twentieth Century South Africa, unpublished seminar paper, African Studies Institute, University of the Witwatersrand, 1986, pp. 3, 6, 10.

¹⁷ So much so that the *Carnegie Commission of Inquiry of 1929-1932* was established to investigate the "Poor White Problem".

¹⁸ L. Koorts, "The Black Peril would not exist if it were not for a White Peril that is a hundred times greater": D. F. Malan's Fluidity on Poor Whiteism and Race in the Pre-Apartheid Era, 1912-1939", *South African Historical Journal*, 65(4), 2013, p. 560.

¹⁹ S. Swart, "The 'Five Shilling Rebellion': Rural White Male Anxiety and the 1914 Boer Rebellion", *South African Historical Journal*, 56, 2006, pp. 88-102.

country prevented a wholesale acceptance of social Darwinism and eugenics. It may have resonated within the broader discourse on immorality, racial purity and condemnation of miscegenation and could certainly explain the degeneration of the races during the urbanisation process, while the rise of similar trends among the “poor whites” required explanation, inclusion and betterment rather than condemnation. Environmental explanations rather than hereditary traits were therefore required.²⁰ This important distinction is discussed by Speech writer and researcher in the national parliament of South Africa, Robert Turrell.²¹

South African authors who took their cue from the feminist theories on rape placed gender inequality at the heart of the phenomenon, and considered the act a manifestation of the need for males to dominate females.²² When women refused the advances of their suitors, it is argued that rapists felt compelled to re-assert their power through force. Men who were unable to conquer women successfully felt emasculated and engaged in self-destructive behaviour in an attempt to numb their anxiety, but this in turn lowered their inhibitions and caused them to rape.²³ This was allegedly precipitated by shifting localities such as the breaking of traditional guardianship on the mining compounds of the Witwatersrand during the 1900s. This dislocation influenced desire and sexuality and laid the foundations for rape.²⁴ It was also explained in terms of a reaction against the oppression of the country’s political history, but power differentials were also visible in less obvious spaces. One such

²⁰ S. Dubow, *Scientific racism in modern South Africa* (Cambridge: University of Cambridge Press, 1970), pp. 16-17. Also see S. Dubow, *Racial segregation and the origins of Apartheid in South Africa, 1919-1936* (Oxford: Macmillan, 1989).

²¹ His discussion on the death sentences passed in South Africa will be discussed in greater detail in Chapter 4, R. Turrell, *White Mercy: A Study of the Death Penalty in South Africa* (Connecticut: Prager, 2004).

²² See for example L. Vogelmann, *The Sexual Face of Violence: Rapists on Rape*, (Johannesburg: Raven Press, 1990); D. Russel, “Rape and child sexual abuse in Soweto: an interview with community leader Mary Mabaso”, *South African Sociological Review*, 3 (2), 1991, pp. 62-83.

²³ R. Jewkes & N. Abrahams, “The Epidemiology of rape and sexual coercion in South Africa: An Overview”, *Social Science and Medicine*, 55, 2002, pp. 1231-1244.

²⁴ See for example T. Dunbar Moodie, V. Ndatse & B. Sibuyi, *Going for Gold: Men, mines and migration*, (Berkeley: University of California Press, 1994); K. Breckenridge, “The allure of violence: men, race and masculinity on the South African gold mines 1900-1950”, *Journal of Southern African Studies*, 24, 1998, pp. 669-683; P. Harries, “Symbols and Sexuality: Culture and Identity on the Early Witwatersrand Gold Mines”, *Gender and History*, 2 (3), 1990, pp. 318-336; G. Kynoch, “Urban Violence in Colonial Africa: A Case for South African Exceptionalism”, *Journal of Southern African Studies*, 34 (3), September 2008, pp. 629-645; E. Longmore, *The Dispossessed: A study of the sex-life of Bantu women in urban areas around Johannesburg*, (London: J. Cape, 1959); T. Dunbar Moodie, V. Ndatse & B. Sibuyi, “Migrancy and Male Sexuality on the South African Gold Mines”, *Journal of Southern African Studies*, 14 (2), 1996, pp. 228-256.

example can be seen in the works of Elizabeth Thornberry who is currently working on the history of rape in the Eastern Cape during the 19th century.²⁵

Apartheid Politics and Rape

Meaghan Campbell has produced a discourse analysis of rape in South African townships between 1948 and 1994.²⁶ She investigates the preponderance of intra-racial rape in black and coloured communities through a detailed analysis of state discourse, liberal white newspaper reports and selected female victim reports on rape through biographies and autobiographies, arguing that it was not a priority for the *apartheid* government. She argues that “Africanists specializing in the region have not examined the roots of sexual violence in South Africa”, that “Until Apartheid ended in South Africa, no space existed within any of these discourses for serious consideration of the issue or of its resolution” and that “this thesis has shown that the Western-orientated rape theories cannot explain the existence of rape cultures throughout the world”. While valid in certain respects, Western theories are not completely out of place because the country adopted and entrenched many western practices. She does, however, present valid points of departure for further research such as the role of churches and the education system as well as the implication of social class during the criminal and judicial procedure.²⁷ This becomes particularly important in Chapter 6.

Research on rapists, however, has been until the 1990s largely restricted to Western theorists.²⁸ Lloyd Vogelman, in *The Sexual Face of Violence: Rapists on Rape* (1990), pioneered a comprehensive study of rapists in South Africa, challenging “many of the myths about rape being an infrequent act of uncontrollable sexual aggression perpetrated by strangers in public places”.²⁹ He conducted interviews with men, including rapists, on their

²⁵ She is working on a manuscript on the history of sexual violence in the Eastern Cape entitled, “The Empire of Consent: Rape and Governance in South Africa’s Eastern Cape, 1820-1927”.

²⁶ M. Campbell, “Discourse Analysis of Rape in South African Townships (1948-1994): A Case Study for ‘Policing the Penis’”, MA, Dalhousie University, Nova Scotia, December 2000.

²⁷ *Ibid.*, p. 157.

²⁸ For example the works of J. Fremont, “Rapists speak for themselves”, D. Russell (ed.), *The Politics of Rape* (New York: Stein & Day, 1974), pp. 243-256; S. Levine & J. Koenig (eds.), *Why Men Rape* (London: W. H. Allen, 1983).

²⁹ Refer to the Preface in L. Vogelman, *The Sexual Face of Violence: Rapists on Rape*.

experiences, feelings and attitudes towards sex, concluding in part that there are more similarities than differences between urban South Africa and Western sex role behaviour and rape patterns.³⁰

Vogelman demonstrated that rape emerges from a particular culture that dominated and objectified women within a ‘rape culture’ in which rape is not acknowledged as a crime and victims are often blamed for their violation. This is also in a context of extreme political violence during the path towards the democratic elections of 1994 in which sexual violence by men against women was widespread, making all women its victims, or at the very least “every woman [as] a potential rape victim”, compelling them to modify their behaviour or dress to avoid being raped.³¹ He demystified many of the rape myths that have helped protect the rapist and maintain patriarchal hegemony. He also criticised approaches which simply pathologise the rapist, presenting him as a psychopath, psychotic or sex maniac by clearly pointing out that rapists are also ‘normal men’ – friends, acquaintances or partners. The causes, nature, and consequences of their actions therefore required contextualised investigation. His motivation for the study was twofold. Firstly, he was alarmed at the high incidence of reported rapes in the 1980s, between 15 000-16 000, in which 9 000 were prosecuted and just over a half culminated in conviction. Unofficial estimates suggested that over 1 000 women were being raped per day in South Africa – almost one every 90 seconds.³² Secondly, he was motivated by the limited availability of knowledge of rapist thoughts, drives, and feelings during and after the crime and a general paucity of research in South Africa on male sexuality and male sexual offenders. Because of the limitations of access to these men, he clearly points out that his research is exploratory and does not claim to offer definitive answers but simply provides a much-needed window into male sexuality and violence in South Africa.

Vogelman chose a limited sample of 27 working-class coloured men from the coloured township of Riverlea on the south-western border of Johannesburg. His sample consisted of nine men from three groups: rapists, classified as those who had committed acts of rape with penetration, physically violent men, and sexually and physically non-violent

³⁰ L. Vogelmann, *The Sexual Face of Violence: Rapists on Rape*, p. 9.

³¹ *Ibid.*, p. 1.

³² *Ibid.*

men.³³ To understand the rapist further his social context was scrutinized, as this was perceived to be the primary cause of his behaviour. The social control of women, the relationship between sex roles and rape (with specific focus on the psychological aspects), and rape-promoting factors were all investigated. The social relations and structures of society and their link with rape were also explored in terms of economic exploitation, racial oppression, social violence, and masculinity. Rapist experiences and motivations, feelings and thoughts about rape were used to fully understand his behaviour in order to improve rehabilitation strategies. How he rationalised his behaviour and how control mechanisms such as the police or the courts affected his recidivism, were examined. Through these various areas of investigation, Vogelmann uncovered the psychology of the rapist using both his internal processes as well as external factors in an interactionist approach to understanding him, placing responsibility on both internal and external factors in the making of the rapist.³⁴ His findings are largely confirmed in this historical study.

Masculinity theories on rape state that men wield varying power and access to power depending on race, class and location.³⁵ Isak Niehaus alerts us to the dilemma that occurs between men's ideals and the reality of their lives in the lowveld of South Africa. He argued that it is socially weak men who engage in rape in an attempt to assert their masculine ideals but warns that ample consideration must be given to the real-life situation of the rapist.³⁶ This should also be read alongside active resistance to rape by women. Certain women's organisations specifically campaigned against sexual violence in the 1980s. The Women's Front (WF) was a more traditional and non-confrontational organisation and had a large support base amongst women in the townships. This organisation was considered a revival of the Federation of South African Women (FEDSAW), an ANC-aligned organisation active in the 1950s. Much like its counterpart the Federation of Transvaal Women (FEDTRAW), the organisation was argued to be largely focused on low threshold concerns such as high rents, low wages, and childcare. Much more active against political and social oppression of

³³ This township was described as overcrowded, houses were of poor quality, there was considerable unemployment, the living conditions were unsanitary, alcohol and drug use were widespread, teenage pregnancy was high, the incidence of violence was extreme and gangs were prominent, *Ibid.*, pp. 12-15.

³⁴ J. Bourke, *Rape: A History from 1860 to the Present*, p. 5.

³⁵ L. Vogelmann, *The Sexual Face of Violence: Rapists on Rape*, p. 6.

³⁶ See for example C. Fransch, "The Power and Poverty of Theory in the Anglo-Boer War, 1899-1902", unpublished BA Honours Research Essay, Stellenbosch University, 2007.

³⁷ I. Niehaus, "Masculine domination in sexual violence: Interpreting accounts of three cases of rape in the South African lowveld", in G. Reid & L. Walker, *Men Behaving Differently* (Cape Town: Double Storey Books, 2005), p. 81.

women and inclusive of white and coloured women was the United Women's Organisation (UWO) which actively campaigned against rape.³⁷ While these organisations attempted to campaign at a grassroots level, it is difficult to ascertain their efficacy. Nevertheless, there is a correlation between the hazardous living spaces of the target audiences and the rise of gang culture and gang rape between the 1960s and 1980s.

Theories on gang rape have been linked to gang culture. The origins of gang culture are often attributed to the Witwatersrand and have been traced back to the discovery of Gold and an era of marginalisation and impoverishment. Charles van Onselen has argued that the Ninevite “anti-social” bandit gangs (rather than “social bandits”) constituted a form of cultural resistance to the State long before any formal political resistance such as that of the ANC.³⁸ Historian Clive Glaser has also contemplated these theoretical constructs of violent youth subcultures in the 1950s on the Witwatersrand.³⁹ Glaser argues that gang culture allowed for boys to gain freedom to express and explore their identities and sexualities. Victims of gang rape would almost invariably be outsiders. During the 1960s, school girls in Soweto, for example, would be the targets for sexual harassment, abduction and rape. Journalist Don Pinnock showed that the socio-political factors such as poverty, poor education, broken families and urban relocations explained the rise of gang culture in Cape Town, but further warned against blaming their behaviour entirely on the *apartheid* system. He calls for greater community intervention.⁴⁰ This needs to be expanded upon and is discussed in greater detail in Chapter 6.

Bill Dixon and Lisa-Marie Johns also attributed gang violence to the forced removals to ghettos on the Cape Flats, as well as globalisation and neoliberalism of the economy,

³⁷ I. van Kessel, “*Beyond our Wildest Dreams*”: *The United Democratic Front and the Transformation of South Africa* (USA: University Press of Virginia, 2000), pp. 180, 257-258.

³⁸ Refer to C. van Onselen, “The Regiment of the Hills, Inkosi Wezintaba”, *Studies in the Social and Economic History of the Witwatersrand, 1886-1914*, (Johannesburg: Ravan Press, 1982).

³⁹ C. Glaser, “Anti-social Bandits: Juvenile Delinquency and the Tsotsi Youth Sub-Culture on the Witwatersrand, 1935–1960”, unpublished MA thesis, University of the Witwatersrand, 1990; C. Glaser, *Bo-Tsotsi: The youth gangs of Soweto 1935–76* (Oxford: James Currey, 2000), pp. 4, 111-113.

⁴⁰ D. Pinnock, *The Brotherhoods: Street Gangs and State Control in Cape Town* (Cape Town: David Philip, 1984); D. Pinnock, *Gangs, Rituals and Rites of Passage* (Cape Town: African Sun Press, 1997).

culture and social structures of the Western Cape in post- *apartheid* South Africa.⁴¹ Both Pinnock and Glaser argued that gangs were peripheral to political contestation but were a form of active resistance to the hegemony of the dominant classes. Pinnock blames the continued gang cultures on a variety of factors: the judicial system which did not have the youth in mind, a poor understanding of adolescent behaviour and failing to rectify the isolation felt by these youth living under oppressive systems. In fact he believes retributive punishment (*lex talionis* which suggests that good can come from “evil”, evil being what may be considered immoral violent punishment) actually compounded the problem. Irvin Kinnes also points out that revelations at the Truth and Reconciliation Commission also shows that the *apartheid* State had a working relationship with gangs in order to eradicate political opponents. Post- *apartheid* governments had more pressing issues and also refrained from actively reducing gang violence. The shift from street gangs to organised criminal syndicates as well as competition between local and international gangs who have established bases in Cape Town, further complicate the policing of gangs.⁴²

Historian Colin Bundy and sociologist Jonathan Hyslop point out that youth disaffection during the 1980s was spurred by the crisis of capitalism. Hyslop adds that the *apartheid* education policies and its political consequences also had implications for youth resistance to the political dispensation.⁴³ But gangs were becoming progressively notorious for gang rapes. As veteran rape theorist Susan Brownmiller has pointed out, within gang subcultures, rape provides solidarity and interaction based on male bonding and masculine validation that allows the perpetrators to justify their actions and reduce any sense of guilt. Those who do not conform are often seen as morally questionable.⁴⁴ Questions were thus raised as to the link between gang culture and gang rape in South Africa. This is further discussed in the Cape context in Chapter 5.

⁴¹ B. Dixon & L. Johns, “Gangs, Pagad and the State: Vigilantism and Revenge Violence in the Western Cape”, *Violence and Transition Series*, 2, 2001.

⁴² I. Kinnes, “From Urban Street Gangs to Criminal Empires: The Changing Face of Gangs in the Western Cape”, *Institute for Security Studies Monograph Series*, 48, 2000.

⁴³ Refer to J. Hyslop, “Schools, Unemployment and Youth”, B. Nasson & J. Samuel (eds.), *Education, From Poverty to Liberation* (Cape Town: David Phillip, 1990); C. Bundy, “Street Sociology and Pavement Politics: Aspects of youth and student resistance in Cape Town, 1985”, *Journal of Southern African Studies*, 13, 1987, pp. 303-330.

⁴⁴ S. Brownmiller, *Against our Will: Men, Women and Rape* (New York: Bantam Books, 1975).

Gangsters are themselves attracted to the idea of belonging to a “community” but these gangs are often involved in rape, some requiring the rape of women or indeed the sodomising of young boys during initiation,⁴⁵ a phenomenon of male bonding and masculine affirmation according to sociologist Lloyd Vogelmann and Sharon Lewis.⁴⁶ *Jackrolling* is not simply considered a way to pass the time and have ‘fun’, but also stems from a belief that being a gangster implies unquestionable sexual privileges to which all women should comply.⁴⁷ Therefore, gang rapes become pivotal when discussing rape, power, and masculinities in crisis.

The term *jackrolling* was coined after the gang of the same name began operating in Diepkloof, a suburb of Soweto, Johannesburg, under the leadership of Jeffrey Brown during 1987-1988. Community activist Mary Mabaso traced the origins of the practice of abducting and raping girls to the Soweto uprising of 1976. After schools were closed, those affected were unable to return (as the National Party government had restricted access to those less than 22 years of age). These men, uneducated and unable to find work, turned to gangsterism and vented their frustration by restricting young girls from access to education by raping them in the hope that they would fall pregnant and become “one of them”. Former CEO of the Youth Commission, Steve Mokwena, expanded on the findings of Mabaso, concluding that victims were originally chosen because they seemed unattainable and were referred to as *amahaiza* (snobs) living a life of better status and in need of punishment.⁴⁸

Mokwena, intrigued by sociologist, founder and former Director of the Centre for the Study of Violence and Reconciliation, Lloyd Vogelmann’s assertion that the usual theories of why men rape, namely aggression and domination, somehow fails to explain gang rape or

⁴⁵ Interviews conducted at MoloSongololo (established in 1979 to protect the rights of children); “John”, a former gang member and Sam from the Rape Crisis Centre in Cape Town (established in 1976), J. Spoor, “South Africa: The State of Rape – A study of the social, economical, political and cultural factors influencing rape in Cape Town”, unpublished MA (Social and Cultural Anthropology), Vrije Universiteit, Amsterdam, October 2004, pp. 56-57.

⁴⁶ L. Vogelmann & S. Lewis, “Gang Rape and the Culture of Violence in South Africa”, http://www.csvr.org.za/index.php?option=com_content&view=article&id=1631 (accessed 12 June 2013). Initially published in German under the title, “Illusion der Stärke: Jugenbanden, vergewaltigung und kultur der gewalt in Südafrika”, *Der Überblick*, 2, 1993.

⁴⁷ *Ibid.*; L. Vetten, “Roots of a Rape Crisis”, *Crime and Conflict*, 8, 1997, pp. 9-12.

⁴⁸ S. Mokwena, ‘The Era of the Jackrollers: Contextualising the rise of the youth gangs in Soweto’, seminar paper presented at the Centre for the Study of Violence and Reconciliation, 30 October 1991, available at <http://www.csvr.org.za/index.php/publications/1805-the-era-of-the-jackrollers-contextualising-the-rise-of-the-youth-gangs-in-soweto.html> (accessed 21 December 2012).

jackrolling,⁴⁹ provides a historical overview of the *jackrollers*.⁵⁰ Mokwena goes on to explain the significance of this on the formation of youth gangs and criminal violence in black townships. He argues that gangs also emerged in the 1950s following the rise of urban townships and continued to increase following the rapid economic growth of the 1960s and the establishment of Bantu education. This trend continued in the 1970s, coinciding with a streetwise subculture called *mapantsula*. Mokwena investigates those gangs notorious in the mid-1980s, in particular the *jackrollers*. Unable to gain adequate access to gang-members himself, he interviewed those who have dealt with gang-members.

This period was marked by growing urban and rural black impoverishment, marginalisation of black youth, growing youth unemployment, an educational crisis and a social breakdown leading to a collapse of civic culture. This sense of powerlessness led to an inferiority complex in which young men felt emasculated, manifesting their frustration in violence against women to regain their self-esteem. Women are therefore considered victims of displaced aggression and a symbolic re-assertion of masculinity and control. Not being effectively challenged, these actions became widely “accepted” and continued to proliferate. *Jackrolling*, he argues, points to the “popularisation of sexual violence amongst the youth in the township streets”. Mokwena, drawing from Vogelmann and Lewis amongst others, distinguishes this from “ordinary rape”. Firstly, it is a youth phenomenon. Secondly, acts are committed in public spaces, sometimes with witnesses who are unable to react because they are done by groups of men. Thirdly, *jackrolling* is seen as a “game” rather than a crime.⁵¹ Lastly, it is done openly with the rapist not attempting to hide his identity – in fact, being notorious only increases the rapist’s standing within the gang culture. He also becomes a rather dubious role model for young schoolboys, as is suggested by socialisation theories mentioned in Chapter 1. This lends to another observation that unlike gangs in “coloured townships”, black gangs are smaller and short-lived because their status is associated with particular individuals rather than a sense of territorial or community identity. Therefore the individual has to be formidable, even if brutal.

⁴⁹ L. Vogelmann, *The Sexual Face of Violence: Rapists on Rape*, pp. 119-139.

⁵⁰ S. Mokwena, “The Era of the Jackrollers: Contextualising the rise of the youth gangs in Soweto”, seminar paper presented at the Centre for the Study of Violence and Reconciliation, 30 October 1991, available at <http://www.csvr.org.za/index.php/publications/1805-the-era-of-the-jackrollers-contextualising-the-rise-of-the-youth-gangs-in-soweto.html> (accessed 21 December 2012).

⁵¹ N. Mathiane, *Beyond the headlines: Truths of life in Soweto* (Johannesburg: Southern Publishers, 1990), p. 148.

Furthermore, Mokwena questions the views that gangs were opponents of the *apartheid* regime, which somewhat obscures the brutal nature of their activities upon local residents in their turf:

Whilst it is probably true that the present gang culture embodies elements of cultural resistance which have a potential of being an affront to the dominant classes, they remain a menace to the poor and the oppressed, and more significantly, often they serve to specifically obstruct progressive political mobilisation. My main anxiety with the current application of the abovementioned paradigm is that it runs the risk of mystifying and romanticising the role played by such youth gangs. It also runs the risk of overlooking the negative consequences of their aberrant anti-social behaviour.

In 1993, Vogelmann and Sharon Lewis, former researcher at the Centre for the Study of Violence and Reconciliation, asserted that violence against women was universal and entrenched in all societies but one manifestation, namely rape, was rather unique to South Africa. It is argued that all women are potential victims and this fear has begun to affect their daily existence. Violence against women is also used as a benchmark for the level of violence within a society. It is argued “overcoming violence against women in the South African context will have to be linked to overcoming violence in the society in general as well as to exposing and eradicating gender oppression”.⁵² Focusing on gang rape which crystallises the power dynamic synonymous with one of the theories on rape, they posit that the incidence of gang rape is particularly high: 44% of all rapes in the 1990s compared to 25% in the United States of America. During the 1980s, they vaguely quote that 16 000 rapes occurred annually and by 1992, this increased to 24 700. They do, however, point out the flaws of the official statistics by estimating that this would be closer to 494 000 rapes per year using the NICRO estimation that only one in twenty rapes is actually reported. In an attempt to understand the aetiology of rape, they consider the wider social, economic and political factors including the culture of violence.⁵³ They avoid, however, a detailed investigation of the individual and social contributory factors of rape.

⁵² L. Vogelmann, & S. Lewis, “Gang Rape and the Culture of Violence in South Africa”, http://www.csvr.org.za/index.php?option=com_content&view=article&id=1631 (accessed 12 June 2013).

⁵³ This, it is argued arose from conflict in traditional African societies, during white colonial settlement, political repression and the liberation struggle against *apartheid* and continues to serve as a method of conflict resolution in most spheres of life. However, the levels of violence differ across class, race and gender with the most victimised being the working class, poorer African communities and women, although the latter term could do with some clarification as not all women share the same experiences. Most victims of gender violence are women and compelling factors include physical strength, financial resources, organisational strength, legal

Certain assumptions are made such as that women are the victims, men are the perpetrators, and that the most common rapes were heterosexual. It is concluded that gang rape is particularly sadistic and illustrates a need beyond sexual gratification. Of importance is masculinity and socialisation in which Vogelman's earlier study suggests that man's wish to dominate, especially women, is not instinctual but rather learnt from family, the media, sexist institutions and activities and society's glorification of strong masculinity and docile femininity.⁵⁴ This social oppression and subjugation is visible in its extreme form when rapists objectify and dehumanise their victim to carry out the act of rape. She loses her status as a human agent and her right to choose to engage in sexual activity. She is also considered the property of man and a sexual object to be used and this is challenged during rapes in which the victim's partner is compelled to witness the act. This, it is presented, ensures his "passive" participation in the rape as well as affirming the masculinity of the rapist whilst destroying that of the "participant", now conceived as incapable of safeguarding or controlling his woman.

The authors also confirm that gender is inextricably linked to class and race in South Africa and that these forms of patriarchal aggression towards women have to be viewed against the political context. As men, in particular black men, became more marginalised, and as unemployment increased (fundamentally seen as an attack on the masculine identity), women became the targets of their frustration in the private domain.⁵⁵

Gangs are also considered the exclusive domain of males with women occupying a peripheral component of the culture. They are objects of competition as well as sources of affirmation for the masculinity of the men. Lisa Vetten, former manager for the Gender Programme at the Centre for the Study of Violence and Reconciliation (CSVr), contemplated this issue with a specific focus on gangs in the Western Cape.⁵⁶ Vetten pointed out in 2000, that little research had been conducted on female gang members although much

rights, customs and traditions.

⁵⁴ L. Vogelman, "Violent crime: Rape", B. McKendrick & W. Hoffman, *People and Violence in South Africa* (Cape Town: Oxford University Press, 1990)

⁵⁵ L. Vogelman & G. Eagle, "Overcoming endemic violence against women in South Africa", *Social Justice*, 18 (1&2), pp. 209-229.

⁵⁶ L. Vetten, "Invisible Girls and Violent Boys: Gender and gangs in South Africa", *Development Update*, 3(2), 2000, <http://www.csvr.org.za/docs/gender/invisiblegirls.pdf> (accessed 10 May 2012)

has been said about women as victims, bystanders or the “property” of gang members, reinforcing the stereotypes that women are passive and living on men’s terms. She argued that while it is uncommon, women do commit violent acts as gang members, especially older women. This observation was already made in 1962. In a letter to the *Argus*, a contributor noted that the *skolly* menace was getting progressively worse and that “the parents of these hooligans are mostly to be blamed for their children’s behaviour. They brought their children up the wrong way; now they want to know nothing about them. Some parents even take their part.” It was also made known that there was a proliferation of female gang members.⁵⁷

The low female membership is attributed, in part, to women having less leisure time and thus unable to indulge in gang culture as well as social isolation (from group activities) of women in comparison to men making it less likely for them to become involved in gang activities. Similarly, there are fewer “role models” for female gangsterism. Despite arguing against any stereotypical analysis of women passivity and gangs, Vetten does provide some insight into women as victims of gangs. This includes women being compelled to enter the sex trade by gangs who control and abuse them and render them forcibly addicted to drugs. These women are often gang raped by the group members before entering sex work. Rape, as mentioned above, is common as an initiation for young male gang members. Vetten makes mention of one of many symbolic cases of gang rape, that of 14-year old Valencia Farmer in 1999. She was gang raped, stabbed 42 times and then had her throat slit by members of the Naughty Boys gang in Eerste Rivier, Cape Town. Other examples include the initiations of the MaRashea gangs of the 1940s and 1950s.⁵⁸ Vetten also investigated feminine men and masculine women in gang culture. In these instances, the masculine women adopt aggressive roles (often never becoming wives or mothers and becoming aggressive in their sexual conquests by instilling fear in their male partners); and the feminine men become subordinate and they, too, become vulnerable to sexual victimisation. This is most apparent in men’s prisons. Criminologist Nicholas Haysom described how the most notorious gangs, the 28s and the 26s, most resemble the sexual division of labour of the heterosexual world.⁵⁹

⁵⁷ Scared from Matroosfontein, “There are girl gangsters, too: Put the township skollies under house arrest!”, *The Cape Argus*, 7 December 1962.

⁵⁸ See P. Bonner & L. Segal, *Soweto: A History* (Cape Town: Maskew Miller Longman, 1998).

⁵⁹ N. Haysom, *Towards an understanding of prison gangs* (Cape Town: Institute for Criminology, 1981), pp. 7-8.

Post-Apartheid Legislation Blows the Cover Off Previously Hidden Rapists

Many of the previously hidden rapists discussed above were thrust into the limelight during the post-*apartheid* era following several legislative changes which previously protected these types of rapists. Many of these will not be discussed in detail in this work as there is an absence of evidence of their existence in the archives. However, their proliferation in contemporary debates certainly suggests that they evaded detection.

A plethora of internet sources, studies and articles authored by local gender activists Lilian Artz and Dee Smythe have discussed the issue of gender violence and rape within the domestic terrain.⁶⁰ Vigorous activism led to the promulgation of the Domestic Family Violence Act No. 133 of 1993 which acknowledged that husbands could rape their wives and the Prevention of Domestic Violence Act No. 116 of 1998, which exchanged “husband” for the non-gendered term “spouse”. This was further extended to all couples, heterosexual or homosexual, under the Civil Union Act No. 17 of 2006. Very few references were made to homosexual rapists during the period under investigation. All forms of sodomy, heterosexual or homosexual, were considered immoral and only decriminalised in 1999. Certain cases prosecuted under the sodomy laws could indeed be classified as rape in terms of the latest rape legislation. Similarly, female-female rape did not exist in the statutes as rape required penetration of a vagina by a penis. In other words, all forms of non-conventional sex unions or sexual acts have only begun to surface in the post- *apartheid* era. Those previously hidden rapists are now prosecutable by law.

Within academe, several works discuss homosexuality, as well as gay rapists.⁶¹ Sasha Gear, for example, argued that sex in prisons can be consensual, forced or coerced. Prisons

⁶⁰ See for example L. Artz & D. Smythe, “Feminism vs. the State?: A Decade of Sexual Offences Law Reform in South Africa”, *Agenda*, 21(74), 2007, pp. 6-18.

⁶¹ For example Z. Achmat, “‘Apostles of Civilised Vice’: ‘Immoral Practices’ and ‘Unnatural Vice’ in South African Prisons and Compounds, 1890-1920”, *Social Dynamics*, 19(2), 1993, pp. 92-110; K. Breckenridge, “The Allure of Violence: Men, Race and Masculinity on the South African Gold Mines, 1900-1950”, *Journal of Southern African Studies*, 24(4), 1998, pp. 669-693; S Gear, “Rules of Engagement: Structuring sex and damage in men’s prisons and beyond”, in G. Reid & L. Walker, *Men Behaving Differently* (Cape Town: Double Storey Books, 2005), pp. 21-64; C. Glaser, “The Mark of Zorro: Sexuality and Gender Relations in the Tsotsi Youth Gang Subculture of the Witwatersrand”, *African Studies*, 51(1), 1992, pp. 47-68; C. Glaser, *Bo-Tsotsi: The*

therefore create the need to re-create a new identity but the gender roles between the inmates continue to promote external patriarchal norms.⁶² These patriarchal norms can also be seen in the proliferation of corrective rape in which lesbians are raped to “turn them straight” – in order to accept the traditional roles of males and females.⁶³ It has been argued further that most homosexual rapes are committed by heterosexual rapists to extend power over both sexes. Rapists, it was believed, were motivated to rape other males, for example, out of the need to conquer, seek revenge or retaliation for suppressed homosexual desires or out of a sadistic urge to degrade their victim, regardless of gender.⁶⁴ Because of the absence of legal recourse or social sympathy for survivors of this type of rape, particular types of rapists have been allowed to proliferate and their actions, at times, condoned by the legal and social systems.

While this has become a visible category of rapist, during the period under investigation, only one media reference is made to gay rapists. As such, this category of rapist will not be discussed in any length in this dissertation. Corrective/curative rapes of lesbians was completely hidden from the records and will also not be discussed in this dissertation.⁶⁵

Sociologist Deborah Posel pointed out that the “baby rape” and “virgin cleansing” scares shifted the image of the rapist in an era of HIV/AIDS.⁶⁶ Anthropologist Suzanne Leclerc-Madlala claimed that the myth of “virgin-cleansing” in Southern Africa stemmed

Youth Gangs of Soweto, 1935-1976, (Portsmouth: Heinemann, 2000); N. Haysom, *Prison Gangs in South Africa*. Cape Town, Institute for Criminology, 1981; M. Langa, & G. Eagle, “The intractability of militarised masculinity: A case study of former Self-Defence Unit members in the Kathorus area, South Africa”, *South African Journal of Psychology*, 38(1), 2008, pp. 152-175; I. Niehaus, “Towards a Dubious Liberation: Masculinity, Sexuality and Power in South African Lowveld Schools, 1953-1999”, *Journal of Southern African Studies*, 26(3), 2000, pp. 388-409.

⁶² S Gear, “Rules of Engagement: Structuring sex and damage in men’s prisons and beyond”, in G. Reid & L. Walker, *Men Behaving Differently*, pp. 21-64.

⁶³ For example, Eudy Simelane, Banyana female soccer player and equal rights campaigner was gang raped and killed in 2009 for living openly as a lesbian in KwaThema, *The Guardian*, “Raped and killed for being a lesbian: South Africa ignores ‘corrective’ attacks, <http://www.guardian.co.uk/world/2009/mar/12/eudy-simelane-corrective-rape-south-africa-co.uk> (assessed 30 May 2009).

⁶⁴ R. McMullen, *Male Rape: Breaking the silence on the last taboo* (London: GMP Publishers, 1990), pp. 24-28.

⁶⁵ There are two particularly interesting documentaries on the rise of lesbian rapes in townships, *Every 83 seconds*, directed by Lucie Page, 1995, NICRO, Kagiso Trust and the Canadian Government; *Rape for who I am*, directed by Lovinsa Kavuma, 2005, South Africa.

⁶⁶ D. Posel, “The Scandal of Manhood: ‘Baby Rape’ and the Politicisation of Sexual Violence in South Africa”, *Culture, Health and Sexuality*, 7(3), 2005, pp. 240-241; D. Posel, “Baby Rape: Unmaking secrets of sexual violence in post-Apartheid South Africa” in G. Reid & L. Walker, *Men Behaving Differently* (Cape Town: Double Storey Books, 2005), pp. 21-64.

from the belief that a man can cleanse his blood of HIV/AIDS and prevent future contamination by having intercourse with a virgin. She extrapolates that this could be used to explain baby rape throughout South Africa.⁶⁷ Researchers have subsequently argued that the incidence of child abuse has remained high since the early 1990s and that the “virgin cleansing myth” has only led to a minimal increase in the statistics of baby rapes.⁶⁸ Thus, they locate the cause of the rape outside of the perceived and public moral outcries.⁶⁹ However, it did spark academic debate on infant rape in South Africa.⁷⁰ Traditional healers were subsequently blamed for the myth.⁷¹ Mmatshilo Motsei, however, has dispelled many myths surrounding black traditions and cultures after the Jacob Zuma rape trial in 2006.⁷² Elizabeth Thornberry also reflects on these aspects in the Eastern Cape.⁷³ Indeed much effort has gone into explaining and understanding the making of black baby rapists by these theorists. However, baby rape pre-dates the AIDS panic of the late 20th century and is certainly not restricted to black communities as will be made visible in the investigation of the Cape.

South African philosopher Louise du Toit believes that philosophical theory can contribute to solving systemic social problems such as rape and sexual violence. Encouraged to investigate rape because of the need to vent personal rage and to give meaning to the realities of rape, she focuses on the event of rape and the implications for the victim of rape by postulating on the meaning attached between a male perpetrator, a female victim, and the effect it has on female subjectivity and agency. Much emphasis is placed, quite rightly I believe, on making sense of Western philosophy in an African context. She argued that South

⁶⁷ S. Leclerc-Madlala quoted by Charlene Smith, “the Relation between HIV-Prevalence and Virgin Rape”, *News from the Nordic Africa Institute*, 2, 2003, <http://www.nai.uu.se/publications/news/archives/203smith/> (accessed 15 December 2012). Charlene Smith also shows that there is evidence to suggest that this occurs in other parts of the world and it can also be dated back to 19th century England where men believed they could cure themselves from venereal disease by having sex with a virgin.

⁶⁸ R. Jewkes, L. Martin & L. Penn-Kekana, “The Virgin Cleansing Myth: Cases of Child Rape are Not Exotic”, *The Lancet*, 359, 2001, p. 711.

⁶⁹ For example, L. Walker, G. Reid & M. Cornell, *Waiting to happen. HIV/AIDS in South Africa*, (Cape Town: Double Storey Books, 2004).

⁷⁰ For example, G. Pitcher & D. Bowley, “Infant Rape in South Africa”, *The Lancet*, 359, 2002, pp. 274-275.

⁷¹ A. Little, “AIDS: A South African Horror story”, *BBC News*, 2002, <http://www.news.bbc.co.uk/1/hi/programmes/correspondent/2311067.stm> (accessed 12 June 2013)

⁷² M. Motsei, *The Kanga and the Kangaroo Court: reflections on the Rape Trial of Jacob Zuma* (Pretoria: Jacana Media, 2007).

⁷³ Her work will be published later this year but some reflections were made during a Seminar at the University of Cape Town on 19 July 2011. She reiterated these views in “An Empire of Consent: Rape and Politics in the Colonial Eastern Cape”, History Department Seminar, Stellenbosch University, 13 March 2013.

Africa's interaction with the West was enhanced by continued legal Western frameworks (which all South Africans are expected to follow). While it is acknowledged that other disciplines causally explain sexual violence better, she hoped to give meaning to rape by investigating the humanity of the rapist but simultaneously resisting the idea that sense can be made of rape by simply understanding the rapist. As revealing as statistics may be, because of their contestation in South Africa she does not place focus on single cases of rape in an attempt to avoid dismissing the anguish of victims. She also avoids the HIV/AIDS pandemic and its relevance to rape. Most importantly, she believes that "race adds little interest to [the] analysis of the meaning of rape" because "men rape women because men are men and women are women" therefore rape reflects sexual politics and sexual relations, and one cannot understand this by using systems that are deemed racist in itself and which normalise rape.⁷⁴ The focus is therefore on gender inequality.

It is worth noting that her study focuses on contemporary cases of rape in South Africa. In other words, post- *apartheid* South Africa and a continued focalisation on racial difference could prove futile. However, we cannot neglect the peculiarity of racial hierarchy in the history of South African systems. She does aptly point out that most cases of rape are intra-racial. Where we differ quite substantially is her contention that there is little need to focus on the psyche of individual rapists – their deliberate motives, rationalisations and deliberations – believing that a theory of rape based on the "agent-rapist's intentions" and "repression of the victim's experiences" should invoke "feminist suspicion". Interestingly, Du Toit's latest study investigates ontological violence as a change of power from victim to rapist, and in which one is left asking how this can be measured or proven unless more attention is paid to the workings of the rapist.⁷⁵

In 2004, social anthropologist Jozanneke Spoor conducted a study on rapists in the Cape at the turn of the 21st century. She firstly located rape within the broader culture of violence at the Cape and subsequently discussed the views on rape in this region according to the interviews she conducted with members of the public, those working to minimise the rape

⁷⁴ L. Du Toit, *A Philosophical Investigation of Rape: The Making and Unmaking of the Feminine Self* (New York: Routledge, 2009), pp. 1-5.

⁷⁵ L. Du Toit, "Rumours of Rape: a critical consideration of interpretations of sexual violence in South Africa", Research Seminars, Stellenbosch University, 25 February 2013 and 17 April 2013.

crisis, as well as rapists from Pollsmoor Prison. She concluded that better policing of rape is indicative of a “better civilisation”,⁷⁶ and proposed ways to deal with rape in the Cape.⁷⁷

One particular point of interest within Spoor’s study is the comment made by a coloured taxi driver who was of the opinion that “the previous government was much better in dealing with criminals”.⁷⁸ Firstly, this deviates from common perceptions that are completely condemnatory of *apartheid* or colonial strategies on the combating of crime, and this would include rape. Much centres around the race of both victim and perpetrator. Race motivated much of the political strategies of the South African past but this changed over time and had varying consequences for the four official racial groups within different regions. This would require much more empirical evidence to draw any foregone conclusions. Secondly, while this isolated statement may reflect contemporary apathy towards the new political dispensation, it is worth further investigation to avoid a blanket dismissal of politico-legal strategies in South African history.

Another pertinent point raised by Spoor, echoing that of Vogelman, is that violence and perception of violence is a historically constructed cultural phenomenon aligned to social structural theory, which argues that environments influence behaviour.⁷⁹ Of importance to this dissertation, she argued that rape proliferated amongst Capetonians because of drug and alcohol abuse⁸⁰ as a method of repressing emotional turmoil brought on by poor living conditions, unsafe neighbourhoods, poverty and parental drug abuse. These conditions were used to justify criminal actions and contributed towards a continued cycle of violence within

⁷⁶ J. Spoor, “South Africa: The State of Rape – A study of the social, economical, political and cultural factors influencing rape in Cape Town”, unpublished MA (Social and Cultural Anthropology), Vrije Universiteit, Amsterdam, October 2004, p. 14.

⁷⁷In stark contrast to sociologist Emile Durkheim’s controversial assertion in 1895 that crime is not only “inevitable”, and “normal” in any society but is indeed “an integrative element in any normal society”, “indispensable to the normal evolution of morality and law” in “anticipation of the morality to come”, E. Durkheim, *The Rules of Sociological Method* (New York: Free Press, 1982), pp. 98, 101-102.

⁷⁸ J. Spoor, “South Africa: The State of Rape – A study of the social, economical, political and cultural factors influencing rape in Cape Town”, unpublished MA (Social and Cultural Anthropology), Vrije Universiteit, Amsterdam, October 2004, p. 7.

⁷⁹ Political scientist, Mary Dietz gives attention to the contestation surrounding political theorising of gender, identity and subjectivity in, “Current Controversies in Feminist Theory”, *Annual Review of Political Science*, 6, June 2003, pp. 399-431.

⁸⁰ Victims, in this study the women, were at times inebriated during the offence, which poses a problem during the court proceedings as well as increasing the risk of rape as they were unable to interpret, act on warning signs nor effectively defend themselves during the assault.

coloured townships. While the role of the State will be investigated in this dissertation, Spoor also refers the reader to the rise and importance of social activism on violence in the Cape Flats⁸¹ by vigilante groups such as PAGAD (People Against Gangsterism and Drugs).⁸² Embroiled within the general state of Cape violence was the increasingly visible proliferation of rape cases.

Spoor thus introduces yet another important theme prevalent in the Cape: gang rape. Some of her informants were victims of gang rape. They refrained from reporting the incidents for fear of reprisals. If they happened to fall pregnant after the assault, they were even more involuntarily embroiled in gang culture as impregnating a rape victim only adds to the status of the gang member. Therefore she is physically guarded not only to prevent her from fleeing but also to pre-empt any possible abortion. Her environment not only encourages rape culture but also holds her captive.⁸³ Alternative theories on rape and locality have also begun to surface.

One new plausible yet highly speculative debate is the intersection of the physical environment with violence and sexual violence. A journalistic piece written by Phillip de Wet and Sipho Kings entitled “Heavy metal is behind crime” and “Lead’s violent effect on SA’s (sic) children”, appeared in the South African weekly newspaper the *Mail & Guardian* in February 2013. Recent studies in the United States, it revealed, attributed the rise in crime to lead exposure during the 1960s.⁸⁴ It was later argued that South Africa could expect to see a drastic reduction in rape statistics by 2030 because children born after lead-based fuels were banned in South Africa in 2006, would be less prone to violence. Unfortunately, this particular article undermines attempts to end an entrenched rape culture by explaining rapists purely in terms of their physical environment.

⁸¹ Suburban areas on the outskirts of Cape Town CBD where most coloured and black people were settled during *apartheid*.

⁸² J. Spoor, “South Africa: The State of Rape – A study of the social, economical, political and cultural factors influencing rape in Cape Town”, unpublished MA (Social and Cultural Anthropology), Vrije Universiteit, Amsterdam, October 2004, pp. 47-49, 51.

⁸³ *Ibid.*, p. 58.

⁸⁴ This was made known by the American publication *Mother Jones*, a left-wing investigative magazine established in America in the 1970s.

Lizette Lancaster, crime analyst for the Institute of Security Studies, doubts that any one such factor can explain the rise of violence in the Cape Flats. She admits that further research needs to be done on environmental issues but combatting social ills such as alcohol abuse should remain central. Clifford Shearing, criminologist at the University of Cape Town, believes that behavioural regulators such as money, status, biology, crime and punishment will greatly benefit criminology studies in South Africa. Angela Mathee, director of the Medical Research Council's environmental health research unit, has published seminal works on the link between lead exposure on child development and its effects on whole communities but she too refrains from drawing a causal link between lead and crime in South Africa. The World Health Organisation, however, published findings in 2010 showing that acute lead poisoning in children can indeed lead to mental retardation and behavioural disruption. Further experiments on cats showed the causal relationship between lead exposure and aggressive behaviour in humans.⁸⁵ It is therefore plausible that environmental factors in the scientific sense may have made some impact on the propensity to violence of South Africans especially considering the rate of development and the late banning of lead-based products such as conventional fuel.⁸⁶

Until now, there has yet to be an extensive historical study of rape in South Africa. Lucy Graham's 2012 analysis of South African literature and rape however, investigated the liminal boundaries between literature, perception, race, gender, and class and rape in South Africa.⁸⁷ She offers a dialectical approach to the suffering of those subjected to sexual violence by using literary texts and the gender narratives from the colonial period to the present to show the extent to which these have been exploited for political ends in South African history. By investigating the obsession with inter-racial rape within literature there is an absence of a sustained focus on the predominant intra-racial violations that have fuelled an

⁸⁵ P. de Wet & S. Kings, "Heavy metal is behind crime" *The Mail & Guardian*, February 1 to 7 2013, p. 10; P. de Wet, "Lead's violent effect on SA's children", *The Mail & Guardian Health Supplement*, pp. 2-3.

⁸⁶ Scientific research on the role of environmental factors on social development continue to expand upon the possible theories as to why rapists rape. In a more recent study, researchers at the University of California, Berkeley suggest that as global climate temperatures rise, by the end of the century, intergroup conflicts such as civil wars and riots could increase by more than 50%. It is suggested that personal violence, intergroup violence and institutional breakdown all exhibited "systematic and large responses to changes in climate", S. Wild, "Violence increases as climate heats up", *The Mail & Guardian*, August 2 to 7 2013, p. 17. As yet, these theories are experimental and no doubt will become possible explanations for rape in the near future. Unfortunately, they may also become plausible justifications for raping within court proceedings.

⁸⁷ L. Graham, *State of Peril: Race and Rape in South African Literature* (New York: Oxford University Press, 2012).

“imagined community” of the South African nation. Similarly, because inter-racial desire was “unimaginable”, it is argued that it could only be represented in violent terms such as rape within South African literature, but this, too, is proven as ambivalent. She traces the relationship between imperial romance and narratives of sexual violence in South Africa and suggests how narratives of the Black Peril functioned before and after the South African War of 1899-1902, and served as an early nation-building process towards white unity.

She also demonstrated how intra-racial black and white perils were melancholic expressions of forbidden inter-racial love. In her concluding chapter, she assessed violence and memory during the transition towards gender rights, the effects of a persistently violent, racially divided and patriarchal past, male victims of rape as well as baby rape. It is argued that until the past decade, Gareth Cornwell was the only literary critic to pay much attention to sexual violence in South African literature, specifically the Black Peril novels of the 20th century. Both Cornwell and Graham provide interesting insights into the condition of sexual violence in South Africa. She concluded that the discourses of race when dealing with rape fundamentally hamper any effective state response to sexual violence. Even more resounding, at least for this study, is her view that “in order to tackle the insidious and deeply disturbing problem of sexual violence in South Africa today, it became apparent to me that what was needed was not simply a feminist call-to-arms, but a more complex response, which involves, partly, unpacking and demystifying certain narratives of rape”.⁸⁸

Graham quite rightly pointed out the historical roots of the extensive press coverage of white rape victims attacked by black rapists, traced back to the Black Peril, fed and continues to feed, white paranoia of inter-racial rape. In contrast, “white peril” was used to advocate against miscegenation⁸⁹ arguing that some authors could only contemplate inter-

⁸⁸ L. Graham, *State of Peril: Race and Rape in South African Literature*, p. 192.

⁸⁹ Initially coined in December 1863 by American journalists from the New York World, David Goodman Croly and George Wakeman, who anonymously published a pamphlet in London and New York entitled , “Miscegenation: The Theory of the Blending of Races Applied to the American White Man and the Negro” to advocate race mixture in order to improve the gene pool. The pamphlet argued that mixed races were far superior mentally, physically and morally than pure breeds. It was presented as a Republican policy but was in fact a Democratic Party hoax and led to the adoption of the term after 1864 in favour of “amalgamation”, which simply implied any mixture rather than connoting mixing of different races of human beings, F. Wood, *Black Scare: The Racist Response to Emancipation and Reconstruction* (Berkeley: University of California Press, 1970), pp. 53-57.

racial sex in violent terms.⁹⁰ This provoked reaction towards racial profiling rather than any attempt to focus on the problem of rapists. The reported statistics indicate the unfounded extent of this social hysteria. Graham pointed out that there is no statistical evidence to suggest that rape has increased since 1994, claiming that reported rapes have remained consistently high for at least two decades. Many theorists would differ.⁹¹ Needless to say that Graham makes use of the contentious statistics to argue the point that rape prevalence has been consistent, but adds that any increases can be attributed to progress, as more women feel safe to come forward because there is, at least in theory, more visible access to a compassionate ear. Sociologist Cheryl Walker noted that when the defeat of *apartheid* became a reality, more attention was given to gender equality so this might be a plausible reason.⁹² Contemporary surveys discussed in Chapter 3 would suggest otherwise. Similarly, statistical decreases, such as that of 2007-2008, have been attributed to a re-emergence of insecurity amongst women to report rape, as was the case in the aftermath of the Zuma rape trial of 2006.⁹³ What Graham begins to suggest is a critical evaluation of the rape statistics as well as reiterating what others have said about the root cause of rape scares in South Africa.

By 1996, gender activist, Lisa Vetten, drawing from inquest reports and newspapers, established that a woman was killed by her intimate partner in Gauteng every six days.⁹⁴ Later in that year, she postulated that in South Africa, visible victims of rape were quickly categorised into ‘good’ or ‘bad’ and this fundamentally determined the outcome of medical, social or legislative investigation.⁹⁵ Investigating the incidence of rape in South Africa from 1988 to 1996, she compared the rape statistics of 11 countries and concluded that South

⁹⁰ L. Graham, *State of Peril: Race and Rape in South African Literature*, p. 7.

⁹¹ In contradiction to the claims made by several critics stating that rape statistics have increased since 1994, see M. Samuelson, “The Rainbow Womb: Race and Rape in South African Fiction of the Transition”, *Kunapipi*, 24(1&2), 2003, p. 88; H. Moffet, “‘These Women, They Force Us to Rape Them’: Rape as Narrative of Social Control in Post-Apartheid South Africa”, *Journal of Southern African Studies*, 32(1), 2006, p. 129; L. Vetten, “Violence against Women in South Africa”, S. Buhlungu et al (eds.), *State of the Nation, South Africa, 2007* (Cape Town: HSRC Press, 2007), p. 430.

⁹² C. Walker, *Women and Resistance in South Africa* (London: Onyx Press, 1982), pp. xi, xiii-xiv.

⁹³ L. Graham, *State of Peril: Race and Rape in South African Literature*, p. 4. The complainant was portrayed as deranged. Feminist academic Pumla Gqola went as far as describing the event as indicative of the ways in which violent masculinities has taken centre stage in South Africa, P. Gqola, “The Difficult task of Normalizing Freedom: Spectacular Masculinities, Ndebele’s Literary/ Cultural Commentary and Post-Apartheid Life”, *English in Africa*, 36(1), 2009, p. 61. In response to N. Ndebele, “Why Zuma’s Bravado is Brutalising the Public”, *Sunday Times*, 5 March 2006, in which he criticised Zuma’s response to the charges and his lack of concern over how his supporters were becoming increasingly violent.

⁹⁴ L. Vetten, “‘Man Shoots Wife’: Intimate femicide in Gauteng, South Africa”, *Crime and Conflict*, 6, 1996, pp. 1-4.

⁹⁵ L. Vetten, “Roots of a Rape Crisis”, *Crime and Conflict*, 8, 1997, pp. 9-12.

Africa featured second, after Canada. Population size, motivating factors and reporting facilities are said to be major contributing factors to the reporting of rape. It is interesting to note that both South Africa and Canada are fairly renowned for their anti-gender violence campaigns. Nonetheless, estimates of the National Institute for Crime Prevention and Rehabilitation of Offenders (NICRO) suggested that only one in 20 rapes were ever reported to the police and therefore a rape occurred in South Africa every 83 seconds. The South African Police Service (SAPS) estimated that one in 36 rapes was reported and this suggested an even more alarming estimate of one rape every 35 seconds.⁹⁶ In 2006, editor, author and academic Helen Moffet stated that South Africa had the highest incidence of rape for any country not at war.⁹⁷

Vetten attributed these findings to various factors. Firstly, she located this within three possible and well-known theories of rape that make it either inevitable or subconsciously desirable: the biological construct in which men have uncontrollable sexual urges once aroused, the evolutionary model in which rape is a tactic used to climb the social ladder, and the psychoanalytical theory in which women are considered innately masochistic and seek out experiences which cause pain.⁹⁸ Secondly, she argued that there was a truism in the existence of a male culture of violence: “men’s involvement in violent behaviour – either as victim or perpetrator – is integral to ‘masculinity’ in South Africa”, as visible through gang culture and *jackrolling*. Thirdly, socio-cultural factors, such as rape-prone and rape-free societies as termed by anthropologist Peggy Reeves-Sanday in which these two poles are determined by gender equality within societies,⁹⁹ resonates with Vetten at the time as she reminded the reader of the lowly political status and visibility of women during the political brokering which accompanied the transition to democracy in South Africa. This, in turn, is suggestive of the ambivalent, and as suggested, rigidly dichotomous, social response to victims of rape. Rape, she suggested, either ignites responses of outrage, shock, horror and

⁹⁶ http://www.rape.co.za/index.php?option=com_content&task=view&id=875&Itemid=69 (accessed 1 June 2009)

⁹⁷ H. Moffet, “‘These Women, They Force Us to Rape Them’: Rape as Narrative of Social Control in Post-Apartheid South Africa”, *Journal of Southern African Studies*, 32(1), 2006, p. 129.

⁹⁸ This is described as “feminine masochism” by psychiatrist, and disciple of Sigmund Freud, Helene Deutsch in Chapter 7, “Feminine Masochism”, *The Psychology of Women Volume 1*, available at http://archive.org/stream/psychologyofwome031636mbp/psychologyofwome031636mbp_djvu.txt (accessed 10 September 2011)

⁹⁹ Which she terms after her study of college gang rapes, P. Reeves-Sanday, *Fraternity Gang Rape: Sex, Brotherhood, and Privilege on Campus* (New York: New York University Press, 2007).

condemnation or an uncritical siding with the accused because the women provoked the rape through their attire or comportment or have simply fabricated the charges. These misleading stereotypes, Vetten further argued, lead people to believe that “real” rape is committed by deranged strangers or that women entice rapists through their provocative clothing. The institutions charged with dealing with rape also fall prey to irrational stereotypes. Inability to arrest and convict offenders coupled with obscure legislation often lead to a reporting *malaise*. The *cautionary rule*, for example, warns the courts to be cautious of the evidence of the complainant in a sexual offences case even in the absence of any motive for false claims of rape. This is based on the stereotype of women being hysterical, neurotic, delusional, spiteful, sexually frustrated, emotionally unpredictable and scornful when the complainant falls pregnant or wishes to protect a friend or implicate another.¹⁰⁰ Vetten also explained that there is little evidence to suggest that false rapes are greater in percentage than for other crimes.

A survey of 70 police stations in Gauteng in 2003 revealed that 16% of the 1886 rape dockets involved gang rape involving penetration by two or more men. These occurred mostly in public, with most cases of single perpetrator rape occurring in the home. Whether gang rape or single perpetrator rape is often reported more or which types of rape are more likely to be reported, still eludes the critics. It is evident that less than 40% of the victims resisted the rape. According to the medical reports, form J88, most showed “no signs of physical injury” save to their genitals. 87% of the victims were black and unemployed. Arrest rates were alarmingly low and there was a vast disparity between perpetrator accounts of the attack and police case reports.¹⁰¹

Three gang rape scenarios were identified. The majority of rapes occurred when the young men roamed the streets for victims, usually for entertainment purposes. One third of cases involved the victim being a partner of a gang member, presented to the group to be raped, normally in punishment of a wrongdoing such as infidelity. One fifth of cases involved

¹⁰⁰ See for example L. H. Hoffmann, & D. T. Zeffert, *The South African Law of Evidence* (Durban: Butterworths, 1988).

¹⁰¹ R. Jewkes, L. Vetten, R. Jina, N. Christofides, R. Sigsworth & L. Loots, “What We Know -And What We Don’t Know: Single and Multiple Perpetrator Rape in South Africa”, *SA Crime Quarterly*, 41, September 2012, pp. 11-19.

the raping of drugged or inebriated women.¹⁰² 65.9% of the gang rapes were committed by strangers and 27.1% by acquaintances. The vast majority of the gang rapists were under 18. Most were unemployed, or students. Most rapists, unlike in previous studies, had no previous convictions. This, it was argued, was probably due to the poor arrest and conviction rate and it was assumed that many had committed previous acts of rape but had simply remained undetected. The criminal justice system was held responsible for the poor arrest rate in cases of gang rapes and it was concluded that the police either feared or colluded with gangs. 12% of single perpetrator rapes were committed by relatives and 17.5% by partners or ex-partners.¹⁰³ By 2005, the Medical Research Council indicated that only one out of nine rape survivors reported attacks to the police.¹⁰⁴ Of these, only 5% led to a conviction for rape. This is alarmingly different to conviction rates presented in Chapter 3.

In 2004, 28% of men reported having perpetrated acts of rape. It was recorded that most started as teenagers with three-quarters committing rape before the age of 20. One in thirty men, 3.5%, were also victims of rape by other men.¹⁰⁵ Female victims of rape ran the added risk of unwanted pregnancy, HIV and sexually transmitted infections. A third developed post-traumatic stress disorder (PTSD), depression, were prone to suicide and became victims of substance abuse. Male victims were more at risk of HIV infection, alcohol abuse, depression and suicide. It should be noted that findings in 2004 and 2006 revealed that children exposed to emotional, physical and sexual abuse also ran the risk of HIV infection, depression, suicide and substance abuse.¹⁰⁶ Many of the observations in later chapters therefore remain relevant to contemporary rape trends.

¹⁰² K. Wood, "Contextualising group rape in post-Apartheid South Africa", *Culture, Health & Sexuality*, 7(4), 2003, pp. 303-317; J. Wojcicki, "'She Drank his money': Survival sex and the problem of violence in taverns in Gauteng Province, South Africa", *Medical Anthropology Quarterly*, 16, 2002, pp. 1-28.

¹⁰³ The findings in this urban study differ somewhat to later studies in rural Eastern Cape, R. Jewkes, K. Dunkle, M. Koss, J. Levin, M. Nduna et al, "Rape perpetration by young rural South African men: prevalence, patterns and risk factors", *Social Science and Medicine*, 63, 2006, pp. 2949-2961; K. Wood, "Contextualising group rape in post-Apartheid South Africa", *Culture, Health & Sexuality*, 7(4), 2003, pp. 303-317.

¹⁰⁴ Refer to www.oneinnine.org.za

¹⁰⁵ K. Dunkle, R. Jewkes, H. Brown et al, "Gender-Based Violence, Relationship Power and Risk of Prevalent HIV Infection among Women Attending Antenatal Clinics in Soweto, South Africa", *Lancet*, 363, 2004, pp. 1415-1421.

¹⁰⁶ L. Vetten, R. Jewkes, R. Fuller et al, *Tracking Justice: The Attrition of Rape Cases Through the Criminal Justice System in Gauteng* (Johannesburg: Tshwaranang Legal Advocacy Centre, 2004); A. Wood, "Correlating violence and socio-economic inequality: an empirical analysis", T. E. McCarthy (ed.), *Attacking the root causes of torture, poverty, inequality and violence* (World Organisation Against Torture, 2006).

The murder of women by husbands and boyfriends is no doubt an extreme consequence of violence.¹⁰⁷ In the mid-2000s, 40% of men were reported to have been physically violent to a partner.¹⁰⁸ 40-50% of women reported being victims of this violence.¹⁰⁹ Intimate partner violence often also included sexual and emotional violence with men exhibiting controlling behaviour and women living in fear.¹¹⁰ While globally most men are murdered by strangers and rarely by intimate partners, 40-70% of women are killed by their partners. The term “femicide” was first coined at the International Tribunal on Crimes Against Women in 1976, to emphasise that in some instances, women are murdered for being female.¹¹¹ A 2004 study revealed that in 1999, in a post-mortem national sample analysis of all female victims over the age of 14, the national femicide rate was pegged at one murder every six hours.¹¹² By 2009, this decreased slightly.

Poverty, unemployment and unequal access to wealth were all factors attributed to a breakdown of status and respect and feelings of low self-esteem resulting in anger and frustration and manifesting in acts of violence (such as robbery, rape, assault, abuse) in a bid to restore respect and power. Across the racial spectrum, it was argued that men felt superior to women and were socialised into believing that they should be strong, brave and respected. Gender inequality thus legitimised male violence. It was concluded that while the middle classes are often most vocal about these conditions, it is the working class and the poor that

¹⁰⁷ N. Abrahams, R. Jewkes, M. Hoffman & R. Laubscher, “Sexual violence against intimate partners in Cape Town: prevalence and risk factors reported by men”, *Bulletin of the World Health Organisation*, 82, 2004, pp. 330-337.

¹⁰⁸ R. Jewkes, K. Dunkle, M. Koss et al, “Rape perpetration by young, rural South African men: prevalence, patterns and risk factors”, *Social Science & Medicine*, 63, 2006, pp. 2949-2961; R. Jewkes, Y. Sikweyiya, R. Morrell & K. Dunkle, *Understanding men’s health and use of violence: interface of rape and HIV in South Africa* (Pretoria: MRC, 2008); K. Dunkle, R. Jewkes, H. Brown et al, “Gender-Based Violence, Relationship Power and Risk of Prevalent HIV Infection among Women Attending Antenatal Clinics in Soweto, South Africa”, *Lancet*, 363, 2004, pp. 1415-1421.

¹⁰⁹ R. Jewkes, K. Dunkle, M. Nduna et al, “Factors associated with HIV sero-status in young rural South African women: connections between intimate partner violence and HIV”, *International Journal of Epidemiology*, 35, 2006, pp. 1461-1468; R. Jewkes, K. Dunkle, M. Nduna et al, “Factors Associated with HIV sero-positivity in young, rural South African men”, *International Journal of Epidemiology*, 35, 2006, pp. 1455-1460.

¹¹⁰ R. Jewkes, N. Abrahams, S. Mathews, M. Seedat, A. van Niekerk, S. Suffla & K. Ratele, “Preventing Rape and Violence in South Africa: A Call for Leadership in A New Agenda for Action”, *MRC Policy Brief*, November 2009, pp. 1-2.

¹¹¹ The coining of term is attributed to Diana Russell and Nicole van de Ven. Russell who first heard the term in 1975 when American author, Carol Orlock, was preparing an anthology on femicide, which was never published. She then used the term at the 1976 Conference in Brussels, D. Russel, “Femicide: Politicizing the Killing of Females”, Meeting for *Strengthening Understanding of Femicide*, Washington D. C, Revised May 2008, www.igwg.org/igwg_media/femicide/russell.doc (accessed 12 June 2012).

¹¹² S. Mathews, N. Abrahams, L. Martin, L. Vetten, L. van der Merwe & R. Jewkes, “‘Every six hours a woman is killed by her intimate partner’: A National Study of Female Homicide in South Africa”, *MRC Policy Brief*, 4, June 2004, pp. 1-4.

are overwhelmingly victims of these acts.¹¹³ This appears to historically hold true in the Cape.

In 2008, studies revealed that children were also subject to physical violence, one in four reporting that this occurred daily or weekly. More than a third of girls experienced sexual violence before the age of 18,¹¹⁴ by the end of the 1990s, 40% of the victims of rape were girls under 18 and 15% were under the age of 12.¹¹⁵ Coupled with this, 15% reported gross parental neglect through alcoholism, emotional abuse, common neglect and one in two reported witnessing violence towards their mothers.¹¹⁶ In 2009, it was also established that three children per day were murdered in South Africa. Most victims were young girls with a notable increase in male homicides amongst teenage boys displaying their ‘manliness’ in acts of fatal aggression. Most children were killed by unrelated persons with mothers committing a sizeable portion of murders of children less than five years of age. 10% of these homicides involved suspected rape or sexual violence. 25% were committed on young girls and 1.5% on young boys. 18% of rape homicides were inflicted upon children under the age of five.¹¹⁷ This, it is argued, leads to a cycle of violence as girls become at risk for re-victimisation as adults¹¹⁸ and boys tend to become violent as adolescents and adults. They also have difficulty with emotional attachments. For both sexes, abuse inhibits brain development and enhances antisocial and psychopathic behaviour.¹¹⁹ Child sexual abuse and the rise of juvenile rapists, too, has a long and sordid history in the Cape.

¹¹³ R. Jewkes, N. Abrahams, S. Mathews, M. Seedat, A. van Niekerk, S. Suffla & K. Ratele, “Preventing Rape and Violence in South Africa: A Call for Leadership in A New Agenda for Action”, *MRC Policy Brief*, November 2009, pp. 1-2.

¹¹⁴ L. Vetten, R. Jewkes, R. Fuller et al, *Tracking Justice: The Attrition of Rape Cases Through the Criminal Justice System in Gauteng* (Johannesburg: Tshwaranang Legal Advocacy Centre, 2004).

¹¹⁵ M. Peden, A. Butchart, “Trauma and Injury”, N. Crisp, A. Ntuli (eds.), *A South African Health Review*, pp. 331-344.

¹¹⁶ L. Vetten, R. Jewkes, R. Fuller et al, *Tracking Justice: The Attrition of Rape Cases Through the Criminal Justice System in Gauteng* (Johannesburg: Tshwaranang Legal Advocacy Centre, 2004).

¹¹⁷ S. Mathews, N. Abrahams, R. Jewkes, L. Martin & C. Lombard, “Child Homicide Patterns in South Africa: Is there a link to Child Abuse?”, *South African Medical Research Council Research Brief*, August 2012, pp. 1-4.

¹¹⁸ M. Koss & T. Dinero, “Discriminant analysis of risk factors for sexual victimisation among a national sample of college women”, *Journal of Consulting and Clinical Psychology*, 57, 1989, pp. 242-250; A. Caspi, J. McClay, T. Moffitt et al, “Role of Genotype in the Cycle of Violence in Maltreated Children”, *Science*, 297, 2002, pp. 851-854.

¹¹⁹ R. Jewkes, Y. Sikweyiya, R. Morrell, K. Dunkle, “Understanding men’s health and use of violence: interface of rape and HIV in South Africa”, *MRC Policy Brief*, June 2009, pp. 1-2; K. Dunkle, R. Jewkes, H. Brown et al, “Gender-Based Violence, Relationship Power and Risk of Prevalent HIV Infection among Women Attending Antenatal Clinics in Soweto, South Africa”, *Lancet*, 363, 2004, pp. 1415-1421.

Gender and legal specialist Lillian Artz claimed in 2009 that gender violence was still the most pervasive crime in South Africa with women being murdered, physically and sexually assaulted on a daily basis. She blamed this on continued support of gender inequality within the social, cultural and political structures, despite a contradictory political rhetoric.¹²⁰

A 2009 sample study of three districts in the Eastern Cape and Kwazulu Natal (in 1 738 households) investigated the interface between sexual violence and rape, physical intimate partner violence (IPV) and HIV. It revealed that South Africa had one of the highest rates of reported rape to the police in the world as well as the largest number of people living with HIV. It tested the notion that men who raped and were physically violent towards their partners were more likely to engage in risky sexual behaviour and thus were perceived to be more prone to HIV infection.¹²¹ The arrival of HIV/AIDS in the country has perhaps led to a new motivation for raping. One can also question whether this explanation has been appropriated by rapists in a bid to exonerate their behaviour.

While the findings on HIV infection surprisingly refuted any correlation between rapists and HIV infection, the factors leading to rape, rapist demographics and reasons given by rapists in some instances supported existing findings on the prevalence of rape in South Africa, but they also provided some fresh insights into the nature of rape acts. 27.6% of the men interviewed admitted to raping a woman or a girl, 4.6% within the past year. 14.3% had raped a current or ex-girlfriend, 11.7% an acquaintance or stranger, 9.7% had raped both and 8.9% admitted to raping with other perpetrators when the woman did not consent, was forced to, or when she was too drunk to resist.¹²² 2.9% had raped other men or boys. 16.8% of the men had attempted to rape with 5.3% having tried within the last 12 months. 46.3% of men who had raped, admitted to raping more than one woman or girl. 23.2% had raped between two to three women, 8.4% between four and five women, 7.1% between six and 10 and 7.7%

¹²⁰ L. Artz, "The Weather Watchers: Gender, Violence and Social Control in South Africa", *The Prize and the Price: Shaping Sexualities in South Africa*, p. 175.

¹²¹ R. Jewkes, Y. Sikweyiya, R. Morrell, K. Dunkle, "Understanding men's health and use of violence: interface of rape and HIV in South Africa", *MRC Policy Brief*, June 2009, pp. 1-2.

¹²² Lisa Vetten points out in 2008 that 30% of cases reported to the police involved gang rapes or multiple acts of penetration with 58% involving serious injury and a high risk of exposure to HIV, L. Vetten, R. Jewkes, R. Fuller et al, *Tracking Justice: The Attrition of Rape Cases Through the Criminal Justice System in Gauteng* (Johannesburg: Tshwaranang Legal Advocacy Centre, 2004).

more than 10 victims. Alarming, 9.8% of the respondents had committed rape while they were under 10 years of age. 16.4% were between 10 and 14, 46.5% between 15 and 19, 18.6% between 20 and 24, 6.9% between 25 and 29 and 1.9% 30 or older. Those who admitted to raping were found to be significantly better educated, having some form of employment and income. Racially, more coloured men admitted to having raped. Here questions arise about the link between poverty and rape as well as if coloureds, historically pervasively situated between white and black in the racial hierarchy, are only now more prone to rape.

Parental absence was a significant factor associated with raping. Many men cited poor relationships with their parents as a contributing factor to their behaviour as well as some form of childhood abuse and trauma such as teasing, harassment and bullying – some of whom admitted to acts of bullying themselves. Criminal and delinquent behaviour was common including theft, use of weapons, gang membership and many had been previously imprisoned. They were also significantly more prone to risky sexual behaviour – having many sexual partners, having transactional sex or sex with a prostitute. There was also evidence that they were heavy alcohol users, were violent towards their partners, refrained from consistent use of a condom in the last 12 months and quite unexpectedly, they admitted to having raped another man. This admission is quite a new phenomenon.

In another study conducted in the Eastern Cape, Mpumalanga and the Northern Province in 2009, 2 232 household interviews took place. Although the prevalence of rape was high, it was concluded that it was lower than had previously been estimated. Alarming, however, the results reveal the extent of rape amongst adolescents. A high percentage of women were reportedly forced to have their first sexual experience, with nearly two-thirds of adolescents in Cape Town reporting they were forced against their wishes and People Opposed to Woman Abuse (POWA) estimating that one in three women will be raped in their lifetime.¹²³

¹²³ R. Jewkes, L. Penn-Kekana, J. Levin, M. Ratsaka & M. Schreiber, *“He must give me money, he mustn’t beat me”*: Violence against women in three South African Provinces, pp. 1-27.

There remains a strong notion, perceived or real, that “these high levels of violence are an enduring legacy of our colonial and *apartheid* past, driven by social dynamics formed during the years of racial and gender oppression, with systematic impoverishment, under-education, rampant violence and destruction of normal family life”.¹²⁴

A 2010 Medical Research Foundation survey of 487 men in Gauteng, South Africa, concluded that one in three men rape women with 7% admitting to being involved in gang rape. Rachel Jewkes is quoted as attributing these figures to *apartheid*, which destroyed family life, fostered violence and antisocial behaviour and poorly enforced common law, thus contributing to a culture of impunity. She adds that interventions need to be started in childhood, especially amongst boys, as well as supporting and encouraging women to report sexual violence.¹²⁵ While these statistics certainly motivate much needed social reaction, there is a danger in not contextualising them appropriately. In the latter example, it is important to note the number of men interviewed as well as the location in which the survey was conducted. Similarly, while broad conclusions can be drawn on the historical causes of rapist motivations, one could also ask why two out of three men do not rape if they, too, are a product of a damaging past and a bleak present of poverty, unemployment and continued violent surroundings?

Motivated by an absence of research on the rapists and having concluded “a focus on victims is less helpful than understanding the men who commit rape”, Rachel Jewkes et al, conducted a study in 2011 in three districts of the Eastern Cape and KwaZulu-Natal. It was concluded that between 28-37% of men in South Africa have raped. 7-9% were involved in gang rape.¹²⁶ It is worth noting that the South African statistics are juxtaposed with those from India, where 24% of men admitted to raping, Chile and Rwanda (9%) and rural Bangladesh (15%). While these figures also prove quite high, less than 2% of these men admitted to engaging in gang rape. But they do suggest that the alarming numbers of reported

¹²⁴ M. Seedat, A. van Niekerk, R. Jewkes, S. Suffla & K. Ratele, “Violence and injuries in South Africa: prioritising an agenda for prevention”, *Lancet*, 374, 2009, pp. 1011-1022.

¹²⁵ See http://www.huffingtonpost.com/2010/11/27/south-africa-rape-study-m_n_788722.html & <http://www.guardian.co.uk/world/2010/nov/25/south-african-rape-survey> (accessed 20 June 2013)

¹²⁶ R. Jewkes, Y. Sikweyiya, R. Morrell & K. Dunkle, “Gender inequitable masculinity and sexual entitlement in rape perpetration South Africa: Findings of a cross-sectional study”, *PloS One*, 6(12), 2011, <http://www.plosone.org/article/info:doi/10.1371/journal.pone.0029590> (accessed 10 July 2012)

rapes is by no means unique to South Africa nor that the incidence of rape is disproportionately large compared to other localities. However, 24% is far from being a negligible figure.

The most pertinent findings in the 2011 study, for the purposes of this dissertation, are the motivations given by rapists. Most rapists felt entitled to sexual gratification. 45% indicated that they felt no remorse. The raping of girls under 15, stranger, acquaintance and partner rapes were considered healthy “fun” to alleviate moments of boredom; similar arguments were used by gang rapists. Most attributed some blame to alcohol and peer pressure; others punished their victims and acted out of anger – especially in cases of partner rape. A small percentage admitted to raping to cleanse them from disease, and their victims were mostly young girls. 49.3% of rapists believed that their young victims would remain silent.

There were five important distinctions between rapists and non-rapists in this sample. It should be noted that these were reported by the rapists and serve as a justification for the approach taken in this study of ascertaining their motivations for rape as far removed from hindsight as is possible. Firstly, all had suffered some childhood abuse. Secondly, they could all find some justification for the attack and held gender inequitable and hostile views on women, “subscribing to rape myths” which legitimised their actions. Thirdly, they engaged in behaviour in accordance with the heterosexual hegemonic masculinity theory on complete control of women. Fourthly, they saw themselves as victims, externalising blame for their actions but simultaneously admitting to testing the boundaries of acceptable social norms, described by psychopathological theory. Lastly, they were all involved in some form of delinquent behaviour – belonging to gangs, using drugs and engaging in other violent behaviour. There was little conclusive evidence to show that rape was linked to poverty or that alcohol was an extenuating circumstance in relation to other compelling risk factors. Some forms of rape, as per legislation, and at odds with traditional practices, were also not considered rape by the rapists. This includes practices such as *ukutwala* (wife abduction), still practised today, as well as sexual cleansing after traditional circumcision in which the sexual partner is not known to the man and often resembles a rape. Therefore, certain acts of rape were considered legitimate forms of traditionally accepted sexual practice within certain cultural groups. One in five men had been involved in gang rape and this was justified as

something “boys do”. This justification also serves as a reason as to why the respondents were willing to participate in the survey.

The motivations also differed according to the age of the victims. Those who raped girls under 15 were either attracted to children or were young themselves, or chose or had selected for them, victims younger than themselves. In these rapes, anger and alcohol were negligible motivations for rape, and rape as a cleansing technique from sexual disease was not restricted to seeking a virgin cure for HIV but rather part of the general notion of sexual cleansing endemic in the area.

In their recommendations, the authors argue that the patriarchal and gendered value system held in these areas requires much more attention at a societal level rather than relying on a purely legal intervention. Whilst these conclusions are important for intervention strategies, they do not explain specific acts of rape. Rape myths and sex role stereotypes are sometimes over-exaggerated and seem to be displayed in both convicted rapists and non-rapists.¹²⁷ Therefore, these cannot fully explain why not all men socialised in the same manner turn to rape. However, they do point towards the importance of a micro-level strategy.

Jewkes et al find some similarities between Malamuth’s global model and the South African context. They concur with him that rape perpetration and childhood trauma, gang membership, transactional sex¹²⁸ and sexual promiscuity are compelling factors, but criticise it for paying scant attention to social contexts influencing childhood trauma, gender dynamics and rape within gangs¹²⁹. Of great importance, they believe, is poverty, childhood trauma and negligent caregivers. However, some research has shown that rural rapists in South Africa came from less impoverished backgrounds and more educated mothers and rather exhibited signs of entitlement from this vantage point. Nonetheless, there was a realisation that there

¹²⁷ N. Malamuth, R. Sockloskie, M. Koss & J. Tanaka, “Characteristics of aggressors against women: testing a model using a national sample of college students”, *Journal of Consulting and Clinical Psychology*, 59, 1991, pp. 670–681; M. Burt, “Cultural myths and support for rape”, *Journal of Personality and Social Psychology*, 38, 1980, pp. 217–230; J. Overholser & S. Beck, “Multi-method assessment of rapists, child molesters, and three control groups of on behavioural and psychological measures”, *Journal of Consulting and Clinical Psychology*, 54, 1986, pp. 682–687; C. Muelenhard & P. Falcon, “Date rape and sexual aggression in dating situations: Incidence and risk factors”, *Journal of Counseling Psychology*, 34, 1990, pp. 186–196.

¹²⁸ Defined as emotionally disengaged sex outside of any nurturing relationship.

¹²⁹ R. Jewkes, Y. Sikweyiya, R. Morrell & K. Dunkle, “Gender inequitable masculinity and sexual entitlement in rape perpetration South Africa: Findings of a cross-sectional study”, *PloS One*, 6(12), 2011, <http://www.plosone.org/article/info:doi/10.1371/journal.pone.0029590> (accessed 10 July 2012)

existed a glass ceiling from under which they would never surface.¹³⁰ The relationship between poverty and rape can also be explained in terms of masculinities theory, discussed under masculinities.

In 2012, the statistics of intimate partner homicide, namely female homicide¹³¹ and intimate femicide¹³², for 1999 and 2009 were compared using a sample of various mortuaries.¹³³ It is argued that the killing of a woman by her partner epitomises the trend of intimate partner violence. Through this comparative study, the efficacy of laws, policies and programmes against gender violence is monitored. It was concluded that there was a decrease in female homicides, but an even smaller decrease in intimate femicide. It is noted that there was a general decrease in homicides in 2009, largely attributed to stricter gun control legislation implemented in 2000. Rape homicides¹³⁴ had increased in 2009 but this was attributed to non-intimate encounters compared to 1999, during which a woman was killed by her partner every six hours.¹³⁵ Rape statistics issued by the SAPS showed relative stability during this period. Convictions of perpetrators, however, had sadly decreased. In 1999 and 2009, it was noted that the SAPS unsuccessfully documented previous histories of violence which would have secured a conviction.

Surveys essentially portray the dichotomy between old and new legislation and the divergent paths of State intervention and social change. They also reflect on moments of scares, panics and manipulation. From the 1990s, various new laws not simply shifted focus away from racialised bodies, but began to press on the need to broaden definitions of perpetrator to include those previously hidden or indeed legislated out of legally being

¹³⁰ R. Jewkes, K. Dunkle, M. Koss, J. Levin, M. Nduna et al, "Rape perpetration by young rural South African men: prevalence, patterns and risk factors", *Social Science and Medicine*, 63, 2006, pp. 2949–2961.

¹³¹ Defined as intimate and non-intimate homicide.

¹³² Defined as the killing of a female by a partner. This includes current and previous partners, husbands, boyfriends, same sex partners and rejected would-be-partners. For the purpose of this study, it would have been interesting if the number of same-sex partner homicides were published as this would have greatly contributed to the understanding of violence and gender power dynamics.

¹³³ N. Abrahams, S. Mathews, R. Jewkes, L. Martin & C. Lombard, "Every Eight hours: Intimate femicide in South Africa 10 years later!", *South African Medical Research Council Research Brief*, August 2012, pp. 1-4.

¹³⁴ Homicides occurring with a sexual component.

¹³⁵ N. Abrahams, R. Jewkes, L. Martin, S. Mathews, L. Vetten & C. Lombard, "Mortality from intimate partner violence in South Africa: a national epidemiological study", *Violence Vict*, 24, 2009, pp. 246-256; S. Mathews, N. Abrahams, L. Martin, L. Vetten, L. van der Merwe & R. Jewkes, "'Every six hours a woman is killed by her intimate partner': A National Study of Female Homicide in South Africa", *MRC Policy Brief*, 4, June 2004, pp. 1-4.

defined as a sexual perpetrator. These included not only marriage partners who raped but all partners in all types of unions. Along with new terminology that acknowledged that men, too, could be victims of sexual violence, these legislated changes had to motivate change within patriarchal traditions unwilling to effect the necessary alignments to national directives. The concept of paying a bride price had to be re-evaluated. Husbands no longer paid for their wives, thereby owning them, and wives and children were no longer to be possessions as they, too, had rights. In its bid to be overarchingly democratic, the new political dispensation now had to confront the dilemma of implementing Western practices of governance within traditional systems unwilling to sacrifice their own autonomy and positions of power. The very notion of tradition became even more stagnated. But clinging on to these powerful traditions, has also led to a selective understanding of what constitutes cultural practice and how it has changed over time in the face of a persistent and more powerful force.¹³⁶ Rather than adopting new customs, staunch resistance meant that those no longer protected by national laws were being protected and indeed encouraged (as “turning a blind eye” does) to continue gender discrimination. This is made visible through the opinions expressed within the surveys.

These studies suggest that cycles of violence in particularly brutal environments are socialising more perpetrators of sexual violence and this transcends the rudimentary theories of rape which explicitly locate rape simply within biological determinism. Many respondents were abused by their parents and turned to substance abuse because they were trapped in these brutalising environments. Their parents too were victims of abuse and they too turned to drugs and alcohol. The cycle is left unbroken as many of the new offenders are young children.

Both statistics and surveys on South Africa give some indication of the broader visible trends but they do tend also to re-enforce stereotypes. Why were these surveys conducted in these particular areas? Why is there a strong suggestion that rape is only

¹³⁶ One such example of selective understanding of traditions is the claim that homosexuality is “un-African”. Several studies have shown how African traditions have indeed adopted “western” constructs of sexuality in a convenient bid to control the bodies of their own protagonists, see S. Murray & W. Roscoe (eds.), *Boy-Wives and Female Husbands: Studies in African Homosexualities* (New York: Palgrave, 2001); M. Epprecht, *Hungochani: The History of a Dissident Sexuality in Southern Africa* (Montreal: Queen’s University Press, 2004).

prevalent in areas occupied by previously disadvantaged South Africans? What about men who lived under similar conditions and did not turn to rape? Do these findings have historical links? More importantly, are these types of rapists visible in the Cape and how do they explain their behaviour?

Towards A 20th Century History of Rapists in the Cape

Historian Hans Heese stated that some cases of rape and attempted rape can be seen in the 18th century Cape courts. He cited only one white man prosecuted for the rape of a Khoi woman, the rest were slaves. Rapists were executed in a gruesome manner, especially men who raped white women.¹³⁷ Mansell Upham claimed that he could not find a single case of a white man convicted of raping a Khoi woman in the Dutch East Indian Company archives. He also added that it was difficult to determine whether cases were about rape, attempted rape or consensual sex across the colour-line.¹³⁸ Between 1705-1767, only five cases of attempted rape of a white woman by a slave (most of whom were young girls, the youngest a mere six years old) were found - all of whom were executed. Attempted rape in these instances meant even the mere desiring of a white female body. The testimonies of the young girls were unequivocally accepted over that of the slaves. This was not unusual during colonial conquest. But as historian Nigel Penn has pointed out, the absence of white rapists from the Council of Justice records does not suggest that the crime did not exist but rather that the crime could not be proven. In this context, and in the absence of witnesses, who would believe the testimony of a non-European heathen?¹³⁹ More importantly, because unmarried women were considered a potential commodity, their virtue had to be protected. Therefore, the virtue of low status women as well as married women was considered less of a concern.

Penn also pointed out that while one could argue that many more Khoi women were raped by white men by the very virtue of them being potential rapists, as suggested by Yvette

¹³⁷ H. Heese, *Reg en Onreg: Kaapse Regspraak in die Agtiende Eeu* (Bellville: University of the Western Cape, 1994), p. 98.

¹³⁸ M. Upham, ““Keeping the gate of Hell...” subliminal racism & early Cape carnal conversations between black men & white women”, *Capensis*, 1, 2001, pp. 16-34.

¹³⁹ N. Penn, “Casper, Crebis and the Knegt: Rape, Homicide and Violence in the Eighteenth-Century Rural Western Cape”, *South African Historical Journal*, 66(4), 2014, pp. 611-634.

Abrahams,¹⁴⁰ the cultural context of the Khoi society needs to be contemplated. Penn shows that it was common practice for marriage suitors to enter the huts of their prospective wives, lay next to, and wait for, the woman to raise the alarm, or not. This would indicate acceptance or rejection of the proposal. Other practices were even more alarming and would be described in contemporary terms as simulated rape. Future bridegrooms along with their fathers would visit the future in-laws. After smoking *dagga* they would either agree or disagree to the proposal. If the parents agreed, he would speak to the girl and ask her permission. If she refused, the two had to “fight”. “They lie together and pinch each other’s buttocks as hard as they can, until at last the girl is tired and concedes victory to the boy...”¹⁴¹

Marriage between whites and Khois meant baptism and familiarity with the Dutch language and customs. As such, and in the absence of a sizeable white female population in the Cape between the 17th and 18th centuries, many white men cohabited with Khoi or slave women. As Pamela Scully has pointed out, with the arrival of British laws in the Cape in the 19th century, testimony of Khoi and slaves was acceptable in the courts of law but this did not lead to a host of inter-racial rape claims. She found no evidence of a white man raping a coloured woman in the criminal records she consulted on the early 19th century rural Western Cape.¹⁴² This is not to suggest that it did not happen. According to Penn it simply means it was not endemic. In fact, Penn argued that while there were instances of rape in the Cape from the early 19th century, there was no culture of endemic inter-racial rape in the colony. He argued that this was most likely because of certain strategies to deter rapists: the death sentence for convicted rapists and the social stigma attached to rape by all sections of Cape society. This, it should be said, has not deterred rapists before.

Unlike the rest of the country during the Black Peril scares, historian R. L. Watson has shown that settler fears of freed slaves was less visible in the Cape and that they hardly anticipated rape scares as was the case in other parts of the country or in America. Court

¹⁴⁰ Y. Abrahams, “Was Eva Raped? An Exercise in Speculative History”, *Kronos*, 23, 1996, pp. 3-21.

¹⁴¹ Peter Kolb quoted in N. Penn, “Casper, Crebis and the Knegt: Rape, Homicide and Violence in the Eighteenth-Century Rural Western Cape”, *South African Historical Journal*, 66(4), 2014, pp. 629-630.

¹⁴² P. Scully, “Rape, Race and Colonial Culture: The Sexual Politics of Identity in the Nineteenth Century Cape Colony, South Africa”, *American Historical Review*, 100, 1995, pp. 334-359; P. Scully, *Liberating the Family? Gender and British Slave Emancipation in the Rural Western Cape, South Africa, 1823-1853* (Portsmouth: Heinemann, 1997).

records of the 1830s show few cases of coloured or black men charged with raping white women or even white men raping coloured or black women.¹⁴³

What is apparent according to the scant existing literature on rape in the Cape on the eve of the 20th century, is that Black Peril scares were less predominant than other regions of the country. The reporting of intra-racial rapes was uncommon, or at the very least, eluded the authorities. Changing colonial powers from the Dutch to the English systems of governance also brought with it new sets of regulatory laws controlling sex, not simply sexual violence. Miscegenation simply went against British colonial policy and this appears to be a consistent obsession throughout the colonial, segregation and *apartheid* eras. However, more attention must be given to deciphering between illegal consensual sexual acts and acts of non-consensual sexual violence in order to trace the trends of sexual violence in the Cape during the 20th century. This requires meticulous attention to what can only be assumed to be the fraction of rape cases which appeared before the Cape Supreme Court.

Concluding Remarks

Global theories on rapists suggest particular types of persons with a variety of reasons as to why they commit rape. Defining the rapist depends largely on political, legislative, social and personal labels which have changed over time and place. Global and local trends do not necessarily coincide but there are similarities between settings within the country and other rape hotspots beyond its borders.

The real or perceived nature of rapists in South Africa has undoubtedly been affected by its colonial, segregation and *apartheid* eras. Fixation on inter-racial rapes by black men upon white women has largely dominated the literature. What has become increasingly obvious through investigations conducted on alleged and convicted rapists, rather than simply the all-encompassing category of potential rapists, is the existence of adult, juvenile, baby

¹⁴³ R. Watson, *Slave Emancipation and Racial Attitudes in Nineteenth-Century South Africa* (Cambridge: Cambridge University Press, 2012), p. 188.

and gang rapists across the racial divide in contrast to a strict race rhetoric at the turn of the 20th century in which all black men were potential rapists and the only type of rapist that should be convicted of rape. People have committed acts of sexual violence in South Africa because they may have suffered from one or more of the following conditions: a diseased or pathologised mind, which is often used to explain serial rapists,¹⁴⁴ their oppressive environments has led them to act out in forms of rape, they have been trapped in cycles of violence, exposed to violence, have been desensitised to sexual violence through pornography and prostitution, have been poorly socialised within the home, have been poorly managed in State facilities, have turned to hyper-masculine gang cultures to feel a sense of belonging and identity, or have had their inhibitions grossly diminished by the easily accessible abundance of cheap alcohol and drugs in the country. But just as historical and geographic contexts have led to similarities and differences between rapists elsewhere and those in the country, more attention should be given to the geo-political setting of the Cape. Who were the rapists, why did they do what they did and how different are they to rapists found in other areas of the country and abroad?

¹⁴⁴ It should be pointed out that a purely psychological evaluation of rapists and in particular serial rapists, falls beyond the scope of this dissertation. However, some notable works on serial rapists in South Africa include J. A. De Wet, "An exploratory analysis of serial rape in South Africa", DPhil thesis, University of Pretoria, 2008, Pretoria, (<http://upetd.up.ac.za/thesis/available/etd-05312009-013437/>); J. A. De Wet, G. N. Labuschagne, & P. M. Chiroro, "Offender characteristics of the South African male serial rapist: An exploratory study", *Acta Criminologica*, 22(1), 2009, pp. 37-45.

Chapter 3

The State and the Judiciary: Legislated Rapists During Segregation and Apartheid

There is broad academic consensus that State statistics on rape are flawed for a variety of reasons. Failing to report rape out of fear of reprisal or ostracism continues to provide legal cover for hidden rapists – they go unnoticed by the law and their communities but not by their victims. Statistics reflect the broad categories of legally defined alleged and convicted rapists. These include adult rapists, juvenile rapists, gang rapists, serial rapists and even people erroneously convicted for rape. Their victims may be adults, juveniles, babies or animals – acquaintances or strangers. However, classification is largely regulated by the State legislation on sexual offences at that time. Social or personal definitions are not considered in the formal classification system. By these standards, it is already clear that rape statistics are flawed. Ironically, they are the most cited sources when discussing rape in a particular context. The rapist, the actual problem, goes largely unnoticed.

So what purpose can statistics serve? Firstly, they give some indication on the effects of changing rape legislation by clearly defining the most prevalent types of alleged and convicted rapists according to the type of victim or alleged victim. Historically, these have been defined in racial terms. Secondly, they may reflect broader political and social concerns about sex, sexuality and sexual violence at a particular moment in time. Unlike surveys which conflate potential rapists with other types of rapists, they indicate actual convicted or accused rapists. Thirdly, they could regulate how those concerns are internalised, in other words, they can create or dissipate moral panics. Lastly, they indicate how efficiently the official policing mechanisms are dealing with rapists in various provinces, such as incarceration or death. Conviction rates as well as conviction rates between the various races can be suggestive of other factors taken into consideration beyond what the law dictates. It should be made clear that police intervention and reporting structures cannot be adequately assessed from the statistics. They also fail to indicate levels of recidivism, which is particularly problematic as they fail to consider the actions of serial rapists who can indeed make an enormous difference to the rape statistics. This would reflect more of a pathological problem on an individual level rather than suggesting a broader social problem. The statistics also fail to identify the various types of rapists or the reasons why they committed acts of rape. The Cape Court records fill this lacuna.

This chapter will critically evaluate changing rape legislation and assess if this has made an impact upon reported rapes or conviction rates. Those previously considered potential or hidden rapists may have contributed to the recorded numbers of convicted or alleged rapists - not necessarily because their numbers have increased but because they have been uncovered by State legislation or fierce policing sparked by general panic. Similarly, State obsessions about regulating consensual sex and “vices” could have also led to some rapists being hidden from the judicial eye.

Curbing Sexual Violence or Regulating Sex?: State Legislation and the Cape Judiciary

There are two types of legislation that require investigation before exploring the rape statistics. While legislation implemented to curb sexual violence should be adequate to explain rape statistics, the particularly turbulent and oppressive policies of the South African State during the segregation and *apartheid* eras certainly need to be reflected upon to partially explain why the statistics are a poor source of information, partially explain the context in which rapists were moulded and partially explain why they committed acts of sexual violence.

Defining the Rapist: Changing State Legislation

By the turn of the 20th century, and in the midst of the Black Peril scares, sexual crimes included incest, polygamy, bigamy, assault with intent to commit rape, indecent assault, rape, Contravention of Section 1, Sub-section 1 of the Criminal Law Amendment Act 25 of 1893,¹ Contravention of Section 1, Sub-section 2 of the Criminal Law Amendment Act 25 of 1893,² and later Contravention of Section 2, Sub-section 1 of The Girls and Mentally Defective Women’s Act No. 3 of 1916.³ The accused could face compound charges in the

¹ Which was tantamount to statutory rape as it made provisions for sexual intercourse with “girls” above 12 and below 14.

² That “she was an idiot or imbecile”.

³ This prohibited sexual relations with girls under 16 and those deemed mentally unable to consent to sexual relations. The first case tried under this Act in the Western Circuit courts was that of Martinus Jaftha, KAB CSC 1/2/1/147 Criminal Records 2nd Western Court of the Cape of Good Hope Provincial Division of the Supreme Court of South Africa 1916 - Criminal Session held in Malmesbury 11 September, Case 3: Rex v. Jaftha.

hope of securing a conviction at any length, even if this meant that the accused was convicted on a lesser charge.⁴ The legal definitions for rape, sexual and indecent assault and for what is now referred to as statutory rape, remained unchanged until 1957. Non-consensual sex or rape was largely defined by the Sexual Offences Act No. 23 of 1957, also known as the Immorality Act No. 23 of 1957. Most of the Act, however, reflects the State's obsession with controlling brothels and prostitution, with very little emphasis on rape itself. Rape was defined as a penis forcefully entering a vagina, thus only women could be raped and, generally, only men were charged with rape. Women could be charged with rape if they aided and abetted male rapists to commit offences on other women. This was extremely rare. Jack Isaac, John Daniels and Katie Petersen, for example, were charged with the robbery and rape of Kathleen van Dyk on 13 June 1932 near Cape Town.⁵ Even though Katie was not found guilty of rape, she was formally charged. In 1972, a girl who considered herself "too ugly to have sex", "got her thrills" by watching gangs rape young women. She was charged with rape in 1972 after having lured several young girls to the gang members.⁶ The only other case of a woman charged for rape can be seen in the national crime statistics in 1988-1989.⁷

Indecent assault was considered a lesser crime and was mostly brought before the Magistrate's Court while cases of rape and sexual assault, even in the absence of penetration, were heard by the Supreme Court of South Africa. The Attorney-General decided whether cases warranted prosecution in the Supreme Court and this dictated the maximum sentences that could be passed down on sexual offenders. For example, the maximum sentence passed down on rapists in the Regional Courts during the 1960s was three years' imprisonment, but this could also be accompanied by corporal punishment.⁸ Men who sexually assaulted other

⁴ For example KAB CSC 1/2/1/138 Criminal Records 1st Western Circuit March to September 1910- Circuit Court held in Oudtshoorn 29 March 1910, Case 2: David Walsh, a groom residing in Oudtshoorn, found guilty of assault with intent to commit rape or otherwise Contravening Section 1, sub-section 1 of the Criminal Law Amendment Act 25 of 1893 or otherwise contravening sub-section 2 of the same Act on Rose Avontuur, minor daughter of Adam Avontuur; KAB CSC 1/2/1/138 Criminal Records 1st Western Circuit Court Cape of the Good Hope Provincial Division of the Supreme Court of South Africa 1910 - Criminal Session held in Oudtshoorn 29 March, Case 2: Rex v. Welsh; KAB CSC 1/2/1/144 Criminal Records 1st Western and Northern Court of the Cape of Good Hope Provincial Division of the Supreme Court of South Africa 1914 - Criminal Session held in Clanwilliam 3 April, Case 1: Rex v. Gysman.

⁵ KAB CSC 1/1/1/166 Cape Supreme Court Records, Case 9/ July 1932, Rex v. Jack Isaac, John Daniels & Katie Petersen.

⁶ Author unknown, "Too ugly for sex, so...", *Cape Argus*, 11 November 1972.

⁷ *Statistics of Offences released by the Republic of South Africa Central Statistical Service (CSS) Reports no. 00-11-01 for 1988/89*. Unfortunately, this case is currently closed under the 25-year archival clause.

⁸ This caused some debate within the National Assembly. For example, Mr. M. L. Mitchell (United Party MP for Durban North) brought before the Assembly the case of two Portuguese men convicted in the Regional

men, or raped them in contemporary terms, were charged with indecent assault. This is not to suggest that it was not considered rape by the victim or the public. One explicit example of the incongruence between legislation and societal views can be seen in a *Cape Argus* newspaper headline of 15 April 1972. The victim was babysitting when a group of thugs dragged him outside and “assaulted” him.⁹ Despite the charge of indecent assault being filed against the men who committed the act, the headline reads “Moffie outraged”, “outrage” commonly being used in reference to the act of rape and “moffie” being the colloquial term used in the Cape to refer to gay men. Most likely, attitudes towards homosexuality and the perception of the “effeminate male” led to this rather outrageous report. Not only does it reflect the scant regard for homosexual victims of sexual violence during this period but it also reflects the media’s flippant treatment of the victim of the assault. It also points to a type of sexual assault that possibly went grossly unreported, especially for those engaged in what was considered illegal sexual relationships which may have ended in rape. These include not only homosexual relationships¹⁰ but also inter-racial relationships.¹¹

Contravention of section 14(1)(a) of Act No. 23 of 1957 referred to what is now termed statutory rape. Then, it was restricted to “sleeping with a girl under the age of 16”. Sex with children, incest, and sex with “idiots” or “imbeciles” was prohibited under the Immorality Act No. 23 of 1957 which forbade any carnal intercourse between parents/guardians and children. This was restricted to male guardians and female daughters, but it became gender neutral under the Immorality Amendment Act No. 2 of 1988. This extended to encouraging the child into prostitution or encouraging the child to visit a prostitute. Males were forbidden from intercourse with a girl under the age of 16 or from immoral or indecent acts with boys or girls under the age of 19. Section 15 forbid carnal

Court, Cape Town for raping a 17 year old girl. Louis Sardinha (22) was sentenced to 3 years and 5 strokes and his 16 year old accomplice received 6 strokes with a light cane. The Magistrate condemned the actions of Sardinha as “absolutely ruthless” with lasting effects on girl, particularly as she was subject to epileptic fits. The maximum penalty he could impose was 3 years and 15 strokes. Applications were to be made to the Minister of Justice (B.J. Vorster) whether case was brought to his attention and if so, why it was not referred to the Supreme Court so that a stiffer sentence could be passed, Author unknown, “Questions for House on outrage hearing”, *The Cape Argus*, 2 May 1962.

⁹ Author unknown, “Moffie outraged by two thugs”, *Cape Argus*, 15 April 1972.

¹⁰ Homosexuality itself was not considered ‘illegal’ until the famous “men at parties” clause in the Immorality Amendment Act No. 57 of 1969. Prior to this, the only prosecutable legislation was for sodomy between both heterosexuals and homosexuals, consensual or otherwise.

¹¹ The Immorality Act No. 5 of 1927 outlawed inter-racial intercourse between white and “native” peoples and this was extended to all non-whites under the Immorality Amendment Act No. 21 of 1950. This was later repealed by the Immorality and Mixed Marriages Amendment Act No. 72 of 1985. The Prohibition of Mixed Marriages Act No. 55 of 1949 was also repealed in 1985.

intercourse with those deemed “idiots” or “imbeciles”. This repealed the Girls and Mentally Defective Womens’ Protection Act No. 3 of 1916. Section 16 prohibited carnal intercourse and indecent or immoral acts across the colour divide. Other taboos included the use of drugs or alcohol to defile a female, the manufacture, sale or supply of items that could be used for unnatural sexual acts, public sexual indecency, prostitution, and acts committed by men which could stimulate sexual passion or give sexual gratification.

Legislation during the *apartheid* era regulated sex rather than sexual violence or rape. It is only during transition and the post- *apartheid* era that any fundamental changes to rape legislation were implemented. Firstly, the Prevention of Family Violence Act No. 133 of 1993 recognised any union between a man and a woman under any law or custom to be recognised as such. Homosexual unions would also become recognised through the Civil Union Act No. 17 of 2006. But the most important legislation which uncovered potential rapists was the Domestic Violence Act No. 116 of 1998. A high prevalence of domestic and sexual violence was allegedly widespread within unions and thus the Act condemned any physical, sexual, emotional, verbal and psychological abuse in both heterosexual or homosexual unions – whether solemnised by a rite or not. This now provided a legal channel for the reporting of rape by a spouse.

The *coup de grâce* appeared in 2007 with the Criminal Law (Sexual Offences and Related Matters) Amendment Act No. 32. This Act expanded the definition of rape to include penetration or stimulation of any orifice with any object, and both genders as possible victims or perpetrators.¹² This also includes people violated in their sleep, while unconscious, dead, in an altered state of consciousness through alcohol, drugs or medication, children under 12 and the mentally disabled. Those who do not report the rape of children are also punishable under the Act. Rape and sexual assault could also be compelled and this implies

¹² It should be noted that similar gender neutral shifts occurred at the same time in other countries. Rape in the United Kingdom, for example, was legally defined as the carnal knowledge of a female against her will and required penetration of the vagina by a penis. This excluded the possibility of female perpetrators of rape. The Sexual Offences Act of 2003 instituted an era of gender free terminology, both male and female could be rapist or rape victim. However, because common understandings of rape conjured images of a penis, rape is only prosecutable if there is a penis involved, although it does not automatically have to penetrate a vagina to constitute rape. The anus or the mouth will do. The violation of a man’s body was not considered as harmful as that of the female as she could fall pregnant or suffer from some venereal disease, J. Bourke, *Rape: A History from 1860 to the Present* (London: Virago Press, 2007), p. 213.

that third parties may be prosecuted for coercing rape or sexual assault of another person, or compelling that person to commit non-consensual acts upon the self. This in effect prohibits those who promote and run prostitution rings. Specific mention is made of trafficking persons for sexual purposes. Those who witness sexual violence are also compelled to report these offences to the authorities. The age of consent is set at 18 and all sexual acts upon children (including compelled rape, exposure, exposure to pornography or enticement to commit sexual acts upon the self), and those with mental handicaps¹³ are considered under the rape legislation. Incest, bestiality and sexual acts with corpses also fall under the Act. Child pornography as well as compelling children to partake in pornography or compelling any person to witness child pornography is a criminal offence. Convicted sex offenders are placed on a register and are compelled to undergo an HIV test.¹⁴

Statutory rape is the term used for consensual sex with minors between 12 and 16. Minors under 12 and mentally disabled people are considered unable to give consent and this would be termed rape. Sexual assault includes any non-penetrative coerced sexual acts as well as compelling a third party to commit rape or sexual assault. The term also replaces the former charge of indecent assault and extends to all other forms of coercive sex not covered by the other definitions of rape.¹⁵

All forms of rape are now statutory and thus courts are compelled by legislation to follow certain rules and punishments, as opposed to how rape had been treated under common law where the judge's discretion and precedents of other cases could influence judgements. In compelling cases, judges could set new precedents. In short, making rape statutory means that the courts have to adhere rigidly and sternly to specific punishments.

¹³ According to the Act, those with a disability or disorder at the time of the offence which renders them unable to appreciate the consequences of the act, unable to act accordingly, unable to resist or unable to communicate their willingness to participate in the said act, Chapter 1.

¹⁴ There is a clause warning against false claims of rape to compel spouses to HIV tests with a fine and/or a prison sentence of up to 5 years.

¹⁵ The 2007 Act repeals the definitions presented in the Magistrates' Courts Act No. 32 of 1944 for rape and indecent assault.

It is within this changing legal framework that the rape statistics in South Africa have been formulated. As definitions of rapists have expanded, one would expect to see a natural corresponding increase in the statistics. Periods of logical fluctuations would therefore be the turn of the 20th century, during the Black Peril Scares, 1957 and 2007. These time frames correlate with the categories mentioned in Chapter 2: colonial, segregation, *apartheid* and post-*apartheid* eras. Because of the importance of these eras, they will be considered for comparative purposes to indicate natural continuity or problematic incongruences. Any deviations from expected shifts would require further explanation. There is little room in this study for a detailed analysis of all the rape statistics. The objective is simply to plot rape statistical movements and conviction rates. However, other forms of legislated control also require some contemplation.

Regulating Sex: State [In]Attention to Rape in the Cape?

From the literature presented in Chapter 2, by the turn of the 20th century, racial mixing was arguably blamed for the state of rape in the Union. However, there was little consensus.¹⁶ Changing class structures were also considered important.¹⁷ Changing class and race dynamics, throughout the political history of South Africa, fundamentally had an impact on its people and the ensuing legislation.¹⁸ English academic Paul Gilroy, for example, suggested that Boer settlers in the Cape were initially responsible for the architecture of *apartheid*.¹⁹ Historians William Beinart and Saul Dubow have since shown greater similarities between British South African policies and Afrikaner *apartheid*.²⁰ Sex between the races had to be regulated and this extended from colonial conquest to *apartheid*. Codification of these obsessions with sexual behaviour appeared under the Sexual Offences Act or Immorality Act of 1957. Three identifiable categories are pertinent: immorality, pornography and prostitution.

¹⁶ R. Ross, *A Concise History of South Africa* (Cambridge: Cambridge University Press, 1999), p. 84.

¹⁷ L. Thompson, *A History of South Africa* (Johannesburg: Jonathan Ball Publishers, 2006), p. 151.

¹⁸ South African historian Nigel Worden argues that *apartheid* actually provided a means of cementing the cross-class Afrikaner alliance. An Afrikaner ethnic identity overcame the ravages of industrialisation and class divisions by preaching a common Afrikaans language and heritage, N. Worden, *The Making of Modern South Africa* (Oxford: Blackwell Publishing, 2000), pp. 78, 101.

¹⁹ P. Gilroy, *After Empire: Melancholia or Convivial Culture?* (Abingdon: Routledge, 2004), p. 17.

²⁰ W. Beinart & S. Dubow (eds.), *Segregation and Apartheid in Twentieth-Century South Africa* (London: Routledge, 1995), pp. 4-8.

A Misnomer - Immorality Act or Sexual Offences Act of 1957: Negotiating Race, Class and Immorality

“Problematic” groups and behaviours have changed over time. Here, too, there is much debate, as pointed out by Heese, Scully and Penn, discussed in Chapter 2. By 1910, the findings of the Fourth General Missionary Conference provide an adequate foundation from which further legislation could be implemented. They identified the most vulnerable groups and gave reasons why they were vulnerable. The majority of cases for rape, defilement of a child and indecent assault were on black women. The statistics of assaults on white women were actually comparable to those in Britain at the time. Black and coloured victims were easy prey because they lacked financial, social and political power. Nevertheless, concerns were raised about black rapists, as it had been done in most colonial settlements according to the general theories on rape. Black men were instinctual rapists incited to act out against defenceless and clueless white women because they drank alcohol and smoked *dagga*, which numbed their senses, self-control and judgement and made them unable to reflect on the consequences of their actions. They had decreased levels of respect for white women because of their frequent escapades with white prostitutes and because they worked in close proximity to white “madams” in their homes. “White miscreants” or “lapsed whites” were largely to blame for showing the uncivilised black man that whites could lead a life of debauchery and lewdness. Many also sold “obscene photographs”, which incited lustful behaviour upon the white sanctified body. So too did inter-racial marriages between white women and black men. She was probably the most damned: “The white woman loses caste with her own people, and generally has as little influence as if she were dead and buried”.²¹

White organisations such as the Rand Women’s Petition of 1913, provided a contesting summation of rape in the Union. There was a strong belief that the threat to white female bodies was real and not perceived. They wanted much more stringent legislation to protect them from vices. They appealed for the death penalty for rapists or attempted rapists

²¹ Author unknown, “Fourth General Missionary Conference: Report of Commission VI: Black Peril”, *The Christian Express*, 1 August 1912, pp. 126-132.

of all races, that police crackdown on white women who lowered the white women's standard by prostituting themselves to black men (which it was argued lowered the place of all white women in the eyes of the "native" and led to general lack of respect by "natives"), as well as tougher control of "houseboys" in the area. What becomes of interest is that they made these pleas under the guise of an impending class conflict rather than a purely racial concern.²² It thus served a particular purpose. It suggests a stronger concern for classes of victims and perpetrators by the turn of the century.

Black opinions on race and rape at the turn of the century also set the scene. They were particularly concerned about whites tantalising the sexual attention of black men during the Black Peril, arguing that effective eradication lay entirely in the hands of white women. It was argued that from Natal to the Zambezi, white women and their men preferred the services of "raw, illiterate natives in the services of their households. In every household, café, restaurant, one will find the raw natives half-clad – and the white employers want to see these people half-clad as they are". The second issue raised was the "undue familiarity between white women and their native servants". They argued that "[t]hese kraal natives are unaccustomed to the white women, consequently they mistake any familiarity on the part of white women to be an indication of love". White women themselves were not beyond the class distinction. There was growing concern that "white women of the inferior class" also accosted these "native men". It was also pointed out that under the laws of the Transvaal and Natal, white women were punished for cohabiting with black men. The missionaries wanted white men to also be punished as well as all couples living in sin.²³ Of particular interest in this account is the distinctions made between desirable and objectionable classes of black men and white women. Strong correlations were being made between good moral behaviour and good class. But this, too, was under attack.

It was being argued that there no longer existed differences between Dutch and British and that the real threat to white hegemony and the state of rape came from "Christianised Kaffirs". Christian missionary societies, such as the American Ethiopian

²² Author unknown, "The Report of the Assaults on Women Commission", *The Christian Express*, 1 August 1913.

²³ Mockockonono, "Extracts from the Native Press: The Black Peril", *The Christian Express*, 1 June 1912, p. 94.

Mission, it was argued, created havoc by encouraging blacks to seek equality with whites. It was believed that the “raw native” was easier to control. It was also debated that in light of the threats the Christianised “kaffirs” posed, “the small, intelligent, and enlightened community should control the barbarian one”.²⁴ However, focus remained firmly on the lower classes of whites, manipulating blacks for their own, “vile passion”.²⁵

The growing “white peril”, or perceived proliferation of sex between white men and black women, was highly publicised by writer and initial secretary-general of the SANNC, Solomon Tshekisho Plaatje. He toured the United States in 1921 where he published *The Mote and the Beam: An Epic on Sex-relationships 'twixt White and Black in British South Africa*, which is considered the first attempt by a black South African to write on sexuality and inter-racial sex in particular. Plaatje directly challenged the notion of the purely Black Peril rhetoric by questioning the role of the white peril, white men who “flood[ed] the country with half-castes”, and the “white madam” as the seductress.²⁶

The moral decay, which manifested itself in rampant outrage against white women, was seemingly the result of whites having “illicit sexual intercourse with the natives [...] in some instances Europeans [...] paid *lobola*”.²⁷ White politicians agreed. In 1912, General Hertzog and Mr. Burton were congratulated for contextualising the crime of rape. Both protagonists argued for racial unity and calm because they asserted that the crime was on the decrease and was, after all, caused by the whites.²⁸ Blame was placed on the press and vigilante groups for heightening public sentiment and indeed by publishing the gruesome details, planting the seed of rape in the mind of the native. They argued that it was the role of the civilised races to show the uncivilised the power of a Christian civilised lifestyle.²⁹ Hertzog’s political turnabout can be seen in the 1930s. Between 1924 and 1933, Hertzog’s

²⁴ Author unknown, “The Native Question”, *The Rhodesia Herald*, 13 November 1902.

²⁵ Author unknown, “Black Peril and Bad Whites”, *Tsala ea Becoana*, 15 July 1911 repeated in *Imvo Zabantsundu*, 25 July 1911. The response to this article was sent in by Petrus Sidzumo in “Letters to the editor”, *Tsala Ea Becoana*, 26 August 1911.

²⁶ L. Graham, *State of Peril: Race and Rape in South African Literature* (New York: Oxford University Press, 2012), pp. 69, 73.

²⁷ Jeremiah Hlazo & J.J. Lerothodi Ntyweyi, “Letters to the editor”, *The Christian Express*, 2 October 1911.

²⁸ Author unknown, “The Black Peril: Discussion in the Senate”, *Mafeking Mail and Protectorate Guardian*, 30 April 1912.

²⁹ Author unknown, “Native Opinion: An Unsavory Topic”, *Imvo Zabantsundu*, 7 May 1912.

Nationalist Party in an electoral pact with the Labour Party, passed more legislation to protect “poor whites” but at the same time create greater constitutional freedom for the Union. In Hertzog’s election campaign of 1929, he made sure to reiterate that the Black Peril onslaught required more rigorous segregation.³⁰ This implied opposition to miscegenation, concerted action against white degeneration in unsegregated cities, and promoting the belief that blacks were innately incapable of becoming civilised members of South African society. White workers were to be protected from black competition and white women were enfranchised, thereby reducing the proportion of black voters in the Cape Province by half. This was seen by observers as a rejection of the Cape assimilationist tradition whereby certain racial groups could acquire status if, for example, they qualified for the franchise or attained certain levels of “civilisation”, according to the definitions of the time.

This also had implications for coloured voters and fundamentally reduced the importance of their concerns, such as increased violence and growing impoverishment. It must be noted that the franchise in the Cape in the early 20th century and the rise of the National Party relied on the coloured vote. Coloured groups opposed the Black Peril rhetoric but did so by distinguishing themselves racially from blacks, all of whom were deemed potential rapists at the time. The African Political Organisation chapter in Port Elizabeth, for instance, published a letter in *The Christian Express* in 1911 in sympathy of a brutal case of rape at the time. The goal of the letter was to add their support in what appeared to be only white condemnation of the act and a “European drive for moral preservation” in South Africa. They argued that the “interests of the coloured people in these things is one with, and inseparable from, those of the European population”. In support of the protection of women and children, they emphasised the fact that this required both white and non-white to enhance mutual confidence and esteem.³¹ As an outward expression of this sentiment, the APO organised a protest with “natives” against outrage against women and children.³² By the 1920s, some coloured intellectuals and those who qualified for the vote, the elite, were attracted to the *Afrikaanse Nasionale Bond*, the coloured wing of Hertzog’s National Party

³⁰ This contradicts his reflections in 1912 on the Black Peril discussed in Chapter 4.

³¹ Author unknown, “The Attitude of the Coloured Population Towards the Recent Crime in Port Elizabeth”, *The Christian Express*, 1 June 1911.

³² Author unknown, “Coloured People’s Protest”, *Tsala Ea Becoana*, 3 June 1911.

because of calls by Hertzog to align coloured identity with that of the Afrikaner.³³ In a 1929 statement, Hertzog clearly aligned white and coloured aspirations: “it would be very foolish to drive the Coloured people to the enemies of the Europeans – and that will happen if we repel him – to allow him eventually to come to rest in the arms of the Native”.³⁴ However, coloured political involvement was limited and will be discussed further in Chapter 6.

What becomes increasingly visible by the 1930s is that debates on rape and race, in particular the stark contrasts between black and white, slowly developed into one of contemplating the class of both perpetrators and victims. Similarly, the issue of coloured rapists as an identifiable racial category also came to the fore. “Coloured” referring to all non-white rapists in the Black Peril literature³⁵ now distinguished between black, white and coloured rapists, but also between those of a “good” or “bad” class. Unfortunately, by the 1940s, race became, yet again, an important marker of rape.

There is little need to reiterate what many texts reveal about the impact of white governance on black and coloured bodies. Most historians have reached consensus.³⁶ There was a consistent shift towards protecting the white population and this required stringent legislation to regulate all forms of sexual behaviour. This was most palpable post-1948 with the election of the National Party and the implementation of several pertinent laws. The prohibition of mixed marriages appeared in 1949 and the Immorality Amendment Act No. 21 of 1950 extended the ban instituted in 1927 on inter-racial sex between whites and blacks to include all “non-whites”. The Population Registration Act of 1950 also classified peoples into “European”, “Coloured”, “Asiatic” (Indian) and “Native” (later “Bantu” or African). The Group Areas Act of 1950 extended separate racial residential areas on a comprehensive and compulsory basis, and this had a profound effect on sexual crimes in the new settlements. The 1953 Reservation of Separate Amenities Act enforced social segregation in all public

³³ A. Davids, “Politics and the Muslims of Cape Town: A Historical Survey”, *Studies in the History of Cape Town*, 4, 1981, pp. 176, 198.

³⁴ J. Hertzog, “Joint Sitting of Parliament”, *Hansard*, 12-15 February 1929, Col. 169.

³⁵ See for example “Coloured Peril: A P.E. Native Sentenced”, Author unknown, *Mafeking Mail and Protectorate Guardian*, 6 March 1913.

³⁶ See for example L. Thompson, *A History of South Africa*, pp. 150-182; D. Welsh, *The Rise and Fall of Apartheid* (Johannesburg: Jonathan Ball Publishers, 2010), pp. 1-28; N. Worden, *The Making of Modern South Africa*, pp. 78-90, 102-106; R. Ross, *A Concise History of South Africa*, pp. 84-113.

amenities. By 1956, coloured voters (largely supporting the United Party) were placed on a separate voters' roll and by 1970 both blacks and coloureds had no political representation in parliament. For Cape society, these national changes meant a hardening of racial categorisation and a clearly defined social strata and differential rights bound within four distinct racial groups of whites, coloureds, Indians and "natives". This is not to suggest that racial categories did not exist before but rather that it had now become codified in law. When legislation was lagging behind desired outcomes, interventions could disguise the real intentions of the State. One such example can be seen in the various sanitation syndromes across the country.³⁷

The relationship between rape, race and class between the colonial, segregation and *apartheid* eras have, according to the literature, remained fluid but certainly consistent in the Cape. Ironically enough, the *apartheid* law of 1957, supposedly regulating sexual offences, further criminalised consensual sexual acts.

Historian Catherine Burns points out that by 1957, immorality "was a firmly established part of public life".³⁸ However, it has a long history. Most visible cases of immorality were heard in the lower courts and thus, much of the testimony has been destroyed. However, some interesting cases of inter-racial sexual liaisons were reported to the authorities under the guise of sexual assault. The reasons for which either protagonist reported these cases are not always apparent within the court records but it did pose a problem for the judiciary. They were charged with the task of deciphering between cases of inter-racial consensual sex and those of inter-racial non-consensual sexual violence, the latter being dealt with more severely. It is unclear if "false" cases of rape, as deemed by the court,

³⁷ Sanitation syndromes often disguised racial rhetoric, see for example, M. Epprecht, "Health, Environment and Racialisation of Space in Pietermaritzburg/Edendale, 1880 – 1950: Revisiting the "Sanitation Syndrome"". Paper presented at the History and African Studies Seminar, University of KwaZulu-Natal, 7 April 2010; M. Swanson, "The Sanitation Syndrome: Bubonic Plague and Urban Native Policy in the Cape Colony, 1900 – 1909", *The Journal of African History*, 18(3), 1977, pp. 387–410; C. Fransch, "We Would Have No Name': The Porosity of Locational and Racial Identities Amongst the 'Coloured Communities' of Stellenbosch, c. 1890-1960s", *African Studies*, 2010, 69 (3), pp. 403-422

³⁸ C. Burns, "Writing the History of Sex in South Africa", paper presented at the Wits Institute of Social and Economic Research, 6 August 2012, p. 18.

were subsequently referred to the lower courts under the crime of immorality. Certainly, before the laws were passed into legislation, charges were simply dropped.³⁹

By 1950, coloureds and Indians were added to the list of possible offenders under the Immorality laws of 1927. The courts of the 1960s realised that this could very well be exploited by some unscrupulous people. An Indian man, Samsodien Ismail, for example, was alleged to have raped a 48-year old white housewife in Southfield in 1962. It was later proven that neither the testimony of the woman nor that of the husband were credible. Justice Snyman even warned the woman: “I think you are a liar. There is a strong possibility that you will be charged with perjury after these proceedings”. It must be said that the prosecutor was willing to charge the man with rape or alternatively contravening the *Immorality Act* as if the two charges were inter-changeable. After intervention by the judge, all charges were eventually dropped because it became clear that the couple were in fact attempting to extort money from the accused.⁴⁰

White complainants were becoming acutely aware that they could secure a conviction if their alleged attackers were non-white. Pieter Genisson, for example, a 27-year-old coloured male, was charged with housebreaking with intent to steal and assault with intent to rape Marjory Salome Kruger, a white woman, in Fish Hoek on 16 October 1969.⁴¹ He was found guilty of housebreaking but acquitted on the charge of assault with intent to rape, despite Marjory’s damning testimony and Genisson’s startling criminal history. The judges were convinced that Marjory had fabricated the allegations of rape to punish Genisson for stealing from her.

The difficulty of negotiating the changing perceptions of race, class and immorality can best be seen in the sentencing practices at the Cape. From the turn of the 20th century, judges had a reasonable amount of flexibility in cases of rape. Some showed signs of racial

³⁹ Christiaan Esau, for example, was charged with raping Anna Waite, a white female in her early 20s in Cape Town on 8 July 1938. The case was eventually withdrawn as the evidence suggested that the two protagonists had been intimate over a period of time, KAB CSC 1/1/191 Cape Supreme Court Records, Case 15/ October 1938, *Rex v. Christiaan Esau*.

⁴⁰ Author unknown, “Woman in attempted assault case told in court: You’re a liar”, *Cape Argus*, 28 May 1962

⁴¹ KAB CSC 1/1/1348 Cape Supreme Court Record, Case 41/1970, *State v. Pieter Genisson*.

bias,⁴² and their sentences could be incomparably harsher.⁴³ Some made it explicit that white women were prized possessions. Justice Jones, for example, warned: “I think it is time that you and your kind should understand that females, and particularly white females, are not there for people like you to satisfy their lust upon. I do not know if you are aware of it or not, but within the last few months two or three persons have been hanged for committing rapes”.⁴⁴

Legislated attempted rape of a white woman also warranted stiff punishment. Jan Meyer, for example, was sentenced to four years’ hard labour and 10 cuts by Justice Centlivres for attempting to rape Edith Myrl Worth on 24 October 1936 near her home in the Durbanville Bellville countryside.⁴⁵ In the same session, and tried by the same judge, Alfred Stevens, a white male, was only sentenced to 18 months and six cuts with a cane for attempting to rape a coloured woman, Ellen Africa, on 24 December 1936 also in Bellville.⁴⁶ Both convicts had no previous criminal records. These two examples would suggest some form of racial bias on the part of the judge, rather than the judicial system.

A few cases in the 1940s have shown this. However, not all attempted rapes of white women resulted in conviction.⁴⁷ Having a previous conviction led to a stiffer sentence,⁴⁸ but showing remorse or compassion would be rewarded. In 1949, Willie Williams, was convicted of attempting to rape Heliganda Hendrika Morkel, a white woman, and sentenced to three years’ hard labour. In passing sentence, Justice Ogilvie Thompson justified his “lenient

⁴² KAB CSC 1/2/1/141 Criminal Records 1st Western Court of the Cape of Good Hope Provincial Division of the Supreme Court of South Africa 1912 - Criminal Session held in De Aar 26 March, Case 8: Rex v. Basson. Other examples can be seen in, KAB CSC 1/2/1/147 Criminal Records 2nd Western Court of the Cape of Good Hope Provincial Division of the Supreme Court of South Africa 1916 - Criminal Session held in Clanwilliam 5 September, Cases 5 and 6.

⁴³ KAB CSC 1/2/1/139 Criminal Records 1st Northern Court of the Cape of Good Hope Provincial Division of the Supreme Court of South Africa 1910 - Criminal Session held in Victoria West 21 March, Case 5: Rex v. Williams.

⁴⁴ KAB CSC 1/1/1/154 Cape Supreme Court Records, Case 6/ May 1929, Rex v. Johnson Kango.

⁴⁵ KAB CSC 1/1/1/185 Cape Supreme Court Records, Case 10/ February 1937, Rex v. Jan Meyer.

⁴⁶ KAB CSC 1/1/1/185 Cape Supreme Court Records, Case 12/ February 1937, Rex v. Alfred Stevens.

⁴⁷ See for example, KAB CSC 1/1/1/200 Cape Supreme Court Records, Case 17/ June 1941, Rex v. John Harry October.

⁴⁸ See for example, KAB CSC 1/1/1/204 Cape Supreme Court Records, Case 8/ August 1942, Rex v. David Fourie.

sentence because Willie had “listened to his victim”, “apologised” and inflicted “little violence upon her”.⁴⁹ Using excessive violence could also lead to a stiffer sentence.⁵⁰

The same trends continue in the 1950s.⁵¹ Even during this racially charged period, protecting the rights of all women, irrespective of race, continued to be of importance. This could naturally reflect the personal leanings of the judge. Justice van Winsen, for example is seen to reiterate this in 1950 and 1952: “*Verkragting is ‘n uiters ernstige misdad, of kleuring op kleuring, of kleuring op blank, of blank op blank of blank op kleuring*”,⁵² “It is unsafe for European, Coloured or Native women to go about when people like you are walking about”.⁵³ It also excluded married women: they were expected to entertain the sexual whims of their husbands.⁵⁴

In 1965, sociologist O. D. Wollheim noted that the problems of crime in the Cape were not one of race but class. “It is high time that we in South Africa started to look at our social problems with cool and detached eyes, analysing them in terms of scientific knowledge already at our disposal and not through some sort of social spectroscopy which immediately attaches certain problems to certain colours”.⁵⁵ Such class distinctions were already visible within the courts from the 1930s.

For instance, Ben Kaluti was charged with raping Elizabeth Asser, a coloured female aged 23, on 6 April 1935 in Cape Town. The jury found Ben guilty of rape and Justice Sutton sentenced him to 12 months’ hard labour and eight cuts with a cane. In passing sentence, it became clear that the class of the victim was of importance:

⁴⁹ KAB CSC 1/1/253 Cape Supreme Court Records, Case 8/ June 1949, Rex v. Willie Williams.

⁵⁰ See for example, KAB CSC 1/1/197 Cape Supreme Court Records, Case 21/ December 1940, Rex v. Adam Cupido.

⁵¹ KAB CSC 1/1/283 Cape Supreme Court Records, Case 326/ November 1951, Rex v. Jan Williams.

⁵² Rape is a serious offence even if committed between coloureds, coloureds and whites, between whites or between whites and coloureds; KAB CSC 1/1/285 Cape Supreme Court Records, Case 24/ February 1952, Rex v. Freddy Silgeur.

⁵³ KAB CSC 1/1/263 Cape Supreme Court Records, Case 137/ May 1950, Rex v. Johannes Mkulusi.

⁵⁴ See for example the sentencing in KAB CSC 1/1/254 Cape Supreme Court Records, Case 25/ August 1949, Rex v. Hendrik Swiggelaar.

⁵⁵ Letter to the editor, “There are other root problems: Lawlessness and liquor”, *The Cape Argus*, 16 February 1965

This woman belongs to a humble class which needs protection in the locality in which she lives [...] I think it was probably due to the fact that you were under the influence of liquor but that does not excuse you [...] only one thing men like you are afraid of and that is cuts. Imprisonment does not mean much to people of your class.⁵⁶

In 1946, Alfred Zwelinjani was admonished by Justice G. Steyn for not only raping a coloured woman but also a coloured woman “not of the same class as [himself]”, when he was sentenced to 18 months’ hard labour for raping Farida Peterson on 3 December 1946.⁵⁷ In 1952, Jakob Pietersen, for example, was found not guilty and discharged by Justice Hall and a jury of 9 white men because the evidence outweighed any possible racial bias.⁵⁸ But this is not to suggest that race still did not play a part in some of the cases.

A protracted and harrowing case involving a young victim of rape in 1966 reveals the prosecutions attempt to make the race of the child central to the charge of rape. While counsel generally tended to cross-examine District Surgeons on the actual forensic evidence as well as the physical and psychological state of both the accused and the complainant, Dr. Edelstein was prodded to determine the race of Nicolene:

BY THE COURT: Doctor, you said the child was a European? ---Yes

Did she appear to be a European? ---- She said she was European. She looked white, but one has doubt. I would say- she might pass for European. I thought she could be non-European but that was only an impression. I saw her mother, too. Ordinarily one would take her to be European? --- Has your Worship seen her?

No?--- I think one would take her to be European if one saw her.

Ordinarily. I am asking for your opinion because this is fairly important? --- is she here? Could we see her again? (Complainant brought into Court). I think she must be taken as European but I wouldn’t be dogmatic about it.

I believe the position is that the mother is European and the father coloured?--- I did not know that. I just saw the mother and the complainant.

Ordinarily one would not class her as coloured? --- I would not think she. [sic]

She has the appearance ...? --- She has the appearance of a European.

After being paraded in the courtroom, all charges were dismissed.

⁵⁶ KAB CSC 1/1/1/179 Cape Supreme Court Records, Case 5/ August 1935, Rex v. Ben Kaluti.

⁵⁷ KAB CSC 1/1/1/235 Cape Supreme Court Records, Case 6/ May 1947, Rex v. Alfred Zwelinjani.

⁵⁸ KAB CSC 1/1/1/286 Cape Supreme Court Records, Case 77/ March 1952, Rex v. Jakob Pietersen.

Determining Nicolene's race was of utmost importance because attempted rape of a white child by a non-white felon would often result in a sentence comparable to that of full penetrative rape. Johannes Hendricks, for example, was sentenced to five years' hard labour for the attempted rape of a young white girl, Maude Mongie, near Ottery, Wynberg on 7 July 1940.⁵⁹ Surprisingly, during the more politically charged era of the 1970s, this was by no means a given. Jan Braadjies, for example, a coloured youth aged 19, was charged with the rape of Magdalena Theron, a five-year old white infant at Drostersnes in Caledon on 17 August 1970. He pleaded, and was found, not guilty by Justice Watermeyer. In this case, a copy of the judge's personal notes indicates that there were certain compelling factors he was taking into consideration. Amongst them, was the fact that the girl was white and under the age of 12 and that the accused was coloured. Nevertheless, the charges were dismissed.

By 1966, there are examples in which the race of defendants and complainants became less important and the age and possible rehabilitation of convicts became even more significant in the sentencing procedure. Patrick Koeries, for example, a coloured male aged between 19 and 20, Desmond Koeries, a coloured youth aged 16 and Michael Davids were charged with 2 counts of rape and theft. The defendants pleaded not guilty but were sentenced, respectively, to 15 years and six months; Porter Reform School; and 16 years.⁶⁰ Both charges of rape were on Reynette Mills, a white woman committed on 17 April 1966.

While the courts and judges were regulated by the laws of the country, clearly their personal views as well as the circumstances of the cases before them would dictate the form of punishment they would deem fit. What can be said with certainty is that the political and social perceptions about race and class during segregation or *apartheid* cannot be assumed to have had an influence on the court procedure or sentencing of rapists in the Cape Courts. The Immorality Act also condemned pornography and prostitution.

⁵⁹ KAB CSC 1/1/1/197 Cape Supreme Court Records, Case 13/ October 1940, Rex v. Johannes Hendricks.

⁶⁰ KAB CSC 1/1/1/797, Cape Supreme Court Records, Case 270/1966, State v. Patrick Koeries, Desmond Koeries and Michael Davids.

*“Pornography is the Theory: Rape the Practice”?*⁶¹

Rape theories discussed in Chapter 1, have suggested that pornography is the theory, rape the practice. This has been contested by other theorists. In the Cape, anti-pornography legislation was both supported and criticised. In 1966, “C”, from Sea Point, for example, sent in a letter to a local newspaper complaining about the marked increase in rapes in the Cape. It was attributed to the illustrations of practically naked women widely in circulation. “They stand unashamed, facing the camera or lie around in a provocative manner – and provocative is putting it mildly!”⁶² The debate continued in 1972. C. R. Benson wrote a letter to the editor of the *Cape Argus* arguing that sexual violence had been far too liberally linked to sex and pornography with little censorship on violence which, in his opinion, incited sexual violence. He posed the pertinent question of what constituted healthy sex? He challenged the newspaper to conduct a study on the relationship between violence in books, films and on the rugby field and “anti-sex” censorship and sexual violence. He suggested that pornography was a harmless sexual outlet and quoted the statistics of Scandinavian countries where sexual violence was much lower because of their more liberal views on sex and sexuality.⁶³ Pornography remained a State obsession. One case which reveals, and may even support the theory that pornography is the theory and rape the practice, appeared in the courts in 1970. Two white males, Lawrence Bernard Abeln (20) and Cornelius Theodorus Volshenk, were charged with the rape of Netta Jansen, a coloured girl aged 22 years, according to the charge sheet. Both pleaded not guilty to the charge of rape but Abeln was found guilty of assault and fined R100. Volshenk was found guilty of contravening Section 14(a) of Act 23 of 1957, sexual relations with a girl under the age of 16, and sentenced to 9 months imprisonment. Both men were found not guilty of rape because no signs of spermatozoa were found in the smears taken from the complainant. Volshenk, however, had to serve a prison sentence because it was also established that he had previous sexual contact with the complainant.⁶⁴ Abeln received a light sentence, and was, ironically, not found in contempt of his previous suspended sentence of three years for possession of pornography in 1970.

⁶¹ Coined by Robin Morgan in an essay in 1974, quoted in J. Slade, *Pornography and Sexual Representation: A Reference Guide, Volume 1* (USA: Greenwood Press, 2001), p. 69.

⁶² Letter to the editor, “Rape cases”, *Cape Argus*, 19 April 1966.

⁶³ Letter to the editor, “Is sex crime linked with censorship?”, *The Cape Argus*, 5 May 1972.

⁶⁴ KAB CSC 1/1/1/ 1858 Cape Supreme Court Records, Case 232/1972, State v. Lawrence Bernard Abeln and Cornelius Theodorus Volshenk.

No broad conclusions can be drawn from an isolated case such as this but it is interesting to witness the unfolding theory on pornography as theory and rape as practice as well as a rather relaxed attitude towards conviction for possession of pornography despite the rather long political and social aversion towards “obscene” material. One is also confronted here with a possible case of immorality. Nonetheless, the court wanted to secure some form of conviction and punishment and did so by using peripheral misdemeanours rather than finding the two men guilty of rape.

The notion of what was considered “deviant” behaviour, such as inter-racial consensual sex and possession of pornography, in the case above, may explain why certain cases of white rapists appeared before the Court records. Were these men charged because they committed acts of non-consensual sexual violence or simply because they also deviated from the sexual “norm”?

Paying for Sex is Illegal! Prostitutes Cannot Be Raped?

Prostitution also continued to flourish. Prostitution in Cape Town in 1964 was described as rampant because it was a main harbour. The number of white prostitutes was minimal with the majority being coloureds, “who preferred white men”.⁶⁵ They ran the risk of being prosecuted under two sections of the legislation. Prostitution brought with it several moral and legislative issues, not to mention situations in which prostitutes who were raped were largely unable to report the assault for fear of reprisal and further condemnation in an already discriminatory era. Furthermore, they were blamed for spreading venereal diseases and contributing to the state of moral decline in the Cape.⁶⁶ By 1973, concerns arose over the number of teenage prostitutes.⁶⁷ It is through rape cases prior to 1957 that one can infer that prostitutes too were victims of rape before the 1957 legislation.

⁶⁵Author unknown, “The Oldest Profession Still Flourishes”, *The Cape Times*, 19 December 1964.

⁶⁶Author unknown, “A Report on prostitution”, *Cape Times*, 24 July 1971.

⁶⁷Author unknown, “Teenage prostitution”, *Cape Times*, 1 March 1973.

Earlier, Jacob van Wyk, a labourer from Cape Town, was found guilty and sentenced to 18 months' hard labour for raping a prostitute, Sarah Petersen, in Cape Town on 12 May 1929.⁶⁸ Escort Nose, however, was found not guilty of raping Margaret Mgobozi on 12 December 1936 near Kenilworth, Wynberg by Justice Centlivres and a jury of nine men after testifying that he had paid the complainant 3 shillings to sleep with her. After payment, they had "connection" in his room. They then went to her parent's home where they drank wine. He asked her to accompany him back to his place to have sex with her again. She refused at which point he slapped her. They went back to his place and "shared" for a second time. What became problematic within the court procedure is that she had agreed to the set amount for one sexual encounter and this called into question her moral fibre according to the standards of that era.⁶⁹

Ben Benjamin was charged with raping Anna Claassen on 5 June 1942. Anna was a prostitute and had a previous conviction. On the night in question, she agreed to go with the accused to his room. Once there, he attacked her and raped her. He had a previous conviction for rape on 7 August 1934 for which he was sentenced to three years' hard labour and 10 cuts. His previous conviction was considered an aggravating circumstance during sentencing by Justice van Zyl. However, he only received a sentence of two years' hard labour and eight cuts with a cane, because the complainant was a prostitute and had agreed to go to his room. However, "be that as it may, ultimately she was unwilling and you used great violence to her, and that must be taken into consideration. As I say, this woman being what she is, the Court takes into consideration, and for that reason you will receive a lesser sentence".⁷⁰

Nelson Maqiti, a 22 year old black man employed as a night porter at the Balmoral Hotel in Muizenberg, was sentenced to six months' hard labour for raping a 45-year old coloured woman, Frances Swarts, on 21 May 1943. She and her daughter were approached by the accused and Nelson testified that he offered the woman 5 shillings to sleep with him. He was found guilty of rape by Justice Fagan who added that he wanted to be lenient with the accused because he was a young man of good appearance and that he did not want to

⁶⁸ KAB CSC 1/1/155 Cape Supreme Court Records, Case 10/ July 1929, Rex v. Jacob van Wyk.

⁶⁹ KAB CSC 1/1/185 Cape Supreme Court Records, Case 11/ February 1937, Rex v. Escort Nose.

⁷⁰ KAB CSC 1/1/204 Cape Supreme Court Records, Case 21/ August 1942, Rex v. Ben Benjamin.

jeopardise his future. This was the least sentence he could pass on the defendant and hoped that he would be able to retain his position considering that he would probably only serve four and a half months in prison.⁷¹ Wilson Galala, a native man aged 28 years old who worked as a kitchen boy also said he paid the complainant Mina Swarts, a 28 year old five months pregnant coloured woman, “habituated to sexual intercourse” according to Dr. Graham Bull, District Surgeon for Simonstown. He pleaded guilty in front of Justice Fagan and was sentenced to six months’ hard labour.⁷²

Questions then arise as to how or if they were able to report these rapes after 1957. Suspects, too, could use this as a way to avoid conviction. In the case of Dieter Krohnert, a 24-year-old German, the accused was charged with indecent assault and rape by the Magistrates’ Court in Cape Town but later deemed sexually deviant and not prosecutable by the Supreme Court in August 1966.⁷³

On 12 March 1966, Mavis Jones, a 32-year-old white woman, was walking in the Central Business District of Cape Town. She accepted a lift from the accused. He then drove her to some bushes, well away from the CBD, stopped the car and told her to undress. He then unbuttoned her jersey, and smacked her. Once naked, she was told to stand in the headlights of his car. Brandishing a long stick he found in the bushes, he proceeded to smack her around the buttocks area. Aroused, he then rolled her over the bonnet of his car and sodomised her. Not quite satisfied, he then penetrated her vagina and compelled her to lick his penis clean. She resisted and he then proceeded to hit again. Once the act was complete, he dropped her back in town. Four days later he was identified, questioned and remanded for trial.

According to the defendant, Mavis needed money and had not resisted any of his advances. He even claimed that she undressed herself and that he told her to exhibit herself in the headlights of his vehicle simply to admire her body. He admitted to beating her but

⁷¹ KAB CSC 1/1/1/210 Cape Supreme Court Records, Case 16/ August 1943, Rex v. Nelson Maqiti.

⁷² KAB CSC 1/1/1/210 Cape Supreme Court Records, Case 17/ August 1943, Rex v. Wilson Galala.

⁷³ KAB CSC 1/1/1/789, Cape Supreme Court Records, Case 232/1966, State v. Dieter Krohnert.

inferred that this was part of the “service”. She allegedly requested £5, which he was supposed to give her the next day, but never did. Judge Theron and assessors Meachin and Lewin found the defendant not guilty and all charges were dropped, probably because enough suspicion was aroused around the allegation that she was “paid for her services”.

The cases of the two white boys and discussed in the previous section as well as the abovementioned case, also point towards a common feature, to be elaborated upon in the following chapter. In this context, it was only conceivable for the State and the judiciary to consider the white rapist behaviour in terms of the theories of rape on deviancy or pathology of the rapist, as discussed in the previous chapters.

The *apartheid* State’s codification of these laws regulating sexualised bodies, and the implication for cases of rape brought before the Cape courts clearly show that despite what the statistical evidence reflects, there was a hidden proverbial iceberg of sexual offences that can or cannot be counted as rape. But what do they have to reveal?

Changing Legislation, Changing Definitions and Increasing Numbers of Rapists in South Africa?

The Official Year Book of the Union of South Africa, the first annual statistical publication, was issued in 1913. The Union of South Africa passed the Statistics Act No. 38 of 1914 to informally collect and publish these statistics but the Act was not promulgated until 1917. Statistics on rape, attempted rape and indecent assault for 1900 to 1912 have been taken from the 1913 Report of the Commission Appointed to Enquire into Assaults on Women, commonly referred to as the Black Peril Commission.⁷⁴ In the Report, the crime of rape includes sexual intercourse with girls under the age of consent, attempts at rape and indecent assault upon females. The term “coloured” (compared to coloured used in the text) is used and includes all those termed “non-white”. This dissertation makes use of the same

⁷⁴ RP 39/1913, *Commission Appointed to Enquire into Assaults on Women*. Cape Town: The Government Printing and Stationary Office, 1913.

rape and race classifications for the statistical analysis, unless indicated otherwise. Further discussion, however, differentiates between coloureds and other races at the Cape because they have a rather particular history which must be taken into consideration.

According to the 1913 Report, cases between 1900-1912 of white men raping “coloured” women were minimal in comparison to other categories. *Figure 1*⁷⁵ conviction rates would support this claim with this category being slightly higher than white men raping white women in 1909 and 1912, the former during the transition phase to Union and the latter, during the Black Peril Commission. This category of rape also constituted the second least reported crimes, marginally fewer than white men raping white women (refer to *Figures 2 and 4*). Most of those were reported in the Cape of Good Hope. The Transvaal figures were slightly higher in 1910 and 1911. Concerns were raised that this was due to the police not willing to prosecute these types of cases, but this was dismissed by the Commission. However, this could suggest that “coloured” women were more at ease reporting crimes of this nature in the Cape.

Members of the panel pointed out that white women were better protected against the unwanted advances of men than black women. *Figures 2 and 5* certainly indicate that white women reported rapes at a lower rate than “coloured” women (refer to *Figures 3 and 5*). Conviction rates in *Figure 1* also suggest that “coloured” men were convicted at a much higher rate for raping white and “coloured” women. There are slight deviations in 1903 and 1910 where white men were convicted at a higher rate for raping white women than “coloured” men raping “coloured” women. Both these periods coincide with a fractured white unity in the country during the South African War of 1899-1902 as well as the turn towards Union.⁷⁶ The Commission, however, insisted that the rights of all women were firmly entrenched in the legislation. Indeed, but the conviction statistics in *Figure 1* would suggest that this was more likely if their assailant was “coloured”.

⁷⁵ All Figures referred to can be found in the Appendix.

⁷⁶ See for example S. Marks, “White Masculinity: Jan Smuts, Race and the South African War”, *Proceedings of the British Academy*, 111, 2001, pp. 199-223.

The Natal Native Commission of 1906-1907 noted that instances of white men having sexual intercourse with black women was being ignored by the authorities yet black men caught sleeping with white women were being severely punished. *Figure 1* supports this statement. So, too, does the observation made by Olive Schreiner in 1912 who noted that the “evil and degrading” attitude of white men towards “dark women” in De Aar was simply immoral and reckless to the point that “one dare not bring a decent black or coloured girl” into the area.⁷⁷ Schreiner was critical of the claims that only black men raped white women and made several contributions to the General Missionary Commission into the Black Peril. It was her firm belief that the “peril which has long shadowed this country, is one which exists for all dark skinned women at the hands of white men”.⁷⁸ It was her firm opinion that white men were the root cause of the peril. In a letter to her brother William Schreiner, who also happened to be critical of British imperialism, an advocate for the integration of all “civilised men” including blacks, and Prime Minister of the Cape during the Anglo-Boer War (1899-1902), she remarked: “I’m so depressed about this Black Peril business, - Black Peril! – its (sic) a white peril that hangs over every black man”.⁷⁹

While the Report suggests that all members of the Commission strongly condemned “coloured” men raping white women, concerns were raised that these men were attempting to shift the blame on white women. Panic amongst the white communities in the country, it was further argued, led to false claims of rape against “unoffending natives”. The Report even suggested that “it is probable that in a good many instances it has created in women of nervous temperament feelings of anxiety and terror which it is not easy to allay”. This comment no doubt reinforced patriarchal notions about women apparent in both the global and local literature presented in the preceding chapters. The Commission urged, “those in whose power it lies” to alleviate unwarranted hysteria amongst the general public. Clearly, the fear of possibly being raped was much higher than the recorded statistics of rape. But this is not to suggest that rape statistics had not increased. In fact, all heads of police throughout

⁷⁷ Olive Schreiner to James Henderson, 15 July 1912, Cory Library, Olive Schreiner Letters Project transcription, <http://www.oliveschreiner.org/vre?view=collections&colid=7&letterid=4> (accessed 1 December 2013).

⁷⁸ Olive Schreiner to James Henderson, 26 December 1911, Cory Library, Olive Schreiner Letters Project transcription, <http://www.oliveschreiner.org/vre?view=collections&colid=7&letterid=2> (accessed 1 December 2013)

⁷⁹ Olive Schreiner to William Philip (‘Will’) Schreiner, 25 May 1911, UCT Manuscripts & Archives, Olive Schreiner Letters Project transcription, <http://www.oliveschreiner.org/vre?view=collections&colid=103&letterid=10> (accessed 1 December 2013)

the Union, and particularly in the Transvaal, agreed that sexual assaults had increased but explained that this was not evidence of an increase in rape but rather a general increase in crime. The Commission condemned what they considered to be an attack upon white civilisation.

Over the 12-year period, sexual assaults had increased mostly in the Transvaal followed by Natal, the Cape and then the Orange Free State. In areas with a large coloured population, attacks upon white women appear to be, according to the evidence, rather infrequent. What becomes apparent from *Figures 1 to 5* is that conviction rates were higher for “coloured” men regardless of who they raped, the Cape saw the most numbers of reported rapes across the colour divide except on white women.⁸⁰ *Figure 5* clearly shows that the number of “coloured” men reported for raping a white women in the Cape were greater in 1902, 1904 and 1905, compared to other provinces. However figures were generally greater in the Transvaal and Natal, the Transvaal almost growing exponentially from 1901 with slight derivations again in 1903 and 1909, explained in terms of white rapists above. *Figure 3* consistently shows the high number of cases reported for “coloured” intra-racial rape in the Cape, and indeed the Union. This is not surprising. In the 1921 census, the “coloureds” comprised 71.9% of the Union population. 51 209 Asians lived in urban areas, 114 522 in rural areas; 249 968 non-whites (excluding Asians and blacks) lived in urban areas and 295 580 in rural areas. 587 060 blacks lived in urban areas and 4 110 813 in rural areas. This meant that 4 520 915 “coloureds” lived in rural areas and 888 237 in urban areas, or only 19.6% of the “coloured” population.⁸¹

According to *Figure 7*, the conviction rate in the Cape between 1901 and 1912 is lower compared to the other provinces. This may be because a much higher number of cases were reported in the Cape. *Figure 3*, however, shows that both Natal and the Cape had the highest numbers of reported rapes but *Figure 6* clearly indicates that a proportionally higher number of men were actually prosecuted for the crime of intra-racial rape in Natal. This could be indicative of a more efficient judicial system in Natal, but more likely one that ignored the cultural distinctions between the “coloured” groups and rape legislation. In the Cape

⁸⁰ Please note, “coloured” within quotation marks refers to all those considered not white during this period.

⁸¹ GPB *Official Yearbook of the Union of South Africa 1910-1925 no. 8*, p. 864.

judiciary, clearly other factors were taken into consideration. Historian Nigel Penn has already pointed out that women of low status and married women were not a priority in the Cape during colonial conquest, as discussed in Chapter 2. Could this explain the low rate of conviction?

Statistically, sexual offences were negligible by comparison to the total number of cases heard in the criminal courts. From *Figure 8*, it can be ascertained that sexual offences comprised 2.3% of the total criminal cases heard in court in 1917. A further 1.8% were proven to be “false” and were withdrawn. These cases contributed to 2.5% of all convictions. These recorded statistics could reflect the high number of hidden rapists who escaped prosecution as well as the difficulty in securing a prosecution for those accused of rape. Of the total number of white people convicted, 2.2% had committed sexual offences, compared to 2.5% of “coloured” men. This would suggest a marginal difference in conviction of rapists across the colour divide. Of the 1159 cases tried, the conviction rate was 53%. While this is not an optimal rate of conviction, there are similarities with the 1980s conviction rates quoted by Vogelmann, discussed in the previous chapter.

By 1920, the number of reported sexual offences cases dropped to 1.5% and charges withdrawn to 1.6%. Convictions in relation to all serious crimes dropped to 1.3%, while the conviction rate of the 420 cases convicted in relation to the 981 cases prosecuted, meant a decrease to a 43% conviction rate. Even more revealing is the ratio of white and “coloured” sexual offenders in relation to other serious crimes. Both drastically dropped to 1% and 1.3% respectively.⁸²

The statistics of 1921 show a marked increase in the reporting of all sexual offences. Indecent assault reports increased to 442 (280 in 1920); rape increased to 629 reported cases (477 in 1920); assault with intent to commit rape increased to 324 compared to 277 in 1920; and sodomy from 52 in 1920 to 69 in 1921. In addition, incest statistics were added and showed an insignificant increase from 47 to 48. The separate category of “carnal knowledge

⁸² GPB *Official Yearbook of the Union of South Africa 1910-1921 no. 4*, p. 396.

of females under age of consent” showed a decrease from 489 cases in 1920 to 289 cases in 1921. However, these erratic changes may be closely related to the more efficient and standardised method of data collection mentioned above rather than to any real change in sexual offences during the 1920-21 period.⁸³ The statistics of 1921 also provide a more comprehensive understanding of the racial profiles of the convicted offenders (refer to *Figure 9*).

In 1922, most of the reported sexual offences decreased slightly except that of attempted rape, which increased by 35 cases.⁸⁴ Conviction rates, however, increased for most offences. “Defilement of girls under 16” increased in 1922 (compared to 1921) to 164 (123), indecent assault 382 (304), attempted rape 119 (101) and sodomy 67 (62). However, rape decreased from 193 convictions in 1921 to 173 convictions in 1922. Yet conviction rates for cases of rape decreased from roughly 30.7% in 1921 to 30.1% in 1922 and the rates for attempted rape increased from 31% to 33% in 1922.⁸⁵ By 1923, another spike in the reporting of sexual offences compared to 1922 is visible from the statistics: indecent assault 576 (509); rape 691 (574); attempted rape 453 (359); carnal connection with underage girls 322 (297), and sodomy, 76 (46).⁸⁶ It is worth noting that murder rates also followed a similar trend from 428 (1921), 301 (1922) and 160 (1923), which would suggest a general increase in serious crime in the Union rather than a specific increase in sexual violence. Of the 26 576 serious crimes reported, 3 896 of the offenders were white, 18 247 black, 489 Asian and 3 944 “other non-European persons”. Conviction numbers for rapes increased from 173 to 229 (a rate of 30% and 33% respectively) and for attempted rape from 119 to 186 (33% and 41%) between 1922 and 1923. There is therefore a minimal increase of 3% in the convictions for rape and 8% for attempted rape between 1922 and 1923. Convictions for sex with underage girls decreased by 3%, with conviction rates for sodomy remaining consistently high above the 99% marker, which is certainly suggestive of a particular intolerance towards unconventional sexual acts.

⁸³ GPB *Official Yearbook of the Union of South Africa 1910-1922 no. 5*, pp. 377, 380.

⁸⁴ GPB *Official Yearbook of the Union of South Africa 1910-1923 no. 6*, p. 408.

⁸⁵ Comparative based on GPB *Official Yearbook of the Union of South Africa 1910-1923 no. 6*, pp. 408, 411.

⁸⁶ GPB *Official Yearbook of the Union of South Africa 1910-1924 no. 7*, p. 324.

The period 1923-24 saw a decrease in serious crime not because of any real change but rather because new categories were added and some removed. It is also worth noting that various strikes took place between 1920 and 1922, in particular the Transvaal mine revolts. In 1924, rape reports increased by 9, attempted rape by 9, carnal connection of underage girls by 7 while sodomy decreased by 12, indecent assault by 24 and incest from 84 to 53. Conviction rates increased by 76 for indecent assault, rape increased by 18 and carnal connection by 14, while attempted rape decreased by 22 and sodomy by 29.⁸⁷ From 1925 to 1926, indecent assault increased by one case, rape increased by 90 cases, incest by 25 cases, attempted rape decreased by 43 cases, carnal connection with an underage girl increased by six cases and sodomy by eight cases.⁸⁸ Conviction numbers also increased. Indecent assault increased from 430 to 483, incest from 29 to 31, rape from 255 to 258, while attempted rape decreased from 167 to 148 (and so did the number of cases reported), as did carnal connection with underage girls from 200 to 164, and sodomy from 49 convictions to 44.⁸⁹ The number of white juveniles convicted on sexual offences charges also increased, with three cases of indecent assault, one case of defilement of a young girl, one attempted rape, and two cases of sodomy.

Between 1939 and 1962, only four statistical reports were released for 1939, 1940, 1947 and 1949-1962. From 1955, the Cape Supreme Court had a continued preoccupation with offences for sabotage, theft, housebreaking, bestiality, murder, assault and culpable homicide. *Figure 10* reflects the number of sexual offences in comparison to other cases heard in the Supreme Court at the Cape.

The peak year for sexual offences in the courts was 1958 and this could be attributed to the implementation of the Immorality Act (renamed the Sexual Offences Act) No. 23 of 1957. Between 1970 and 1973, sexual offences comprised a mere 10-13% of all cases. However, *Figure 10* clearly shows that national convictions for sexual offences steadily increased throughout this period. While prosecution levels may have dropped, those brought before the courts appeared to be dealt with more efficiently.

⁸⁷ GPB *Official Yearbook of the Union of South Africa 1910-1925* no. 8, pp. 323, 326.

⁸⁸ In 1925: Indecent assault – 632; Incest – 49; Rape – 715; attempted rape – 465; carnal connection youth underage girls – 275; Sodomy – 61. In 1926: Indecent assault – 633; Incest – 74; Rape – 805; Attempted rape – 422; Carnal connection – 281; Sodomy – 69, GPB *Official Yearbook of the Union of South Africa 1926-1927* no. 9, p. 329.

⁸⁹ *Ibid.*, p. 332, 334.

By 1963, the Statistics of Offences and Penal Institutions were published and provided much more detailed statistics and analysis on crime within the Union.

Figure 11 gives a break-down of the number of rape cases reported in South Africa from 1960 to 1980. It is worth reflecting upon the increasing size of the population when reading further statistics. *Figures 12* and *13* reflect the total number of prosecutions of B2 transgressions (crimes against the person). These statistics also include the other obsessions of the political dispensations, namely pornography and prostitution. By 1988, Immorality was removed from the list of misdemeanours. By 1965, there was a sharp increase in the number of people brought before the official judicial system for crimes against the person. These increased and peaked during the 1987-88 period in which 15 018 people are prosecuted for sexual offences. This coincided with a period of political turmoil within the country. *Figure 14* demonstrates the erratic number of convictions for legally defined rape and attempted rape from 1963 to 1996. The total convictions for rape and attempted rape (by far a greater proportion of total sexual offences) clearly follow the trends for sexual, indecent, and sexually related matters. Indecent assault and statutory rape convictions are quite similar but the former tends to increase in the 1990s when all other rates begin to plummet.

The conviction rate percentage compared to prosecutions in *Figure 15* and *16* suggest that while the number of convictions for rape and attempted rape mentioned above are high, the conviction rate is exceptionally low in comparison to other offences between 1963 and 1967, and below the total average conviction rate for all sexual, indecent, and sexually related matters. Proportionately fewer people were convicted. This will be further explained under *Figure 16*. From these statistics, clearly the highest conviction rate for statutory rape reflects abhorrence towards carnal intercourse with underage children. Indecent assaults follow with the second highest conviction rates, followed by sodomy and immorality. While it would appear that indecent assault cases tower above those of rape and attempted rape, it has been noted that a number of men initially charged with rape or attempted rape were found guilty of indecent assault. Naturally, this affected the sentence passed down but these men were not left unpunished.

Between 1977 and 1987, it is clear that immorality cases were most efficiently dealt with in the Cape courts, which held the highest conviction rate until it was removed from the statutes in the 1988 statistics. This would suggest a hardening obsession in condemning inter-racial consensual sex at the expense of sending a clear message to non-consensual sexual predators. Statutory rape convictions remained relatively high, followed by indecent assault and sodomy. These sexual offences were all above the total average for all sexual, indecent, and sexually related matters. Rape and attempted rape convictions remained fairly abysmal but much higher than those presented during the Black Peril Commission.

It is with reference to *Figures 17 and 18* that the poor conviction rate for rape and attempted rape can be explained. In 1963, white men were least likely to be convicted with non-white men being the most likely to be convicted in cases involving white women. Intra-racial rape convictions remained consistently low until 1967. From 1977 onwards white victims were more likely to secure a conviction especially if their perpetrators were Asian or coloured, followed by black men especially from the 1990s. White men were also largely convicted for raping black women, but this trend decreased from 1977 with sudden surges in the 80s and 90s. Non-white intra-racial rape was consistently low throughout, even dipping below the 50% threshold in the 1990s.

In 1976/77 and 1979/1980, the Transkei and Venda Bantustans were removed from the statistics because they were no longer a part of white South Africa. No doubt, this would have an effect on later statistics.

Between 2001 and the implementation of the new Sexual Offences Act of 2007, figures for sexual offence dockets (see *Figure 19*) were erratic but clearly indicated the need for alternative strategies to combat what was becoming an endemic problem of sexual violence in the country. According to the SAPS, sexual crimes increased by 4.6% between 2003-2004 and 2004-2005. It then decreased until 2008. By 2008-2009, it increased by 12%, no doubt reflecting the new sexual offences legislation of 2007. From 2008-2009, there was a

general decrease of 4.4%.⁹⁰ The SAPS also warned against drawing conclusions from the statistics because they also reflected the inclusion of other sexual offences such as exposing children to pornography or compelling others to watch pornography.

Rape statistics provide a racial profile of charged and convicted rapists. However, there is a fundamental problem in relying on rigid legislated categories. While the Courts may be charged with ensuring that State legislation is adhered to, they are bound by the evidence brought before them and this will dictate both the charge and possible punishment of the alleged crime.

Relying on judicial classification proves ineffective in cases that straddle the legal categorisation of offences. Historically, there existed some confusion particularly in cases of murder and rape. In cases where both murder and rape had taken place, the greater charge of murder was often laid against the accused. In instances of both rape and murder, despite extenuating evidence, the charge of rape would be dropped.⁹¹ This extended to cases of multiple rape and murder even during a period when inter-racial sexual violations were thoroughly condemned.⁹² Even in cases with obvious traces of semen both in and around the victim's body, the sexual violation went unacknowledged.⁹³ Only in rare instances, the murder charge would be dropped in favour of the rape charge.⁹⁴ This, therefore, required reading cases not officially categorised as sexual offences. Systematic perusal of all the Court

⁹⁰ <http://www.saps.gov.za/statistics/report/crimestats/2010/categories.htm> (accessed 20 September 2010)

⁹¹ Jan Munnick, for example, was a white male charged with the rape and murder of Annie Mildred Hawes, a 16-year old white girl at Clifton-on-Sea, Cape Town on 10 December 1931. He was found guilty and sentenced to death, KAB CSC 1/1/1/165 Cape Supreme Court Records, Case 19/ May 1932, *Rex v. Jan Hendrik Willem Munnick*.

⁹² Gamat Salie Lineveldt, a 22 year old coloured male, was charged on four counts of murder on Ethel Marais, 3 October 1940; Dorothy Marie, 22 October 1940; Evangeline Bird, 11 November 1940 and May Overton Hoets on 25 November 1940. All four white women were killed in Cape Town. He was found guilty with no extenuating circumstances and sentenced to death in June 1941 for murder and not rape despite evidence to suggest otherwise, KAB CSC 1/1/1/200 Cape Supreme Court Records, Case 22/ June 1941, *Rex v. Gamat Salie Lineveldt*.

⁹³ Stefaans Karelse, a 28 year-old coloured male was sentenced to death for the murder of Frieda Olga Helene Buhr, a white female aged 17. Medical reports show the presence of spermatozoa on some of the outer garments of the victim and abrasions and dead ants were found in her vagina. However, the Crown ensured a conviction only on the charge of murder and Stefaans was hung on 9 September 1948 at Pretoria Prison, KAB CSC 1/1/1/246 Cape Supreme Court Records, Case 38/ June 1948, *Rex v. Stefaans Karelse*.

⁹⁴ John Watson and four men, for example, were initially charged for murder but later convicted of raping Katrina Julies, a coloured woman on Paarden Island, Cape Town on 2 October 1946. The five accused coloured men raped and beat her so severely that she died from the injuries, KAB CSC 1/1/1/234 Cape Supreme Court Records, Case 9/ April 1947, *Rex v. John Watson & 4 others*.

Cases before the Cape Supreme Court from February 1937 to December 1948 showed a remarkable increase in cases that actually entailed sexual violence yet those appearing in front of the courts were charged with other offences.⁹⁵ This process proved extremely time consuming and could not be done for the entire timeframe of this dissertation. However, the biggest objection to using rape statistics in their present form would be that they reflect numbers of rapes and not numbers of rapists. The number of serial rapists during the period of investigation was quite alarming.⁹⁶ In this instance, it could prove beneficial to have statistics on the number of rapists to compare with the number of reported rapes.

The general statistics on reported rapes and rape convictions are also problematic for a variety of other reasons. Rape statistics may officially appear to increase and decrease but they fail to reflect changing rape legislation and thus the expanding definition of the legally defined rapist. They also fail to clearly differentiate between the judicial process charged with regulating rapists and broader State legislation regulating sexual behaviour. They do however, in their crudeness, dictate social perceptions about rape, leading to rape myths. They also only reflect the charge that led to a conviction. Court records show that alleged perpetrators normally have multiple charges brought against them. Conviction rates are also problematic because they do not reflect social and judicial bias at a particular moment in time nor indicate whether discharge was due to inefficient collection of evidence and prosecution. Discharges are frequent due to poor investigations. Punishments passed down from the Courts could also have an effect on the statistics because strategies of deterrence may have indeed been inadequate leading to more rapes.

One is confronted with a host of problems in considering the judicial system as representing the State and that regulation of sexual violence is solely a judicial process. The global, local and Cape literature on rape thus far presented suggest that the State partially frames the notion of rapist. As an agent of the State, what role has the judicial system had in defining, creating, harbouring, punishing and rehabilitating rapists?

⁹⁵ KAB CSC 1/1/185, February 1937 to KAB CSC 1/1/250, December 1948.

⁹⁶ See for example the repeat sexual offences of John Johnson between 1934 and 1942, KAB CSC 1/1/175 Cape Supreme Court Records, Case 6/ June 1934, *Rex v. John Johnson*; KAB CSC 1/1/191 Cape Supreme Court Records, Case 15/ August 1938, *Rex v. John Johnson*; KAB CSC 1/1/197 Cape Supreme Court Records, Case 16/ October 1940, *Rex v. John Johnson*; KAB CSC 1/1/203 Cape Supreme Court Records, Case 36/ April 1942, *Rex v. John Johnson*.

Conclusions

Despite global and local debates about sex, sexuality and sexual violence in the Empire, and colonies, during segregation and *apartheid* (Chapters 1 and 2), and despite the stringent codification of racial laws ushered in during *apartheid* and confirmed by the arguably flawed statistics on rape during these eras (Chapter 3), it cannot be said with certainty that the individual cases brought before the Cape courts, and which survived in the archives, were influenced by the broader racial rhetoric. The judicial system, a representative arm charged with regulating criminality on behalf of the State, acted, according to the evidence, for the most part, outside of the historically entrenched racial norms shown to exist in the Cape, in South Africa and other colonial settings. This is not to suggest that the guardians of the judiciary did not share and exhibit some forms of patriarchal and misogynistic views about women, hegemonic ideas about the role of men in society and rigid colonial notions on sex. The men who controlled these proceedings were also a product of their time. The individual cases, evidence and court proceedings may have indeed hinted at an entrenched patriarchal *zeitgeist* or were even conducted in racialised settings, but the sentences passed down on convicted rapists strongly support the claim that they acted in accordance with the law and at times, the personal viewpoints of the judges. This was not necessarily in the best interest of the victim and certainly did not always lead to the rehabilitation of rapists.

Contemporary viewpoints strongly criticise State inactivity, poor policing and an inefficient or biased judicial system for the state of rape. This is not inexplicably apparent during the period under investigation. On the other hand, the role of the State and the courts in the Cape, certainly need to be further investigated when asking the question, why did these men rape in the first place. State, judicial and Cape populace will be under investigation in Chapter 4.

Chapter 4

Judicial Procedures: Towards Locating the Cape Rapists, c. 1910-1975

This chapter will investigate how the Cape courts dealt with suspected and convicted rapists. Convicted rapists were to be punished and their punishment was to serve as a warning to potential rapists. It has been established in the previous chapter, that the courts were bound, to a certain extent, by legislation regulating sexual violence, but they also had to negotiate State legislation regulating sexual behaviour – often distorting cases of non-consensual sexual violence. It cannot be said with any certainty that laws regulating sexual behaviour negatively affected these cases. Judges were also able to rely on case law when confronted with more complex cases. Despite oppressive political environments, it was concluded that they evaluated the evidence and the characters in front of them using law, experience and their own common sense. But how did the procedure work, was it entirely conducive for the punishment of rapists and what judicial strategies were used to discourage potential rapists from raping? Another question arises as to the reception of these judicial strategies by the general public in Cape Town. These questions will be answered by firstly outlining how the Cape courts conducted rape cases, and secondly, by considering sentencing trends designed to punish and dissuade potential rapists. Lastly, a brief reflection of the responses to these strategies will set the tone for Chapter 6.

Managing the Courtroom: Cape Court Procedure

The Union of 31 May 1910, should have ushered a period of common law and legislation across the country. To consolidate white power over potential black revolt, the Union Act of 1909 instituted a central government with regional concessions. Cape Town, Bloemfontein and Pretoria secured the status of legislative, judicial and administrative capitals respectively.¹ All four independent legislatures were officially dissolved but continued to exist in the absence of a comprehensive replacement. A legislative body (the Provincial Council) was established for each province, which could pass ordinances on

¹ N. Worden, *The Making of Modern South Africa* (Oxford: Blackwell Publishing, 2000), p. 36.

matters within its jurisdiction. Section 135 of the 1909 Act provided for the continuation of all laws existing in the respective provinces until repealed or amended by Parliament or Provincial Councils, if they had jurisdiction over the matter. They, therefore, had limited autonomy.²

The Courts combined Roman-Dutch judicial processes with English law, the English jury system and English rules of evidence and procedure, monitored and centralised under the Department of Justice.³ Prior to 1 January 1918, the jurisdiction in criminal cases of magistrates' courts was determined by the legislatures of the colonies then forming the Union. This was safeguarded under Section 135 of the South African Act. These courts had jurisdiction over all cases with the exception of offences punishable by death, namely treason, murder, and rape. As yet another example of the complexities, Natal added other offences to this list. This was justified by insisting that offences committed within a particular jurisdiction had to be tried according to the laws of that jurisdiction. One such example included the prosecution of black men trespassing on white property "presumably to commit a sexual offence". He would subsequently be charged with attempted rape. Cases were referred, in most part, to the jurisdiction of where the defendant resided except in the Transvaal or Orange Free State. Maximum sentences were restricted differently in each province.⁴ Across the Union, boys under the age of 14, for example, could have a "moderate whipping with a cane" in lieu of any other punishment. Other forms of incarceration were also optional under the Prisons and Reformatories Act of 1911. Adults could be sent to a farm colony, and juveniles and young adults to a reformatory.⁵

² Official statutes, which regulated condemnation and punishment during the 1910-1927-period, comprised a patchwork of existing legislature from the various territories, at times at odds with its neighbour. This heterogeneous mixture, consisting of views born out of a specific political history, included the Cape Criminal Law Amendment Act No. 25 of 1893, the Transvaal Immorality Ordinance No. 46 of 1903, the Orange Free State Suppression of Brothels and Immorality Ordinance No. 11 of 1903, the Orange Free State Suppression of Brothels and Immorality Amendment Act No. 19 of 1908, the Natal Criminal Law Amendment Act No. 31 of 1903, the Union Girls' and Mentally Defective Women Protection Act No. 3 (1916) and the Union Immorality Act No. 5 (1927).

³ GPB *Official Yearbook of the Union of South Africa 1910-1921 no. 4*, p. 386.

⁴ For example, maximum sentences in Magistrates' courts were as follows: in the Cape of Good Hope, a maximum fine of £10, imprisonment with or without hard labour not exceeding three months, whipping not exceeding 36 strokes compared to Natal where Chief magistrates could impose a maximum fine of £50, imprisonment for 12 months, whipping not exceeding 24 strokes and other magistrates in Natal, a maximum fine of £20, imprisonment for six months and a whipping not exceeding 24 strokes, GPB *Official Yearbook of the Union of South Africa 1910-1917 no. 2*, p. 327.

⁵ Prisons and Reformatories Act 1911.

The Superior Court system consisted of the Appellate Division, the Provincial Divisions and the Local Divisions (including circuit courts). The three Provincial Supreme Courts of the Cape of Good Hope, Natal and the Transvaal were constituted in name after Union formation as the new Supreme Court of South Africa. The High Court of the Orange River Colony became the Provincial Division of the Orange Free State, the Eastern Districts Court of the Cape became the Eastern Districts Local Division, The High Court of Griqualand became the Griqualand West Local Division and the Witwatersrand High Court became the Witwatersrand Local Division. Circuit Courts in every province were considered local divisions of the Union Supreme Court.⁶ However, all Supreme Courts, High Courts and Circuit Courts continued to possess the same criminal jurisdiction as they had done prior to Union. This implied differing criteria and punishment of offenders. Cases were committed for trial by the Attorney-General (or the Solicitor-General in the Eastern Districts Court) after the resident magistrate called a preparatory examination, in other words, after the initial hearing. The accused would then be asked if they required *pro Deo* representation although this was not always granted. Bail would generally be discussed and the accused would be asked if he would prefer short service – a judge and two assessors – or trial by jury. In rare instances, bail would be granted. By 1969, with the Abolition of Juries Act, the trial would be held in front of either a judge or a judge and his assessors. It must be noted that very few perpetrators opted for a trial by jury. In the rare cases of a death sentence being passed, the convicted rapist could appeal the decision with the Appellate Division in Bloemfontein, only if he received a recommendation from the original trial judge who had found him guilty. In most instances, new evidence was not accepted.

The courts and political legislation were strongly criticised by members of the Fourth General Missionary Conference, who met regularly to discuss the moral issues of the Union. Calls were made that trials for rape or attempted rape by black men on white women as well as white men on black women be assessed by a bench of judges and not before a jury. A full investigation was also called for to understand the criminal's race, education level, his religious affiliation, occupation, his mental condition or whether he was a habitual drunkard

⁶ Circuit courts also varied according to each province. The Cape Western and Northern circuits were held twice a year; the Transvaal Western and Eastern Districts also twice a year as well as for the circuit courts of the Orange Free State. Natal held regular circuit courts in Durban but nowhere else in the province since 1914. Native High Courts were held regularly in Natal. GPB *Official Yearbook of the Union of South Africa 1926-1927 no. 9*, p. 319.

or *dagga* smoker. The environment in which he was “developed”, it was argued, should have been investigated rather than relying purely on racial stereotypes. Calls were also made to separate black prisoners according to the offence, with long-term inmates being incarcerated in single cells, no doubt to keep them from further influencing petty criminals. Quite controversially, it was argued that juvenile black offenders be rehabilitated rather than being simply punished. This was indicative of the broader debates on the benefits of rehabilitation or the continued retribution practices of the time.⁷

The fundamental difference of the Supreme Court in comparison to other Magisterial courts lay in its ability to rely on jurisprudence. While laws, legislations and criminal procedures existed, trials and sentences could deviate from prescribed sentences based on case law. Judges would often refer to previous cases when they felt that a particular case before them required a deviation from the norm. Many referred to *Gardiner and Lansdown* during this period. Thus, while legislation may have dictated the range of the sentence, there was relative leeway for the presiding judge, based on what he thought were mitigating circumstances.

In convictions for murder, the death sentence was obligatory unless the accused was a woman convicted of killing her new-born child or for persons under the age of 16. Naturally, this depended on the circumstances of the individual case. The death sentence could also be passed for treason or rape. Judges had full discretion over sentencing. For example, declaring of a habitual offender occurred theoretically after the third offence, where after the sentence was no longer bound by the Union statutes, but by the discretion of the judge. To combat the discrepancies, the Appellate Division of the Supreme Court served as an appeals court or as court when aspects of the law were in question. This is similar to the contemporary Constitutional Court and replaced the pre-Union Privy Council. The Council consisted of the Chief Justice of South Africa, two ordinary judges of appeal solely appointed to the Appellate and two additional judges from one of the other divisions. Their decisions overruled

⁷ Author unknown, “Criminal Procedure and Prison Reform”, *The Christian Express*, 1 August 1912, p. 126.

provincial disparities.⁸ However, appealing a sentence required compassion and, in most instances, commitment from the *pro Deo* advocates.

Under the Magistrate's Court Act No. 32 of 1917, court proceedings involving children under 16 were supposed to occur *in camera*, meaning only the parent or guardian of the child as well as legal counsel could be present during cross-examination.⁹ Yet because accused sexual offenders, for a large part, had to conduct their own defence, and because Supreme Court cases were sometimes conducted in front of a jury of nine men, children were, in effect, subjected to the same court procedure as their adult counterparts.

The Republic of South Africa Constitution Act, 200 Section 25(3) suggests that all those accused of a crime are presumed innocent until proven guilty. There exists contention over evidential burden, in which the accused is expected to provide evidence that raises reasonable doubt to his/her guilt, and a legal burden in which the accused has to demonstrate on a balance of probabilities that he/she is not guilty. In effect, the burden rests on the accused to prove innocence. There have been consistent appeals from the 1930s that contest the disparity between "innocent until proven guilty" and an implied guilt, until enough evidence is produced to suggest innocence. The presumption of innocence was visible as early as 1883 in *Rex v. Benjamin* (3 EDC 337 at 338). Justice Buchanan noted, "But in a criminal trial there is a presumption of innocence in favour of the accused, which must be rebutted. Therefore there should not be a conviction unless the crime charged has been clearly proved to have been committed by the accused. Where the evidence is not reasonably inconsistent with the prisoner's innocence, or where a reasonable doubt as to his guilt exists, there should be an acquittal". This became a fundamental principle of law by the Appellate Division in *Rex v. Ndhlovu* (1945 AD 369) which had been endorsed by the House of Lords in *Woolmington v DPP* (1925) and deemed to be consistent with Roman-Dutch law. It was argued "In all criminal cases it is for the Crown to establish the guilt of the accused, not for the accused to establish his innocence. The *onus* is on the Crown to prove all averments necessary to establish his guilt". This would differ if the accused entered a plea of insanity. Under the old Constitution, the legislature could depart from the principle of the presumption

⁸ GPB *Official Yearbook of the Union of South Africa 1910-1917 no. 2*, pp. 327-338.

⁹ GPB *Official Yearbook of the Union of South Africa 1910-1924 no. 7*, p. 334.

of innocence and impose on an accused the burden of proving innocence. Most examples in this dissertation follow this trend. This was even more apparent if the case was sent to the Appellate during the appeal process. This was a rare occurrence as the initial presiding judge had to give permission for the case to be referred to the Appellate Division.¹⁰

Defendants in the Cape courts were treated as if they were guilty and had to prove their innocence. Even indictment sheets read as such: “That [name], [profession] [place of residence], [district], is guilty of the crime of [offence]”.¹¹ In very rare cases of sexual offences, the accused were allowed bail while awaiting trial. In most cases, when bail was offered, only whites could afford the hefty surety even in cases of compound offences. Coupled with this, there was little legal support for those unable to afford private defence counsel. While much contemplation went into finding the appropriate sentence for the convicted felon, those awaiting trial and subsequently found innocent had already spent long periods of detention with hardened criminals. This made the protracted contemplation of what facility would be of more benefit to each individual perpetrator a rather futile exercise.

In some cases, the accused was defended by a court-appointed attorney either on a *pro Deo* basis or with the assumption that the defendant would have to repay the expenses of the court-appointed attorney. By and large, many had to defend themselves. It is worth noting that the Cape only had 50 advocates registered on the Supreme Court roll out of 671 throughout the Union by the 1920s– the lowest number of all four provinces.¹² Still, there is no clear indication that the accused were at a disadvantage in situations where they had to defend themselves.¹³ According to the court transcripts, questions were asked on behalf of the plaintiff and the accused by both judge and the jury. Those with means procured the services of their own attorneys who worked in their best interests.

¹⁰ C.M.E. O'Regan, Judge of the Constitutional Court, *State v. Bhulwana*, CCT12/95, 12 September – 29 November 1995, <http://www.saflii.org.za/za/cases/ZACC/1995/11.pdf> (accessed 25 March 2012)

¹¹ KAB CSC 1/2/1/140 Criminal Records 2nd Western Court of the Cape of Good Hope Provincial Division of the Supreme Court of South Africa 1910 - Criminal Session held in Malmesbury 5 September, Case 3: *Rex v. Maree*.

¹² GPB *Official Yearbook of the Union of South Africa 1910-1923 no. 6*, p. 397.

¹³ See for example KAB CSC 1/2/1/143 Criminal Records 1st Western Circuit Court 1913- Circuit Court held in Swellendam 29 March Case 1: *Frederick Hendriks alias Freek Jackals*; KAB CSC 1/2/1/140 Criminal Records 2nd Western Court of the Cape of Good Hope Provincial Division of the Supreme Court of South Africa 1911 - Criminal Session held in George 28 September, Case 1: *Rex v. Jafta*; KAB CSC 1/2/1/140 Criminal Records 2nd Western Court of the Cape of Good Hope Provincial Division of the Supreme Court of South Africa 1910 - Criminal Session held in Riversdale 21 September, Case 1: *Rex v. la Grange and Victor*.

Defendants were also required to pay the expenses of their witnesses.¹⁴ Those unable to do so, applied to the courts but this would mean a possible delay in their case coming to trial. This occurred in rare instances.¹⁵ Witnesses could also be subpoenaed if requested by the defendant.¹⁶ At times, but infrequently, complainants also needed to be subpoenaed if they failed to appear in court. In the case of Willem Sylvester, charged with raping Sarah Abrahams, wife of Abdol Abrahams, for example, both failed to appear in court and a warrant for their arrest was issued.¹⁷

Judges were bound by legislation as to the limits of the punishment that could be meted out upon rapists. Legislation dictated the scale of sentences the Courts were compelled to pass down if the accused was convicted of sexual crimes. For example, Contravention of the Girls and Mentally Defective Women's Act of 1916 placed a maximum sentence of six years' hard labour, with or without a whipping, not exceeding 24 lashes, with or without a fine. All legislation, however, was open to the judge's discretion, especially in the Supreme Court. It is to be noted that no provisions were made for a complete suspension of sentence in rape cases because it was considered a severe transgression. This can be seen in the case of Thomson Citywa, sentenced to one year hard labour for raping Lenie Myakayaka on 16 May 1946 and sentenced by Justice Ogilvie Thompson on 14 August 1947.¹⁸ In 1949, Justice Herbstein, in passing sentence on John Fritz and three others, called for the law to be changed so that suspended sentences could also be imposed.¹⁹ However, if the original charge was rape and the conviction of a lesser charge such as an immoral act, the sentence could be suspended.²⁰

¹⁴ See for example KAB CSC 1/2/1/138 Criminal Records 1st Northern Circuit March to September 1910-Circuit Court held in Victoria West 23 March 1910, Case 1: Piet Jafta.

¹⁵ For example, KAB CSC 1/2/1/144 Criminal Records 1st Western and Northern Court 1914 - Circuit held in Paarl 10 September Case 9: Jacobus de Goede.

¹⁶ See for example KAB CSC 1/2/1/140 Criminal Records 2nd Northern Court of the Cape of Good Hope Provincial Division of the Supreme Court of South Africa 1911 - Criminal Session held in Victoria West 11 September, Case 5: Rex v. Evans.

¹⁷ KAB CSC 1/2/1/143 Criminal Records 2nd Western Court of the Cape of Good Hope Provincial Division of the Supreme Court of South Africa 1913 - Criminal Session held in Worcester 9 September, Case 1: Rex v. Sylvester.

¹⁸ KAB CSC 1/1/1/236 Cape Supreme Court Records, Case 30/ August 1947, Rex v. Thomson Citywa.

¹⁹ KAB CSC 1/1/1/253 Cape Supreme Court Records, Case 18/ May 1949, Rex v. John Fritz & 3 others.

²⁰ KAB CSC 1/1/1/284 Cape Supreme Court Records, Case 22/ February 1952, Rex v. Pieter Pietersen.

The procedure itself largely favoured the more fortunate. Those able to seek private defence attorneys were at an advantage, not just in the initial stages of the court case, but also if an appeal was necessary. Those conducting the case were primarily white males and defendants were therefore subject to their own personal bias. The procedure itself was conducted in English or Afrikaans, which was problematic for those more able to express themselves in other languages. Interpreters were called in, but this calls into question their efficiency and ability to correctly relay testimonies. These observations are not restricted to cases of sexual violence. There are, however, two legal considerations which prove even more challenging to cases of sexual violence than simple court procedure.

The *Mens rea* clause, which investigates the intent and responsibility of the accused, played an important role during the period in question, as the psychological state of rapists was instrumental in determining culpability and sentencing of convicted rapists. The *cautionary rule* required the court to exercise additional care when assessing the credibility of the rape survivor based on the misogynistic view that women naturally suffer from hysteria causing “neurotic” victims to imagine that they had been violated. Spurned women were also believed to be spiteful or vengeful towards men thus causing them to lay false charges of rape against their victims. These two procedural clauses could explain cases of false rapes or non-convictable cases of sexual violence, but also inadvertently provided “a motive” for why some men committed rape. This will be discussed in the next chapter.

The majority of the judicial cases of rape in the Cape involved non-acquaintance rape and most of the accused and the victims were coloured and black.²¹ Common excuses provided by convicted sexual offenders included over-indulging in alcohol or drugs, temporary insanity, witchcraft, false hopes, the “sensual” or sexual comportment of their victims or outright denying of the charge. The majority of these cases were swiftly tried when eventually brought before the Cape Supreme Court and sentences depended upon the severity of the attack, previous convictions and sometimes the race of the victim. Most involved working class coloured men, women and children. Four trends are visible in court procedure which highlight the nature/nurture debates discussed in Chapter 1: victim culpability,

²¹ It is impossible to list all the cases in this work. This statement can be made after having read through a large number of cases.

substance abuse as an extenuating circumstance and the shift from the rapist as a pathologised being to a product of his environment.

Scrutinising the Victim?

There is a long history of mistrusting the claims of women and young girls in charges of rape. Men often suggested that their victims “seduced” them.²² The press also reported that young girls were capable of seducing men.²³ This continues to be a debatable subject.²⁴ Many therefore refrained from reporting rape out of fear of not being believed. They also feared that their own families would be suspicious of their claims.²⁵ Their testimony was also rigorously questioned in the courts.

The victims of rape always had to prove their innocence before a man could be convicted of rape. If the woman was not a virgin prior to the assault, if she consumed alcohol, or if she was linked to any activity deemed “illegal”, the courts would be more lenient when the perpetrator was sentenced, if convicted at all. Rape charges had to show visible signs of vaginal rupture in order to secure a conviction. If she was no longer a virgin, the charge was harder to prove. In the gang rape of Elsie Kat in Paarl, 1911, all four men were discharged because the victim had slept with another woman, had syphilis, had been running a brothel (testimony given by her own sister), was a prostitute, had group sex with another man and her mother as well as having a history of alcohol and *dagga* abuse. With such a variety of “counter-charges” against her, it is little surprise that all charges were summarily dismissed,

²² See for example, KAB CSC 1/2/1/141 Criminal Records 1st Western Court of the Cape of Good Hope Provincial Division of the Supreme Court of South Africa 1912 - Criminal Session held in Clanwilliam 14 March, Case 3: Rex v. Fransman.

²³ Author unknown, “Jail for assault on girl”, *Cape Argus*, 17 September 1964.

²⁴ The notion of children as sexual beings has been challenged by theorists such as Deevia Bhana, D. Bhana, “Innocent? Another look at children, sexuality and schooling”, New Social Forums Seminar Series, Department of Sociology and Social Anthropology, Stellenbosch University, 16 May 2013.

²⁵ See for example KAB CSC 1/1/1/71 Criminal Records Cape of Good Hope Provincial Division of the Supreme Court of South Africa 1910 - Criminal Session held in Cape Town 16 September, Case 5: Rex v. de Freitas; KAB CSC 1/2/1/140 Criminal Records 2nd Western Circuit Court Cape of the Good Hope Provincial Division of the Supreme Court of South Africa 1911 - Criminal Session held in Paarl 12 September, Case 4: Rex v. Roos; KAB CSC 1/2/1/140 Criminal Records 2nd Western Circuit Court Cape of the Good Hope Provincial Division of the Supreme Court of South Africa 1911 - Criminal Session held in Paarl 12 September, Case 2: Rex v. Jaftha.

yet the extent to which her sexual history was investigated does make the case more about her rather than the savage gang rape.²⁶ Treating the victim as a suspect in her own rape has not changed over time. Her sexual history was and still is meticulously scrutinised.²⁷

In the Cape, great importance was placed on visible damage to the vagina and hence medical reports, such as the J88 form, as well as the testimony of the District Surgeon, were instrumental in securing a conviction. This was a mitigating factor in proving rape. Penetration had to occur with the penis, otherwise some other sexual offence was normally charged. Damage to the vagina suggested implications for future childbirth, unwanted pregnancy or the contracting of an unwanted venereal disease.

It was only in the 1940s that effective treatment of venereal diseases with penicillin became widespread in South Africa. Consequently, the history of venereal diseases in South Africa was inextricably linked to the sentencing of rapists who infected their victims. The syphilis outbreak and the subsequent scares of the 1930s and 1940s also contributed to the heightened sensitivity towards venereal infection and the implications thereof.²⁸ The most

²⁶ KAB CSC 1/2/1/141 Criminal Records 1st Western Court of the Cape of Good Hope Provincial Division of the Supreme Court of South Africa 1912 - Criminal Session held in Paarl 21 March, Case 6: Rex v. Keyster, Davids, Fortuin and Fortuin; see KAB CSC 1/2/1/145 Criminal Records 1st and 2nd Western and Northern Court of the Cape of Good Hope Provincial Division of the Supreme Court of South Africa 1915 - Criminal Session held in Paarl 7 April, Case 3: Rex v. Paulse

²⁷ Two small examples of this continuity can be seen by Justice Newton Thompson in sentencing Arthur Prins and Nicholaas Naude for raping Mona Meyer, a coloured female near Cape Town on 21 April 1948. He argued that he would impose a two year sentence and eight cuts on each of the rapists and avoided a heavy sentence because “this rape was on a woman of somewhat uneasy virtue”, KAB CSC 1/1/1/246 Cape Supreme Court Records, Case 22/ August 1948, Rex v. Arthur Prins & Nicholaas Naude. However, women that did admit to sleeping with men outside of wedlock were not always dismissed. Justice Herbstein, for example, commented on the testimony of Joey Isaacs, the complainant in a case of gang rape against John Fritz, Kallie Royine, Niklaas Coetzee and John Henry in 1949, despite admitting previous sexual relations with men, the court deemed her to be “a decent coloured girl”. “There are very many decent coloured people who live in this area and people like you are a disgrace not only to them but to the whole community”. The six men were convicted of raping two girls from within their communities. Ringleaders were identified but the court felt that the younger boys needed to learn that their actions had consequences, KAB CSC 1/1/1/253 Cape Supreme Court Records, Case 18/ May 1949, Rex v. John Fritz and 3 others. Martin Rosen, Achmat Goeroe and Ganief Williams were found guilty of raping Maria Bailey on 25 November 1950. In sentencing Justice Hall pointed out that the jury recommended leniency because the offence took place in a house of “ill reputation” and that the girl had consumed liquor and to some extent led the boys on. However, they were still punished for and found guilty of, rape, KAB CSC 1/1/1/271 Cape Supreme Court Records, Case 34/ March 1951, Rex v. Martin Rosen & 3 others. A case in 1972 shows that even though the two rapists raped and sodomised their victim, because she was no longer a virgin, the case was dismissed, KAB CSC 1/1/1/1836 Cape Supreme Court Records, Case 198/1972, State v. Dawid Badenhorst and Johannes Michaels.

²⁸ For a full discussion, please refer to, A. Jeeves, “Public Health in the Era of the Syphilis Epidemic of the 1930s and 1940s”, *South African Historical Journal*, 45(1), 2001, pp. 79-102; S. Kark, “The social pathology of

widely used method for detecting syphilis at the time was the Wasserman test. However, this could not detect early infections, necessary for evidence during the court proceedings. The fear of contracting syphilis and/or gonorrhoea was exacerbated by the long-term effect this would have on child bearing and on the later psychological state of the victim of rape. Therefore, the limited knowledge on venereal diseases as well as ineffective treatment of these diseases prior to the 1940s had a severe implication for the sentencing procedure if the victim was contaminated during the sexual assault.

These conditions ultimately threatened the long-term rehabilitation of the victim and the judiciary was particularly harsh when long-term damage was inflicted on the victim. If the victim was a virgin, the severity of the case increased. Theories pertaining to the status of women in colonial South Africa have suggested that daughters were considered invaluable possessions who could be married into wealth. Damaged property, in other words the non-virgin, was considered an unsaleable commodity. It is worth noting here that many of the coloured women and girls sexually assaulted throughout the period investigated in this dissertation were reported to have lost their virginity prior to the assault and this explains the glaring disparity of sentences between the different races. This had a vast influence on the subsequent sentence if, indeed, the men were found guilty. Coupled with defending previous sexual conquests, and despite visible signs of physical trauma, the victims of sexual violence had to prove that they had certainly resisted the attack of their assailants.

Victims also had to show visible signs of resisting the attack.²⁹ Only four types of women were normally, yet not exclusively, “forgiven” for not showing any signs of

syphilis in African”, *International Journal of Epidemiology*, 32, 2003, pp. 181-186; R. Arderne, “A Case of Sub-acute Nephritis”, *South African Medical Journal*, February 1896, pp. 265-267.

²⁹ KAB CSC 1/1/1/70 Criminal Records Cape of Good Hope Provincial Division of the Supreme Court of South Africa 1910 - Criminal Session held in Cape Town 18 May, Case 19: Rex v. May and Cornelius; KAB CSC 1/1/1/70 Criminal Records Cape of Good Hope Provincial Division of the Supreme Court of South Africa 1910 - Criminal Session held in Cape Town 21 July, Case 10: Rex v. Davids; KAB CSC 1/2/1/141 Criminal Records 1st Western Court of the Cape of Good Hope Provincial Division of the Supreme Court of South Africa 1912 - Criminal Session held in Clanwilliam 14 March, Case 7: Rex v. Zwart; KAB CSC 1/1/1/154 Cape Supreme Court Records, Case 9/ May 1929, Rex v. Johannes Lodewicus Verreyne.

resistance, and their attackers dealt with more severely: children, the elderly, the physically disabled, and the “mentally retarded”. This was made explicit in the trial.³⁰

It is conceivable that a lack of visible resistance may have indeed suggested consent and the judiciary had to prove beyond doubt that the perpetrator knew that his advances were not being reciprocated. Confusion often surfaced when initial resistance dissipated. Willie Shitengane, for example, was found guilty and sentenced to four years of hard labour by Justice Jones for raping Lena Pinto on 4 August 1945 near Retreat, Wynberg. Shitengane could not understand why he was found guilty:

I have been arrested on a charge of Rape. I caught hold of the girl because she was unwilling that I should have connection with her. I asked her and she refused. That is why I took hold of her and pushed her to the ground and I then lay on top of her and had intercourse with her. She resisted up to the time I threw her to the ground but when I threw her down and was on the point of lying on her she said ‘wait until I undo my clothes’. She then pulled up her dress and seemed to pull aside one of the legs of her bloomers enabling me to insert my penis into her private parts. She did not struggle or wriggle about to prevent me from doing so. She just opened her legs and lay still.³¹

This type of rape was also debated within legal circles. In *Rex v. Swiggelaar* (1949), the judiciary concluded, “though the consent of a woman may be gathered from her conduct, apart from her words, it is fallacious to take the absence of resistance as proof of consent. Submission by itself is no grant of consent, and if a man intimidates a woman to induce her to abandon resistance and submit to intercourse to which she is unwilling, he commits the crime of rape”.³² By no means can the act be excused but there is little consensus among the legal fraternity at this time on how to deal with cases such as this. Coercion only appears in the statutes in South Africa in 2007. This reflects the large gaps that existed between cultural practices, as in the above mentioned cases, and the legal definition of rape – hereto also debated in both cases.

³⁰ See for example KAB CSC 1/1/254 Cape Supreme Court Records, Case 23/ August 1949, *Rex v. Piet Adams*; KAB CSC 1/1/286 Cape Supreme Court Records, Case 85/ March 1952, *Rex v. Lukas Groenewald*; KAB CSC 1/1/171 Cape Supreme Court Records, Case 16/ September 1933, *Rex v. Willie Johnson*; KAB CSC 1/1/231 Cape Supreme Court Records, Case 9/ December 1946, *Rex v. John Williams*; KAB CSC 1/1/1438 Cape Supreme Court Records, Case 251/1970, *State v. Hendrik Kastoor*.

³¹ KAB CSC 1/1/224 Cape Supreme Court Records, Case 37/ December 1945, *Rex v. Willie Shitengana*.

³² J. Burchell, *Cases & Materials on Criminal Law* (Cape Town: Juta, 2007), p. 681.

Hendrik Johannes Swiggelaar was a 19-year old white police officer in the South African Police Force and was accused, charged and found guilty of raping a coloured woman, Lillian Rassie, aged 21, on 26 February 1949. He was found guilty by Justice Herbstein and assessors Du Plessis and Scholtz and sentenced to two years' hard labour. His sentence was rather lenient given the nature of his crime and this was one of the rare cases during this period in which leave to appeal the sentence was granted by Justice Herbstein according to Section 105 of the South African Act and Section 1 of Act No. 1 of 1911.³³

What was of importance in this case was also the long-term effects of the rape upon Lillian. Dr. Percy Samols, Assistant District Surgeon at the police station, claimed that she had no visible signs of bruising but did have a urethral discharge. The court then tried to ascertain whether she was suffering from gonorrhoea but it was claimed that symptoms would only be exhibited between 36 hours and 10 days after exposure. This was of importance as the accused was suffering from the venereal disease and if he had infected her, the punishment would have been more severe. The fact she had no bruises or marks of resistance was something the court had to consider. There were, nonetheless, some signs of police brutality. During the police investigation, she was prevented from using the bathroom for much longer than was medically required.

The court found the accused to be a liar and Lillian a “refined, nicely spoken Coloured woman, who was obviously nervous in the box, but who told her story quite clearly and without any attempt at exaggeration. She could, it seemed to us, if she had wished, made her story much stronger against the accused”. In this instance, the fact that the accused was an officer of the law was even more compelling. Referring to *Gardiner and Lansdown Vol 11 p. 1477*, the courts condemned his actions quite severely:

Consent need not be by words, but may be by conduct. The fact that the accused thought the women consented is no defence, for if in this circumstance he committed the act, he did so at his peril. If, however, the woman acted as a woman would act who consented to intercourse, and her conduct was such as to induce the accused honestly to believe that she consented, the jury is entitled from these facts to infer that she did in fact consent, or that, despite a possible mental reservation she led the accused to believe that she consented, and in this event there is no men's rea [...] There are one or two facts which prima facie are in favour of the accused. There are the admitted facts that this intercourse

³³ KAB CSC 1/1/1/254 Cape Supreme Court Records, Case 25/ August 1949, Rex v. Hendrik Johannes Swiggelaar.

took place in a most unusual manner and the absence of any injury to the complainant. There is the admitted fact that she put up no physical resistance, that she did not shout or attempt to run away.

The defence argued that Hendrik believed that she was consenting to sexual intercourse. In fact, Lillian said she did not resist because she was small, afraid and that the accused had a revolver. Her reaction befits what is clearly described in *Gardiner and Lansdown*, p. 1476, “If a man so intimidates a woman as to induce her to submit to intercourse, to which she is an unwilling party, he is guilty of rape”. Another reference is made to Judge Wilde C. J. quoted in *Russell on Crime* (1) p. 620, “It is said that, as she made no resistance, she must be viewed as a consenting party. This is a fallacy”.

In passing sentence, Justice Herbststein reminded the accused that he held a position of responsibility and that he entered the home of law-abiding non-whites under false pretences. He did not get a more severe sentence because Lillian submitted and did not “suffer any physical injuries”. However, she had complained that she had become infected because of the rape.

Despite the political climate of post-1948, Hendrik was convicted of raping a coloured woman. Lillian, it must be noted, was deemed “a decent coloured woman” and thus earned the respect of the court not because she was a victim of rape but because she lived a “socially acceptable lifestyle”. Hendrik was a police officer and even though Lillian was subjected to callous questioning when she reported the matter at the police station, the evidence was not tampered with nor did it go astray. Moreover, Hendrik’s appeal, lodged in Bloemfontein, away from the more liberal Cape bar, was dismissed. The fact that he was carrying a firearm at the time was considered an extenuating circumstance, not because this was written in law but because it was considered as such by the criminal procedure handbook often referred to in the Supreme Court. It should also be mentioned that his alibi, that Lillian proposed sex and he that he accepted, did little to secure a discharge in a political climate in which even consensual inter-racial sex was becoming increasingly reprehensible according to the authorities.

By 1959, the “status” of both victim and perpetrator was being considered: According to Justice Newton Thompson:

I regard this as a very serious case. I have to consider the social status of the two parties, the complainant and the accused. There is the fact that the complainant was a woman of a type whom the accused could have had no sort of thought that she would be willing to have sexual relations with him; there is the fact that the accused used a knife, and then there are the general circumstances of the rape which I think were very serious indeed [...] In the case of some rapes the Court gives quite a light sentence, depending on the status of the parties, or the circumstances of the case.

Here, Arthur escaped the death sentence because he had no previous convictions and was thus “not of an established criminal character”. A second factor was that, although the court could not find him to be insane, “there [was] evidence of some slight degree of abnormality about him”.³⁴

What one is confronted with is a courtroom in which the credibility of the victim of rape is scrutinised. If she did not conform to what was deemed a woman of good morals, if she was no longer a virgin or if she did not have visible signs of the attack, she was less likely to be “heard” by the court. In effect, she was on trial, not the rapist. Rapists also made use of these fallacies to explain why they could not have raped their victim. There are strong correlations here with reasons given by deniers of forceful sex discussed in Chapter 1. Unquestioningly, the court procedure condoned sexual violence for some victims and provided an alibi for some rapists. Another contentious point in many cases was the use of alcohol and drugs.

Alcohol and Drugs

According to Rachel Jewkes et al, the conditions that give rise to emotional, physical and sexual violence include South Africa’s alarming per capita alcohol consumption figures. Alcohol and drug abuse not only lead to violence but over-indulgence by victims of abuse, as

³⁴ KAB CSC 1/1/1/267 Cape Supreme Court Records, Case 249/ September 1950, Rex v. Arthur Abrahams.

a method of escapism, makes them more vulnerable to later abuse. Similarly, parents who over-indulge contribute to the impending vulnerability of their children.³⁵

Alcohol consumption and criminality was of particular concern, especially after the Black Peril Commission linked alcohol abuse to rape in South Africa. This continued throughout the period investigated. Alcohol abuse and social disintegration was further elaborated upon in the 1937 *Commission of Inquiry Regarding the Cape Coloured Population of the Union*.³⁶ Largely to blame was the “tot” system of the Cape farmers.³⁷ In the 1976 *Commission of Inquiry into Matters Relating to the Coloured Population Group*, alcohol consumption and drug abuse, the former having its roots in the “dop” system, was now considered a way in which coloureds escaped from the environmental issues imposed upon them by the forced removals of the 1960s.³⁸ By the 1960s, welfare officers pointed out that the problem of criminality and rape in the Cape could be attributed to alcoholism.³⁹

By 1965, and in the context of debates on the role of the State and dislocation of coloured peoples in the Cape, poverty, insecurity, liquor and the ease with which dangerous weapons could be obtained were listed by sociologists, psychologists and social workers in Cape Town as the main cause of lawlessness among inhabitants of the Peninsula’s coloured townships. A social worker commented on the high incidence of alcoholism amongst

³⁵ K. Dunkle, R. Jewkes, H. Brown et al, “Gender-Based Violence, Relationship Power and Risk of Prevalent HIV Infection among Women Attending Antenatal Clinics in Soweto, South Africa”, *Lancet*, 363, 2004, pp. 1415-1421; L. Vetten, R. Jewkes, R. Fuller et al, *Tracking Justice: The Attrition of Rape Cases Through the Criminal Justice System in Gauteng* (Johannesburg: Tshwaranang Legal Advocacy Centre, 2004); M. Peden, A. Butchart, “Trauma and Injury”, N. Crisp, A. Ntuli (eds.), *A South African Health Review*, pp. 331-344; S. Mathews, N. Abrahams, R. Jewkes et al, “Alcohol use and its role in female homicides in the Western Cape, South Africa”, *Journal of Studies on Alcohol and Drugs*, 70 (3), 2009, pp. 321-327.

³⁶ RP 54/1937, *Report of the Commission of Inquiry Regarding the Cape Coloured Population of the Union*, pp. 22-24.

³⁷ This has long historical traditions especially amongst farmworkers in the Cape, see for example, L. London, “The ‘dop’ system, alcohol abuse and social control amongst farm workers in South Africa: a public health challenge”, *Social Science Medicine*, 48(10), 1999, pp. 1407-1414; J. te Water Naude, L. London, B. Pitt & C. Mahomed, “The ‘dop’ system around Stellenbosch – results of a farm survey”, *South African Medical Journal*, 88(9), 1998, pp. 1102-1105; L. London, D. Sanders, J. te Water Naude, “Farm workers in South Africa – the challenge of eradicating alcohol abuse and the legacy of the ‘dop’ system”, *South African Medical Journal*, 88(9), 1998, pp. 1092-1095; A. Mager, “‘White liquor hits black livers’: meanings of excessive liquor consumption in South Africa in the second half of the twentieth century”, *Social Science Medicine*, 59(4), 2004, pp. 735-751.

³⁸ RP 38/1976, *Report of the Commission of Inquiry into Matters Relating to the Coloured Population Group*, p. 265.

³⁹ F. Gross, “A Criminologist discusses ways in which society ‘prepares’ the crime for the criminal to commit”, *The Cape Argus*, 21 August 1963.

coloureds. Another issue raised was the insecurity from being forcibly relocated. “Adolescents are in any case insecure, because they are neither man nor boy. They have the urges of a man but not man’s ability to control them”.⁴⁰ Alcohol abuse as well as the forced removals, were largely to blame for criminality.

Rape theories as well as local studies showed correlations between alcohol abuse and rape. This was not purely a Cape nor a coloured problem. What is interesting to note is the manner in which the Cape courts considered alcohol consumption during the trial process. Rapists were not discharged if inebriated but their sentence, supposedly a warning to all men who raped or contemplated rape, would be reduced because their actions were explainable. Their senses were dulled.

From the turn of the 20th century, inebriated rapists were not held entirely accountable for their actions.⁴¹ The trend continued during the 1920s. Justice Sutton summarised the widely-held view that the excessive consumption of liquor led to rape when sentencing Pieter Burger in 1929:

The misfortune is that you coloured people will indulge in liquor and it unfortunately, amongst other things, inflames your sexual passions. Many of these assaults upon women and children take place amongst coloured people when under the influence of liquor. The crime is so prevalent in the Cape Peninsula and other parts of the country that it must be stopped.⁴²

In fact, Justice Sutton seemed to be convinced of the link between abuse of alcohol amongst coloureds and sexual violence. In the same court session, he reprimanded John

⁴⁰ Author unknown, “Poverty, liquor cause for coloured lawlessness: Delinquency begins early in life”, *The Cape Argus*, 11 February 1965.

⁴¹ See for example KAB CSC 1/1/1/70 Criminal Records Cape of Good Hope Provincial Division of the Supreme Court of South Africa 1910 - Criminal Session held in Cape Town 18 January, Case 8: Rex v. Koos Barron; KAB CSC 1/2/1/140 Criminal Records 2nd Western Court of the Cape of Good Hope Provincial Division of the Supreme Court of South Africa 1911 - Criminal Session held in Paarl 12 September, Case 5: Rex v. Simons; KAB CSC 1/2/1/141 Criminal Records 1st Western Court of the Cape of Good Hope Provincial Division of the Supreme Court of South Africa 1912 - Criminal Session held in Clanwilliam 13 March, Case 5: Rex v. Mezent and Scheffers; KAB CSC 1/2/1/144 Criminal Records 1st Western and Northern Court of the Cape of Good Hope Provincial Division of the Supreme Court of South Africa 1914 - Criminal Session held in De Aar 10 March, Case 1: Rex v. Barnard and Maraba.

⁴² KAB CSC 1/1/1/157 Cape Supreme Court Records, Case 6/ January 1930, Rex v. Pieter Burger.

Williams, a labourer from West London, Wynberg, found guilty of assault with intent to commit rape on Jane N’Kata, a widow, on 12 October 1929:

In 1926, you received a sentence of twelve months’ imprisonment with hard labour for a similar crime. I do not consider that it is really an excuse that you were under the influence on this occasion. You people, especially coloured people, have no right to take so much drink that you cannot control yourselves and as a result are tempted to commit assaults on women and children [...] One way of trying to put a stop to assaults of this character is to give cuts in addition to a term of imprisonment [...] you are a young man still and it will be a good thing if it deters you from committing any further assaults.⁴³

Being inebriated at the time of assault could even protect a rapist from the gallows. Jacobus George, for example, was found guilty of rape and sentenced to death in 1929.⁴⁴ He was not granted a reprieve in part because he had not consumed alcohol before the attack. Neither were Joseph Phillips, George William Richard Coleman and Karl Mento in 1943. While not sentenced to death, they were sent to prison because they were not drunk at the time of the assault.⁴⁵ In the case of Izak Isaacs, a 60-year-old man charged with raping Salia Samuels, aged between 7 and 8, on 15 November 1941, not only was alcohol considered a mitigating circumstance, but the fact that the family brewed illegal alcohol affected the sentencing procedure.⁴⁶ This continued during the 1960s.⁴⁷ By the 1970s, however, attention was no longer drawn to the use of alcohol, nor the presence of alcohol but rather to how alcohol had created a brutalizing environment in which the rapist had been shaped.⁴⁸

It is not whether inebriated rapists or victims of rape were discharged, convicted or even treated with suspicion, but rather the fact that this influenced the form of punishment passed down from the bench. In essence, if charged with rape, the court procedure could be manipulated by the rapist if he claimed that either he, his victim, or both, were inebriated at the time. Whether this was a true reflection of his own motivations is debatable. It is also not

⁴³ KAB CSC 1/1/157 Cape Supreme Court Records, Case 8/ January 1930, *Rex v. John Williams*. A similar remark is also seen in Case 9/ January 1930, *Rex v. David Smit*.

⁴⁴ KAB CSC 1/1/153 Cape Supreme Court Records, Case 28/ February 1929, *Rex v. Jacobus George*.

⁴⁵ KAB CSC 1/1/212 Cape Supreme Court Records, Case 22/ December 1943, *Rex v. Joseph Phillips, George William Richard Coleman & Karl Mento*.

⁴⁶ KAB CSC 1/1/203 Cape Supreme Court Records, Case 31/ April 1942, *Rex v. Izak Isaacs*.

⁴⁷ See for example, KAB CSC 1/1/508 and 509 Cape Supreme Court Records, Case 217/1962, *State v. Charles Andrews, Ronald Williams and Willie Lombard*.

⁴⁸ See for example, KAB CSC 1/1/1757 Cape Supreme Court Records, Case 78/1972, *State v. William September*.

surprising that the courts placed so much focus on substance abuse given the lengths to which the links between alcohol and rape had dominated the literature during the colonial and segregation periods. By the 1970s, and very much in tandem with the growing presence of social workers evaluating circumstances in the home, it can be seen that the effects of substance abuse in cases of rape at the Cape shifted from individuals to their environment.

Rapists Are More than Pathologised Beings

From the turn of the 20th century, those considered by the courts to have a “diseased mind” were defined in terms of the Mental Disorders Act of 1916,⁴⁹ but there existed varying approaches to dealing with mental disorder.⁵⁰ Mental instability was often used by rapists in their defence.

In 1912, a medical contributor to the local publication, *Christian Express*, pointed out that in all countries, a portion of criminal assault cases upon women were recognised as being due to mental defect on the part of the aggressor. It was pointed out that the plea of irresponsibility because of irresistible impulse was seldom accepted unless there was other evidence outside of the assault to suggest mental weakness. Professor van Krefft-Ebbing, dubbed the father of perversion, was quoted as saying that rape was the act of degenerate

⁴⁹ According to Section 3: “Mentally disordered or defective persons” may be divided into the following classes: *class 1* – person suffering from mental disorder which makes him incapable of managing himself or his own affairs, *class 2* refers to those through age or decay of faculties is no longer able to manage himself or own affairs, *class 3*, an idiot, deeply defective mind from birth or from an early age who is incapable of guarding against common physical danger; *class 4*, an imbecile, capable of managing himself against common dangers is unable to manage himself or his affairs; *class 5*, feeble minded, incapable of competing on equal terms with normal fellows or of managing himself or his affairs with ordinary prudence and who requires care, supervision, and control for own protection or for the protection of others, permanently incapable of receiving proper benefit from instruction; *class VI*, moral imbecile, permanent defect with strong vicious or criminal propensities on which punishment has had little or no deterrent effect; *class VII*, an epileptic who is a danger to himself and others or who is incapable of managing himself or his affairs. Taken from the Report form of the District Surgeon or other medical practitioner or physician superintendent of mental hospital, the medical report would be included in the case file under Form Mental S9.

⁵⁰ For example, Jacobus Daniel Vorster, a white male and General in *Die Ossewa-Brandwag*, was charged with contravening Section 1(1)(c) of the Official Secrets Act, 1911 and contravening Section 4 of the said Act. He was accused of trying to procure army information from Corporal Karel Wilhelm Puchert of the South African Artillery to pass on to enemy forces. He was evaluated by Dr. Gordon James Key, a Physician Superintendent at Valkenberg Mental Hospital. He was considered classifiable under Section 3 clause VI, a “moral imbecile”, because of his psychopathic tendencies, KAB CSC 1/1/198 Cape Supreme Court Records, Case 31/ February 1941, *Rex v. Jacobus Daniel Vorster*.

male imbeciles suffering from mania, satyriasis and epilepsy. Often in cases of brutal violence, the automatic question arises as to the sanity of the aggressor. Indeed they may be suffering from some disease but history has many examples of murder and rape perpetrated together, often by clinically diagnosed ‘sane’ men, such as soldiers during war. Assaults upon children and infants may be symptomatic of chronic brain disease, head injury, alcoholism, apoplexy, syphilis or simply vicious habits. While medical explanations are rare, advice is given to have the mental condition and history of the criminal investigated by a medical expert and if mental deficiency is proven, to alter the sentence to detention, and if necessary to life imprisonment in an asylum.⁵¹

By 1959, plans were underway to submit a Bill to parliament to sterilise sexual offenders.⁵² However, the Bill was never implemented. Here there is a direct correlation with rape theories which explain rapists as pathologised beings only treatable through surgical intervention and possible treatment of rapists in South African at a time when rape prosecutions and rape reporting were in a state of flux (refer to *Figure 10 and 11*). One is also reminded that rape was previously defined in terms of an erect penis. The judges in the Cape were also of the opinion that this was the only way to “treat” a rapist. Mr. King, Magistrate at the Wynberg Court, for example, in passing sentence on a 17-year-old youth summed up his judgement by saying, “If I had the authority, I would have had you castrated. You are a menace to society”.⁵³ By 1973, a judicial commission of psychologists, psychiatrists and sociologists headed by Justice van Wyk into the Mental Disorders Act presented a proposal to castrate rapists. The recommendation was subsequently shelved by the Secretary for Health, Dr. J. de Beer.⁵⁴ What is of interest is the debate on the treatment of rapists in both instances coincide with increasing rape reporting and prosecution rates. More importantly the new Mental Health Act of 1973 had an impact on the general sentencing procedures in the courts and served as a turning point in which the mental health of those charged with offences was taken into much greater consideration. However, the assassination of Hendrik Verwoerd by a white man, Dimitri Tsafendas in 1966, had already led to the notion that the mental instability

⁵¹ Contributed by Medical Witness, “Note on relations of assaults to insanity: Fourth General Missionary Conference: Report of Commission VI: Black Peril”, *The Christian Express*, 1 August 1912, p. 132.

⁵² Author unknown, “Sterilisation for sexual crime urged”, *The Cape Argus*, 4 July 1959.

⁵³ He had raped a 64-year-old woman in Hout Bay. Disturbed by her husband, the youth then stabbed him. His father was disappointed with his son and explained that he had lost all control over the boy, Author unknown, “Rapist should be castrated: Magistrate”, *The Herald*, 25 December 1971.

⁵⁴ Author unknown, Author unknown, “Plan shelved”, *Cape Argus*, 27 May 1973.

of perpetrators had to be given due consideration. How else could one explain the killing of one white man by another. Court evidence, however, would already suggest that these considerations pre-dated both the Mental Health Act as well as the 1966 assassination.

The notion of the “degenerate”, however, has a longer history. Between 1914 and 1921, for example, N. J. de Wet, the minister of justice, questioned the notion of degeneracy. He wanted to correct previous notions of degeneracy and the passing of the death sentence: execution for whites who threatened the white race, mercy for blacks convicted of murdering whites, execution for whites who killed blacks and a greater punishment for intra-black murders. Insanity pleas were rare in South Africa at the time. During the 19th century, tests were conducted to determine insanity, here defined as the inability to know the difference between right and wrong because of a diseased mind. Those unable to afford private psychiatric evaluations were at a disadvantage. By the turn of the 20th century, understanding insanity was in a state of flux. This led to the 1916 Mental Disorders Act replacing the Cape Lunacy Act of 1897. Medical advisor John Dunston recommended that serial offenders be evaluated but this was ignored. He argued this was necessary to differentiate between defective or mentally ill patients by birth and those suffering from noncongenital mental disorders, which could be treated. In either case, the perpetrator had diminished responsibility and this would affect the sentencing procedure as well as prospective rehabilitation. The differences between legal and medical considerations thus existed in which execution of the feeble-minded could still occur.⁵⁵

Delinquent behaviour prior to the 1920s in South Africa was also discussed in terms of personality maladjustments. These “biotypological” studies placed emphasis on innate dispositions, neglecting the environmental conditioning, the primary focus of social workers. Environmental influences in igniting innate dispositions needed to be understood. Professor of abnormal psychology and social pathology at the University of Pretoria, W. Willemse, therefore assessed these links in 1938.⁵⁶ He found that a large cohort of boys engaged in “sexual misconduct” because they were addicted to promiscuity. Poor and neglected boys

⁵⁵ R. Turrell, *White Mercy: A Study of the Death Penalty in South Africa* (Connecticut: Prager, 2004), pp. 97-100.

⁵⁶ W. Willemse, *The Road to Reformatory* (Pretoria: South African Council for Educational and Social Research, 1938).

were unable to develop “normal” relationships and in the absence of these regulating structures, they gave in to their temptations. Home, school, intelligence, work and personality of delinquents explained the link between psycho-biological and environmental factors in the making of the juvenile delinquent.⁵⁷

Between the 1920s and the 1930s, increases in juvenile delinquency amongst boys in the Rand and Cape Town areas had increased, while percentages dropped in the Durban and Pretoria areas.⁵⁸ This is explained in terms of both environmental shifts and the effects this has on the individual, as suggested by psycho-analytic theory. The study concludes that delinquency was an urban problem, particularly in the Rand, because of its population, but also because of family dislocations to unsettled and unregulated environments. Vicious home environments in which alcoholism, immorality and criminality were rampant, also affected these children. In crisis, these young boys formed friendships with other maladjusted boys but this was considered a minor cause of delinquency in the 1920s and 1930s. Organised gangs were not commonly found however there were “idle groups of boys”, encouraging male bravado amongst each other, which it was argued, were leading criminal lives in gangs.⁵⁹

Researcher at the National Bureau of Educational and Social Research, J. D. Venter, evaluated the incidence of juvenile crime in South Africa between 1945 and 1954.⁶⁰ He concluded that white juvenile crime increased after WWII but most criminal activity was seen amongst coloured juveniles despite the fact that they were not necessarily the largest population. Juvenile crime in South Africa also showed a much more rapid increase than in the USA, Canada and England.⁶¹ White juvenile rapists continued to be considered pathologised beings while environmental factors were considered in evaluating coloured delinquents.

⁵⁷ W. Willemsse, *The Road to Reformatory*, pp. 7, 9.

⁵⁸ Please refer to Table IX, *Ibid.*, p. 24.

⁵⁹ W. Willemsse, *The Road to Reformatory*, pp. 108-111.

⁶⁰ J. Venter, “The Incidence of Juvenile Crime in South Africa”, *National Bureau of Educational and Social Research*, Series 2, 1964.

⁶¹ *Ibid.*, p. 70.

Psychiatrist Louis Franklin Freed, found that the majority of crimes committed in Cape Town were by the coloured population and these included, amongst others, robbery, murder and rape. In 1955, he blamed the “skolly” menace for much of the criminality. He described these youths as the “roughest, toughest, juvenile thugs in the world”. He blamed much of their actions on the consumption of brandy and dagga. He blamed much of their behaviour in terms of the violence they witnessed in American films and in the home. Inadequate parenting, he argued, was rampant. He suggested that 80% of these boys were illegitimate and had been abandoned by their families. He further added that the environmental issues led these boys to a life of crime especially in overcrowded and derelict locations such as District Six, a notorious “crimogenic area”.⁶² Naturally, one is cautious of this method of justifying forced removals, normally guised under sanitation syndrome theories, as previously discussed. Interestingly, he suggested that similar conditions existed in Pretoria, but amongst the “natives” of Lady Selbourne township. He was particularly alarmed by the increase in youth gangs⁶³. The black township of Cator Manor in Durban is specifically mentioned. Rape, robbery and murder are explained in terms of congestion, poverty, crime, juvenile delinquency and disease. 80% of children are described as malnourished. Many black women are described as immoral, having teams of illegitimate children. Interestingly, there is also concern over the increase in white juvenile delinquents and criminal activity, largely blamed on visitors (from Johannesburg) to the area, flocking to the South Coast resorts and behaving in a “lewd, loutish and crude” manner. He heavily criticised their consensual sexual behaviour on the beaches.⁶⁴ What becomes apparent is the continued shift towards environmental factors in assessing the pathologised mind of the coloured juvenile delinquent. But how did this reflect in the Cape courts?

In 1911, the mental state of men accused of sexual offences was only considered after the court ruling, where the sentence would be executed after the findings of the medical expert.⁶⁵ By the 1930s, far more applications for psychological evaluations prior to the trial

⁶² L. Freed, *Crime in South Africa* (Cape Town: Juta & Co., 1963), pp. 138-140.

⁶³ L. Freed, *Crime in South Africa*, pp. 142-144.

⁶⁴ *Ibid.*, pp. 144-146.

⁶⁵ For example, Tom Gooiman, a labourer, was charged with assault with intent to rape of Katje Majure. He was sentenced to four years' hard labour but was granted a stay of execution pending the District Surgeon's report on his mental condition. His sentence was eventually executed on the 22 March 1911, KAB CSC 1/2/1/138 Criminal Records 2nd Western Court of the Cape of Good Hope Provincial Division of the Supreme Court of South Africa 1910 - Criminal Session held in Victoria West 20 March, Case 8: Rex v. Gooiman.

were visible.⁶⁶ The aim of psychiatric evaluation was to determine whether the accused could be held morally and socially responsible for his actions. Sydney Dudley, for example, was charged with raping Minnie Grendeling on 6 May 1933 at Pinelands, Cape Town. He was sentenced to four years' hard labour and eight cuts with a cane in July 1933. Prior to the trial, he was examined by B. J. Laubscher, assistant physician at Valkenberg Hospital:

I have found no evidence of mental disorder or defect that can affect his responsibility. The sexual crime of which he is accused is in the nature of a cruel impulse to overpower and further colouring the idea of such an act with lustful feeling. Investigation further discloses the fact that the act was premeditated and planned was, therefore, not the upheaval of a sudden sadistic pathological impulse which usurped all control that could be ascribed to any pathological condition of the mind. As far as he cooperates in the interview, I find nothing in his personal history indicating sexual perversion or conflict over sexual impulse. I consider him a low cultured person with undisciplined sexual instancet [sic], though fully cognisant of the demands of society and capable of conforming to the demands of society – hence a punishable individual.⁶⁷

In sentencing, Justice Gardner noted, “I regard this as a very bad case. This is not a case of a man who is suddenly overcome with passion. You made a plan to get this woman. You took advantage of the fact that she wanted work. The woman was a perfect stranger to you and you took her to Pinelands and there raped her”.

Psychological explanations were even more important in explaining the behaviour of white rapists. For instance Jan Hendrick Visser, a 22-year-old white male, was charged with raping Phyllis Evelyn Bowring at Clovelly in Cape Town on 29 November 1962.⁶⁸ He was convicted and sentenced to 10 years on 24 April 1963. White rapists in the courts were rare and thus Visser was sent for a psychiatric evaluation to ascertain why he committed such an act of violence on another white person.

Dr. Weinberg from Valkenberg did not find him mentally disordered according to the Mental Disorders Act. He did however find him to be exhibiting psychopathic tendencies. A detailed explanation was given by Dr. Weinberg. In substance, an arrest of emotional

⁶⁶ See for example KAB CSC 1/1/165 Cape Supreme Court Records, Case 12/ May 1932, Rex v. James Zumbula.

⁶⁷ KAB CSC 1/1/170 Cape Supreme Court Records, Case 3/ July 1933, Rex v. Sydney Dudley.

⁶⁸ KAB CSC 1/1/551 Cape Supreme Court Records, Case 198/1963, State v. Jan Hendrick Visser.

development made him carry infantile patterns of antisocial behaviour into adult life, very much resembling the Freudian explanations of rape.

While a diseased mind may have had some implication on the sentencing in rape cases, this was of little importance in cases of both rape and murder. In 1972, Joseph Morgan, for example, was condemned to death for murder despite exhibiting psychological imbalance.⁶⁹ What is interesting in this case is the protracted and conflicting accounts of the accused's mental state between Dr. Ames, a neurologist, Dr. Zabow, a psychiatrist, Ryno van Zyl, a psychologist for the defence, and Dr. Somonsz and Dr. Pascoe, Superintendent and Assistant Superintendent at Valkenberg Mental Hospital. Each diagnosed the accused with various mental diseases. The court, having heard this compelling evidence, then tried to assess the balance of probability by citing *State v. Ndhlovu* 430/1970 and *State v. Letsolo* 476/1970 in which circumstances such as these distinguished between moral blameworthiness and legal culpability. Factors considered in these cases included immaturity, intoxication, and provocation and whether these factors had a direct effect on actions and moral blameworthiness. What one is confronted with is not simply the possibility of mental instability but also the use of case law in passing sentence. Thus the divergent views in the psychiatric profession (as well as the variations of opinion within the professional body) and the views held by the courts were clearly not aligned.

The psychological evaluation prevented Joseph from having the death sentence being carried out. A similar example can be seen in the case against Gulzaar Ebrahim in 1970.⁷⁰ Both these cases occurred at the height of *apartheid* and both non-white rapists escaped the noose during a period of hardening racial oppression. Despite the continued and growing interest in diseased minds, especially in particularly brutal cases, the role of the perpetrator's environment continued to be a mitigating circumstance. This suggests that while mental health continued to be an important consideration, so too, was the effects of broader environments in the making of the criminal.

⁶⁹ KAB CSC 1/1/1/1689-1693, Cape Supreme Court Records, Case 348/1971, *State v. Joseph Morgan*.

⁷⁰ KAB CSC 1/1/1/ 1515-1519 Cape Supreme Court Records, Case 69/1971, *State v. Gulzaar Ebrahim, Mogamat-Zane Nastedien, James Petersen, Roy Sampson and Daniel Arendse*.

By the 1940s, welfare officers were often used in court cases to ascertain the background of suspected criminals, especially juvenile criminals. This strongly suggested that the nurture argument, the environment of the rapist, became increasingly important in explaining his behaviour in the absence of any severe mental impediment. Welfare officers would report on the socio-economic circumstances of the criminals and make recommendations to the court. They also worked with the probation officers. They would ensure that convicted criminals were re-integrated back into their societies but often these mechanisms would prove ineffective given the high recidivism rate.⁷¹ Probation officers were also charged with the welfare of criminals given lenient sentences.⁷²

What becomes clear is that the judicial system itself excused or entertained certain pretexts for rape. It therefore becomes unclear whether rapist testimony as to why they committed rape is a reflection of their own motivations or rather a viable option to manipulate the judicial system by making use of their own preconceived notions of explainable or excusable behaviour. This is not to suggest that the rapists went unpunished if they effectively proved that these conditions were present at the time of attack, but rather, that this had an effect on how the rapist would be punished. It also detracted from the strong message the court was supposedly trying to send out to potential rapists. Similarly, this affected how the rapist could be rehabilitated, if deemed rehabilitative at all. It does, however, reflect a growing interest outside of the judiciary in understanding the criminal – especially in psychiatry and social welfare. Nonetheless, the courts' role in maintaining many

⁷¹Isaac Lameni was charged and convicted for assault with intent to rape Dinah Matroos near her makeshift hut in Klipfontein, Wynberg on 21 May 1937 and for raping Rosie Malie in Klipfontein on 23 May 1937. Justice Jones and a jury sentenced him to three years hard labour and eight cuts with a cane, considered a harsh sentence despite his previous conviction for sodomy on 10 March 1933 for which he was sentenced to two months' hard labour and a conviction of rape on 10 March 1933 for which he was sentenced to two years and nine months' hard labour and eight cuts by the Supreme Circuit Court in Swellendam. He was released on bail on 18 September 1935, twenty months before he was caught for these offences, KAB CSC 1/1/186 Cape Supreme Court Records, Case 11/ August 1937, *Rex v. Isaac Lameni*; Jan Bergman was sentenced to five years hard labour for the rape Maria Sampson near Kraaifontein on 22 June 1940 after having a previous conviction for rape in the Malmesbury Circuit Court on 2 March 1923. For that offence he was sentenced to five years hard labour and 10 cuts but was released on probation on 29 March 1926. After a spate of convictions for theft, assault, possession of dagga and housebreaking from 1926 to 1938, he was convicted of another crime of rape, KAB CSC 1/1/197 Cape Supreme Court Records, Case 8/ October 1940, *Rex v. Jan Bergman*.

⁷² Four trends are visible in court procedure which reinforce the nature/nurture debates discussed in Chapter 1: victim culpability, substance abuse as an extenuating circumstance, the rapist as a pathologised being and the role of the environment for excusing bad sexual conduct, KAB CSC 1/1/196 Cape Supreme Court Records, Case 17/ August 1940, *Rex v. Izak Gardiner, Tonto Mbongo & Izak Witbooi*.

theories as to why these men raped, not only affected the outcome of cases but largely determined the manner in which these men were sentenced.

Punishing or Rehabilitating the Rapist?: Sentencing Trends in the Cape Courts, c. 1910-1975

Marianne Bruins writes that the role of the courts was to influence society through its rulings and thus suggests that they also had a transformative potential to reduce or eradicate the incidence of rape. She is also of the opinion that the public had access to the court proceedings through the media and the presence of reporters at rape trials.⁷³ As Bruins suggests, certain considerations were visible in the sentencing of rapists and this may have detracted from the severity of the crime in the mind-set of the general public. Mitigating circumstances in sentencing were numerous. Factors considered include the use of alcohol; mental instability; pathological mental illness or non-pathological signs of emotional distress; forced or coerced rape in gang situation; ill health of the perpetrator; remorse for the act (distinguished from remorse for getting caught); the personal circumstances of the perpetrator such as employment, education and family situation; time in custody awaiting trial; immaturity of the accused; whether the crime was premeditated; previous convictions; coercion by older persons; marital problems and sexual frustration; pleading guilty; potential for rehabilitation; the physical and psychological damage to the victim and the message the court could send to the general public by making an example of the convicted rapist.⁷⁴

The sentences for sexual offences were comparable with those of murder. In some instances, they were more severe.⁷⁵ Sentencing relied on so many variables that no specific and conclusive trends can be drawn. One can, however, reflect on the types of sentences passed down and the reason for those particular forms of punishment. Attention will now be

⁷³ M. Bruins, "On rape and gender: Aspects to include in sentencing rape offenders in South Africa and elsewhere", LLM Dissertation, Leiden University, 2009, pp. 5-6.

⁷⁴ M. Bruins, "On rape and gender: Aspects to include in sentencing rape offenders in South Africa and elsewhere", LLM Dissertation, Leiden University, 2009, pp. 36-37

⁷⁵ For example KAB CSC 1/2/1/140 Criminal Records 2nd Western Court March to September 1911- Circuit Court held in Beaufort West 7 September Case 3: Rex v. Hannah Prins, found guilty of murder; Circuit Court held in Paarl 12 September Case 3: Rex v. Jas, charged for murder of Jan Umdala and pleaded guilty to culpable homicide – both of whom received a three-year sentence with hard labour.

drawn towards the most consistent forms of punishment for rape at the Cape: the death sentence, flogging and incarceration.

The Death Sentence

The sternest warning that could be sent out to potential rapists was the execution of the convicted rapist. Despite a consistent rhetoric which pegged all “coloured” men as potential rapists of the white woman since the colonial era, few death sentences in comparison to the number of rapists convicted, even in cases of inter-racial rape of white women, ended in an execution. This observation is supported by the statistics. This would strongly suggest that the judiciary in the Cape was not particularly racially biased. It also suggests that it did believe that men could fundamentally be rehabilitated. But some were beyond redemption. Once again, the evidence would determine the severity of the sentence.

According to Robert Turrell, Joe Slovo did not think that black men were more likely to be sentenced to death for murder during the 1950s. However, practicing attorney Harry Morris suggested the contrary from 1907-1947 when the value of white bodies was perceived to be higher. This could also be the result of the mandatory death sentence for murder being abolished in 1935. Legal academic Ellison Kahn suggested that the 1960s judiciary was criticised for its racial prejudice because whites were controlling the system. They were, he argued, lenient towards non-whites because they were believed to be prone to violence and exhibited low levels of morality and self-restraint further arguing that whites should have known better and thus treated with a stricter hand. Sentencing was somehow different in cases of intra-racial murders, and rapes. In America, the race of perpetrator bias shifted in the 1960s to a race of victim bias in the 1980s whereas in South Africa, this shifted from race of victim bias in the 1940s and 1950s to the race of the perpetrator bias from the 1960s to the 1980s. Similar arguments were made about race and rape.⁷⁶

⁷⁶ R. Turrell, *White Mercy: A Study of the Death Penalty in South Africa* (Connecticut: Prager, 2004), pp. 7-13.

In rape cases in the Cape courts, death sentence trends passed for rape during the colonial, segregation and *apartheid* eras strongly correspond with death sentences passed elsewhere in the country, just at a lower rate. The motivations, too, are similar. While victims were not necessarily killed during these attacks, the value was largely linked to the damage done to the body and the lasting effects this had on the victim, especially unmarried virgins or those who had contracted an STI during the rape. There is almost a continued colonial notion of the body as a commodity: if damaged, the perpetrator should pay. It should, however, be noted that the class of both victim and perpetrator in the Cape courts resonates throughout the court proceedings even if one could argue that severity of sentences still followed the broader South African trends.

Robert Turrell, has delineated rape scares in South Africa, especially in Natal, culminating in the compulsory death sentence for rape being passed in Natal in 1887. This was subsequently left to the discretion of the judges by 1898, after the panics had subsided. The death sentence was normally passed for particularly brutal attacks such as the rape of babies and children, across the colour-divide. As black scares re-ignited in other parts of the country, so too did the numbers of those condemned to death. In the Cape, Cape chief justice, Henry de Villiers, passed his first death sentence for rape in 1898 because the white victim was left for dead. In his report to the Prime Minister, he questioned whether deflowering a respectable woman was not the same as murder. Lord Milner commuted the sentence. By 1904, black men were being sentenced to death even for the attempted rape of white women. The Cape, now aligned with English common law, required that forced penetration had to be proven on its own, with or without ejaculation.⁷⁷ Ejaculation was an important feature in rape cases at the Cape. Nevertheless, Turrell concludes that by the turn of the 20th century, hanging a black man for the rape of a white woman had become normal.

Laws against racial sex are largely considered to have led to this state of affairs from the end of the South African War, 1899-1902. Turrell argues that during the Reconstruction era (1902-1910), which served as a blueprint for the segregation era, “regulating sex between black and white, differentiating the civilised from the savage, reinforcing civilised

⁷⁷ R. Turrell, *White Mercy: A Study of the Death Penalty in South Africa*, pp. 52-58.

punishments for those able to respond to morality, and the introduction of the death penalty for the rape of white women by black men were central”. Corporal punishment and the death sentence for sexual offences were introduced at the same time to reinforced the “civilised criminal code”.⁷⁸ The passing of death sentences for rape was most prevalent in areas adverse to inter-racial sex – especially the Transvaal, and the only two judges at the Cape who passed death sentences for rape had either been imports from the Transvaal or had vehemently expressed repugnance towards inter-racial sex.⁷⁹ Therefore sex, rather than sexual violence was central. This is not to suggest that one could not be sentenced to death for intra-racial rape. There are examples in both the Transvaal and the Cape. Similarly, not all black men convicted of raping a white woman were condemned to death. Of the 469 convictions in the Cape between 1901 and 1910, 31 involved black men raping white women, only six per cent were hanged compared to 50% in the Transvaal during the same period. This was largely left to the discretion of the judge who scrutinised the character of the white victim. What appears by the turn of the 20th century is a shift from seeing black and coloured victims raped by white men, to one in which the black man was considered a potential rapist who had to be controlled.⁸⁰

During the segregation era, 52 men were sentenced to death for rape between 1911 and 1947. 39% were executed. Most black and coloured men were executed between 1911 and 1920 (two blacks and one coloured received reprieves). Most sentences were passed in the Transvaal between 1911 and 1927. Black men were still severely punished for raping white women. Only two cases in Johannesburg between 1911 and 1927 resulted in the death sentence, the first for a gang rape and the second, on a “houseboy” who raped a German housekeeper. Between the 1920s and 1930s, rape executions were rare. Turrell believes that the concerns of the Transvaal can also be seen in the Cape. One rapist was sentenced because he raped a school girl. Most alleged rapists denied that they had raped at all. Most reported incidents were stranger rapes. Many were poorly identified by the victim. Others suggested that consent had been given, but this was rarely believed by the courts when the victim was white: a white woman would never desire a black man therefore she would never consent. For this reason, her “respectability” would prove her innocence. In the Transvaal, it had been

⁷⁸ R. Turrell, *White Mercy: A Study of the Death Penalty in South Africa*, pp. 58-59.

⁷⁹ *Ibid.*, p. 59.

⁸⁰ *Ibid.*, p. 60.

noted that medical examinations had sometimes not even been conducted yet the rapist was convicted of rape in the absence of any documented medical proof. The testimony of the respectable woman was enough to secure the conviction. She was not be subjected to a humiliating experience of a rudimentary medical examination. This would solve the legal issues if the if the victim was no longer a virgin prior to the assault. The rapist would be convicted even if the medical evidence suggested otherwise because the victim had testified that she had been raped.⁸¹

Between 1939 and 1948, Turrell points out that hanging black rapists re-emerged, mostly in the Transvaal. Interestingly, this period saw the highest proportion of reprieves – 9 reprieves and 12 executions. Most were stranger rapes. Men traumatised and returning from war, it was argued, were now raping. In other words, their behaviour was considered justified because of their traumatic experiences at the front. The sentencing was determined by the severity of the assault, the comportment of the accused, the location of the attack, if the attack was premeditated and if she was a white virgin. In the Cape, this was compounded if the victim was impregnated or had contracted a venereal disease. Sentencing practices continued to differ across provinces. However, similarities were appearing between rapes of white and black women, even in the previously charged environment of Natal. In 1944, one case in particular of a black woman was described as being the worst seen by the judge.⁸²

During the initial stages of *apartheid*, from 1948 to 1969, 108 blacks were executed, more than double of the previous eras, but no white men were executed. There were very few reprieves.⁸³ The increases can be explained by the shift in the Appeals process during the 1950s. Implied malice was rejected by the Transvaal courts in the 1930s – the prosecution had to prove malice or intention. This eventually diffused down to other courts. Secondly, the objective tests for criminals was replaced by the subjective test which meant that cultural aspects had to be considered in the initial evaluation.⁸⁴ In essence, the initial trial was considered more efficient. But what of the Cape courts?

⁸¹ R. Turrell, *White Mercy: A Study of the Death Penalty in South Africa*, pp. 111-115.

⁸² *Ibid.*, pp. 217-221

⁸³ *Ibid.*

⁸⁴ *Ibid.*, pp. 237-239.

A very detailed analysis has been conducted of several case studies of rapists condemned to death from 1929 to 1972 in the Cape.⁸⁵ Unfortunately, this could not be included in this already lengthy dissertation.⁸⁶ From these detailed accounts, initial observations would suggest that these men were simply condemned to death because their victims were white, except for a few cases of coloured men sentenced to death for raping coloured women: Moos Diedericks was convicted in 1972, so too were members of the Wonder gang who brutally raped a rival gang member's pregnant sister in 1971⁸⁷ and Eric Booysen who raped a coloured girl aged 10.⁸⁸ However, the list of previous convictions all these men had as well as the particularly brutal details of their attack, at least according to the court records, would certainly suggest that the Cape courts did attempt to rehabilitate these men but eventually concluded that they were unredeemable. They were subsequently hanged. Their cases were sent for appeal and the process at the Cape court can therefore be assumed to have been adequate for the time. But the death sentence was a last resort. Other forms of punishment were also used to punish convicted rapists and to warn potential ones not to act out in rape.

Flogging in the Cape

Corporal punishment in the Cape courts was reserved for those who the judge believed could be taught a good lesson through the rod and to act as a deterrent to other potential rapists. It was commonly believed by judges at the Cape that the most effective

⁸⁵ KAB CSC 1/1/153 Cape Supreme Court Records, Case 28/ February 1929, Rex v. Jacobus George; KAB CSC 1/1/212 Cape Supreme Court Records, Case 22/ December 1943, Rex v. Joseph Phillips, George William Richard Coleman & Karl Mento; KAB CSC 1/1/281 Cape Supreme Court Records, Case 264/ October 1951, Rex v. Frikkie Blankenberg; KAB CSC 1/1/320 Cape Supreme Court Records, Case 437/ October 1953, Rex v. Johannes Cloete; KAB CSC 1/1/329-330 Cape Supreme Court Records, Case 136/ August 1954, Rex v. Daniel Lindeboom; KAB CSC 1/1/332 Cape Supreme Court Records, Case 205/ December 1954, Rex v. Adam Davids; KAB CSC 1/1/461 Cape Supreme Court Records, Case 12/1961, State v. Nico Loubsher and George Steyn; KAB CSC 1/1/529 Cape Supreme Court Records 1963, Case 3/1963, State v. Albert Kimimbi; KAB CSC 1/1/508 and 509 Cape Supreme Court Records, Case 217/1962, State v. Charles Andrews, Ronald Williams and Willie Lombard; KAB CSC 1/1/1/ 1515-1519 Cape Supreme Court Records, Case 69/1971, State v. Gulzaar Ebrahim, Mogamat-Zane Nastedien, James Petersen, Roy Sampson and Daniel Arendse; KAB CSC 1/1/1/1743-1746 Cape Supreme Court Records, Case 52/1972, State v. Albert Davids; KAB CSC 1/1/1/1852-1853 Cape Supreme Court Records, Case 229/1972, State v. Moos Diedericks and Johannes Booysen.

⁸⁶ Please contact the author directly for a copy of this 50 page analysis.

⁸⁷ KAB CSC 1/1/1/1791-1795, Cape Supreme Court Records, Case 144/1972, State v. Mervin Pietersen, Chris Robyn, Johannes Januarie, Elloe Meyer, Frank Duiker, Pieter Samuels, Solomon Overmeyer, Pieter Kleinsmit, Robert Meyer, Samuel Philander, Abdulaman Markus and Peter Antha.

⁸⁸ KAB CSC 1/1/1/1777 Cape Supreme Court records, Case 116/1972, State v. Eric Booysen.

means of deterring repeat sexual offences was the administering of lashes with a cat-o-nine tails or cuts with a cane along with a prison sentence. Justice Sutton, in summation of the trial of Piet Abrahams and Jan Pietersen on 29 December 1929, argued: “I always think in a rape case it is a good thing to administer cuts to make you think for the rest of your life what you have done and if you have any temptation to do it in the future perhaps the sentence of cuts will prevent you from doing so”.⁸⁹ In some instances, only cuts were given because it was argued that the setting of the prisons could be more detrimental to rehabilitation, especially for young offenders.⁹⁰ Justice Sutton simply believed that it was the only way to deal with rapists: “In my opinion the only way to stop assaults on women is to administer cuts to people like you. It seems to be the only thing that has effect on your minds”.⁹¹ Cuts were administered either in public or in private to serve as a warning to other would-be rapists. Justice Sutton decided that John November would serve as an example to all: “I am going to order you some cuts [in public] as a warning to other people in case they are tempted to do this kind of thing”.⁹² For repeat offenders, cuts with a cane (or lashes with a cat-o-nine tails) had to be re-administered because they “needed their memories refreshed”.⁹³ Some men were exempted from corporal punishment on the grounds of poor health and being elderly.⁹⁴ It could also be avoided if no violence had taken place during the assault.⁹⁵

By 1950, Justice Steyn believed that aggravated assaults with knives by certain racial groups justified administering cuts. Duma Fohlani, for example, was found guilty of raping Mary Diamond, a “native” woman, in Grassy Park, Wynberg, on 2 April 1950. Mary was attacked with a knife and raped. At the time, she was 26 weeks pregnant. Duma was sentenced to 10 cuts with a cane. “When coloured people and natives use knives, I invariably

⁸⁹ KAB CSC 1/1/154 Cape Supreme Court Records, Case 5/ March 1929, *Rex v. Piet Abrahams & Jan Pietersen*.

⁹⁰ See for example, KAB CSC 1/1/166 Cape Supreme Court Records, Case 5/ July 1932, *Rex v. Hendrik Charles*.

⁹¹ KAB CSC 1/1/155 Cape Supreme Court Records, Case 4/ July 1929, *Rex v. Sam du Preez*.

⁹² KAB CSC 1/1/157 Cape Supreme Court Records, Case 3/ January 1930, *Rex v. John November*.

⁹³ KAB CSC 1/1/178 Cape Supreme Court Records, Case 6/ April 1935, *Rex v. Japie Arendse*.

⁹⁴ See for example, KAB CSC 1/2/1/146 Criminal Records 1st Western Court of the Cape of Good Hope Provincial Division of the Supreme Court of South Africa 1916 - Criminal Session held in De Aar 7 March, Case 3: *Rex v. Adams*; KAB CSC 1/1/202 Cape Supreme Court Records, Case 20/ December 1941, *Rex v. Johnson Mapali*; KAB CSC 1/1/153 Cape Supreme Court Records, Case 30/ January 1929, *Rex v. Isaac Visagie*.

⁹⁵ See for example, KAB CSC 1/1/187 Cape Supreme Court Records, Case 8/ October 1937, *Rex v. Marthinus Julies*.

order cuts with a cane”.⁹⁶ By 1953, some judges argued that the law imposed cuts for convictions for rape. For example, in sentencing Jack Klaasen on 1 April 1953, Justice Steyn pointed out that he was going to pass a lenient sentence, but was compelled to impose cuts as well, in accordance with the new law.⁹⁷ This is reiterated in *Rex v. William Ngobo*. “I want to keep you out of gaol but you must be punished and I will give you the lightest sentence that I can possibly give you and that is eight cuts with the cane”.⁹⁸

These mechanisms were designed not only to punish rapists but also to deter others from sexual violence. Corporal punishment was to serve as a physical reminder to criminals not to re-offend. Those that did not conform, even after corporal punishment, could be given an indeterminate sentence.

Incarcerating the Offenders

Sentencing in cases of multiple offences was sometimes little more than those of single offences, and despite political or rape scare climates, sentencing was not always determined by the race of victim or perpetrator.⁹⁹ Having a previous conviction, for example, could secure a much stiffer sentence.¹⁰⁰ Habitual offenders were so prevalent that legislation came into effect in 1917 to control serial sexual predators. The third conviction for serious

⁹⁶ KAB CSC 1/1/1/265 Cape Supreme Court Records, Case 14/ June 1950, *Rex v. Duma Fohlani*.

⁹⁷ KAB CSC 1/1/1/309 Cape Supreme Court Records, Case 181/ April 1953, *Rex v. Jack Klaasen*.

⁹⁸ KAB CSC 1/1/1/308 Cape Supreme Court Records, Case 131/ March 1953, *Rex v. William Ngobo*.

⁹⁹ David Davids Jnr, a farm labourer in Doornkraal, was charged with assault with multiple offences of intent to commit rape upon two white farmer’s children, Isabella Koen and Gertie Kemp. He pleaded guilty to indecent assault and received a sentence of 20 cuts with a cane, but no rehabilitation was offered, KAB CSC 1/2/1/138 Criminal Records 2nd Western Court of the Cape of Good Hope Provincial Division of the Supreme Court of South Africa 1910 - Criminal Session held in Swellendam 21 September, Case 1: *Rex v. Davids*.

¹⁰⁰ Jan Cloete, was sentenced to four years hard labour for incest. He was originally charged with both rape and incest of his daughter, Antje Cloete. His harsh sentence was motivated by his previous conviction for incest in 1913 for which he received 12 months hard labour, KAB CSC 1/2/1/146 Criminal Records 1st Western Court of the Cape of Good Hope Provincial Division of the Supreme Court of South Africa 1916 - Criminal Session held in Malmesbury 26 March, Case 5: *Rex v. Cloete*; Willie Mitchell, a coloured male aged 24, charged with assault with intent to commit rape on Hannah Mabel, a minor under 12, the defendant was sentenced to seven years hard labour and 15 cuts. This rather severe sentence was due to his string of previous convictions of attempted sodomy in 1908; theft in 1909; assisting to commit sodomy in 1910; and vagrancy, breach of peace, theft and assault between 1913 and 1915. For the attempted sodomy he was sentenced to one year hard labour and for assisting to commit sodomy, one year and 25 lashes, KAB CSC 1/2/1/146 Criminal Records 1st Western Court of the Cape of Good Hope Provincial Division of the Supreme Court of South Africa 1916 - Criminal Session held in Victoria West 13 March, Case 3: *Rex v. Mitchell*.

offences such as rape, any statutory offence of a sexual nature against a girl of or under the prescribed age, attempted rape or assault with intent to commit rape, resulted in being classified a habitual offender under the statutes of the Criminal Procedure and Evidence Act no. 31 of 1917.

There were several drawbacks to the passing of an indeterminate sentence. Firstly, judges were aware that corporal punishment could not be passed in sentencing if the offender was declared a habitual offender.¹⁰¹ Secondly, it was evident that probation could be obtained after a short period of time. But judges were also not prone to applying the three stroke rule in cases of sexual offences.¹⁰² The indeterminate sentence was passed on repeat offenders once all other options had been exhausted.¹⁰³ It also depended on how the perpetrator was considered by the judiciary.¹⁰⁴ Recidivism was also very high. In 1910, two white males and 27 blacks received indeterminate sentences. By 1920, 20 white males, 154 black males and one black female had been classified under this system. This soared to 101 white males, 1068 black and coloured males, 10 black and coloured females and 16 Asiatic men in 1922. Up until 1923, no white or Asian females had received life sentences. This would indicate a severe crackdown on serial offenders between the end of 1921 and the beginning of 1923. Of the 33 white men incarcerated between 1910 and 1917, one died, one was transferred to a mental institution and 27 were released on probation. The recidivism rate was roughly 20%. Of the black or coloured females incarcerated prior to 1918, one died, and the other two were successfully reintegrated back into society. Asian men imprisoned prior to 1916 fared poorly.

¹⁰¹ KAB CSC 1/1/178 Cape Supreme Court Records, Case 31/ April 1935, *Rex v. John Jacobs*; KAB CSC 1/1/260 Cape Supreme Court Records, Case 56/ March 1950, *Rex v. Klaas Morris*.

¹⁰² See for example the repeat sexual offences of John Johnson between 1934 and 1942, KAB CSC 1/1/175 Cape Supreme Court Records, Case 6/ June 1934, *Rex v. John Johnson*; KAB CSC 1/1/191 Cape Supreme Court Records, Case 15/ August 1938, *Rex v. John Johnson*; KAB CSC 1/1/197 Cape Supreme Court Records, Case 16/ October 1940, *Rex v. John Johnson*; KAB CSC 1/1/203 Cape Supreme Court Records, Case 36/ April 1942, *Rex v. John Johnson*.

¹⁰³ See for example the charges brought upon John Adams between 1920 and 1934, KAB CSC 1/1/176 Cape Supreme Court Records, Case 3/ August 1934, *Rex v. John Adams*.

¹⁰⁴ In the case of Dickie Cleenwerck, charged with theft and Contravening Section 2(1) of Act No. 3 of 1916 in September 1933 upon Minnie Mentoer, a girl under the age of 16, despite having eight previous convictions for theft, two convictions for 6 counts of indecent assault and one conviction for contravening the same act from 1909, he was given two years hard labour for both offences, KAB CSC 1/1/171 Cape Supreme Court Records, Case 12/ September 1933, *Rex v. Dickie Cleenwerck*. He was later found guilty of contravening the 1916 Act when he had connection with Anna van Wyk near Salt River, Cape Town, on 29 July 1938. He was sentenced to three years hard labour and warned, yet again, of the indeterminate sentence by Justice Sutton. Richard's use of language and structure of the letter applying for legal counsel clearly indicated that he was a well-educated person. It was most likely his more privileged background which kept him from receiving the indeterminate sentence, KAB CSC 1/1/191 Cape Supreme Court Records, Case 9/ December 1938, *Rex v. Richard Cleenwerck*.

Most relapsed, many were transferred to mental institutions and some were deported. Coloured and black men convicted prior to 1918 numbered 550. 10% died in custody, 19 were transferred to mental institutions, one was removed to a leper colony, and two were reclassified and removed from the indeterminate offender list. 39% of the remaining men were released on probation but 29% of those were re-incarcerated. 9 men were reclassified habitual offenders. In total the failure rate was 33%.¹⁰⁵ Why, then, was incarceration so ineffective?

Prisons, during the Union period, officially intended to punish the criminal to prevent further recurrences of crime. For the habitual offender, the aim was to remove the threat to society and prevent his/her menacing behaviour but allow for self-redemption. Reformatories and prisons worked on the principles of religious and moral influences, schooling, drilling, discipline and training. The prison system, however, assimilated outside classifications by moulding, guiding, and supporting prisoners along racial lines. The South African Prisoners' Aid Association, for instance, helped white prisoners keep bonds with their families and assisted them to regain a place within society on their release. Prison Farms were instituted as a transition between incarceration and official release. White prisoners were also forbidden to share cells with, or be surveyed, by non-whites. According to the official stance, prisoners were being treated fairly and those in need, "lunatics", for example, were to be sent to psychiatric hospitals.

The South African Prisoner's Aid Association was established in 1910. Its main objectives were to prevent recidivism or relapse into crime, to encourage the study of underlying causes of crime and recidivism, to conduct public propaganda, to aid discharged prisoners, to help the deserving dependents of prisoners, to prevent delinquency and the "manufacture of criminals", and to carry out the mission throughout South Africa.¹⁰⁶ By 1923, there were 677 supporters and 988 members throughout Union.¹⁰⁷ 61.9% of all revenue was from the State. The State relied heavily on organisations such as this to rehabilitate prisoners or reduce the levels of recidivism within the non-white groups, despite the fact that 19 366 prisoners of the total 96 722 were repeat offenders by 1922, and that 18 189 of those

¹⁰⁵ GPB *Official Yearbook of the Union of South Africa 1910-1924* no. 7, pp. 330-331.

¹⁰⁶ GPB *Official Yearbook of the Union of South Africa 1910-1923* no. 6, p. 380.

¹⁰⁷ GPB *Official Yearbook of the Union of South Africa 1910-1924* no. 7, p. 299.

were non-white.¹⁰⁸ Much of the criticism pointed to harsh living conditions within the prisons. By 1917, the prison system had to re-invent itself from one that simply “exploited” inmates, according to the critics, to one that now provided the basic comforts needed to rehabilitate prisoners. The *Official South African Yearbook, 1910-1917*, describes these new living and working conditions and despite sounding very much like a carefully crafted piece of wartime propaganda, no substantial recommendations were suggested to actually reform the prisoners and reduce the rate of recidivism:

Profitless labour such as oakum picking is now unknown, and its place has been taken by creative arts and trades. At the prisons excellent mats are now made from the discarded sheath leaf of the mealiecob, replacing the coir mats imported from India. Manilla rope of sisal fibre grown on the prison farms has been turned out by the thousand yards. Prison building on a large scale is being undertaken. Blankets are woven from South African wool, and felt hats are made from the same material [...].¹⁰⁹

The re-evaluation of the treatment of prisoners was instituted under the Prisoners Act No. 13 of 1911, which incorporated the chief features of the Transvaal Act No. 38 of 1909, considered the first legislation to improve the rights of prisoners. However, the effectiveness of rehabilitation was minimal considering the high percentage of recidivism.

By 1912, calls were made in the press for “native” prisoners to be classified according to the nature of their offence. This classification would also include the extenuating circumstances of the crime such as education level, religious affiliation, alcohol or drug abuse, occupation and mental state. Repeat offenders, it was thought, had to be placed, along with their dependants (which suggests the sins of the father are lived through his children), in remote parts of the colonies. Juvenile offenders were to be placed in reformatories.¹¹⁰

By the 1960s, substantial social pressure was placed on the judicial system to reform and rehabilitate offenders rather than institute retaliatory measures for crimes. The cost of rehabilitating criminals was no doubt a debilitating factor.¹¹¹ The Reverend H. P. Junod,

¹⁰⁸ Calculated from GPB *Official Yearbook of the Union of South Africa 1910-1923* no. 6, p. 415.

¹⁰⁹ GPB *Official Yearbook of the Union of South Africa 1910-1917* no. 2, p. 349.

¹¹⁰ Author unknown, “Criminal Procedure and Prison Reform”, *The Christian Express*, 1 August 1912.

¹¹¹ Author unknown, “Fortune spent on crime in S. A. – judge”, *Cape Argus*, 8 October 1969.

Director of the Penal Reform League of South Africa, argued that courts should try to guide offenders into re-establishing themselves in society. He believed that converting prisons into factories would give prisoners a sense of pride and responsibility.¹¹² Rev. J. R. Luckhoff, Director of Religious and Social Services at the Department of Prisons, told the Dutch Reformed Church (NGK) Synod that prisons had indeed already been changed from punitive institutions to ones of rehabilitation. He attributed this to the effects of the Prisons Act of 1959.¹¹³ The state of prisons was already assessed before Smuts lost the election of 1948 by the Landowne (a leading figure in criminal law and procedure during the 1940s) Commission of 1946.

Emphasis on penal reform and the treatment of prisoners was certainly important for the upper classes of society as people were reminded that Winston Churchill had said that the treatment of crime and criminals was an unfailing test of how civilised any country was.¹¹⁴ The Commissioner of Prisons, Victor Verster, warned that criminals of violent crimes such as rape, murder, assault and robbery were beyond redemption, but only consisted of 2000 of the 32 000 criminals incarcerated in prisons in 1962. Another 6000 “borderline” cases were held in maximum detention facilities where they could “no longer be a menace to society”. He strongly advised that these “rogues, virtually beyond redemption”, needed to be dealt with because the incidence of violent crime had spread rapidly to rural areas, the victims being mostly elderly people. The rest, it was argued, were treated fairly to equip them to return to society. These prisoners were made to work on farms.¹¹⁵ Of particular concern were criminals from good homes. The Commissioner could not understand why youths “from good homes [...] decent parents and with good education”, were choosing crime as a career.¹¹⁶ Indeed the condition of prisoners and the manner in which they were treated led to wide-scale sociological reports on criminality within the media.

By 1972, Prof. N. Cloete, a criminologist at the then University of Durban-Westville, emphasised the fact that South Africa had the highest pro-rata prison population in the

¹¹² Author unknown, “Rehabilitation must be aim, says Junod”, *Cape Argus*, 25 June 1961.

¹¹³ Author unknown, “N.G.K Synod told of rehabilitation methods in prisons”, *Cape Argus*, 8 November 1961.

¹¹⁴ Author unknown, “Misgivings about SA’s Prison System: Why Enquiry Should Be Held”, *Cape Argus*, 12 October 1962.

¹¹⁵ Author unknown, “Most S.A Convicts put to work outside prisons”, *Cape Argus*, 31 October 1962

¹¹⁶ Author unknown, “Prisoners ‘Must be helped’”, *Cape Argus*, 2 November 1962.

Western world. He condemned officials who were tying up the prisons with sentences reflecting the crime and not the criminal, seeing punishment for the sake of punishment. He suggested a major revision of thinking amongst politicians and the public. "Provision will have to be made for a greater degree of individualisation in the court proceedings and punishment so that the offender becomes the focal point round which the community's activities centre".¹¹⁷ Focusing on the individuals suggested a concerted effort at looking at all the mitigating conditions moulding the perpetrator. The individual was very much at the forefront of the case prior to the 1970s but this was an attempt to find a fitting sentence for the crime, rather than an attempt to rehabilitate an offender who was naturally going to be released into society after a few years. What is apparent from the 1950s was a greater shift towards understanding the rapist rather than simply punishing his deeds.

Juvenile offenders (under 16 years of age) and juvenile-adults (between the ages of 17 and 20) were sentenced in a similar manner to their adult counterparts until 1913.¹¹⁸ By 1913, juvenile offenders were supposed to be incarcerated in juvenile facilities.¹¹⁹ White juvenile offenders were less common throughout the Union. In 1921, only four juveniles were convicted for indecent assault, and two for defilement of young girls.¹²⁰ Of the 13 432 juvenile offenders admitted to prisons (and not including those in reformatories), 321 were white males; 26 white females; 10 883 coloured males and 2 202 coloured females.¹²¹ In some instances of juvenile sentencing, the jury recommended mercy and the sentences were

¹¹⁷ Author unknown, "Making punishment fit the crime", *The Tribune*, 27 August 1972.

¹¹⁸ In 1910, Willem Jooste, a 14 year-old and his brother Piet, both shepherds in Dunedin, were charged for raping Mina Janse, a minor girl under the age of 12. Willem was serving a sentence for escaping prison; and was later sentenced to four years' hard labour and 15 cuts with the cane, which was an adult sentence for this period, KAB CSC 1/2/1/139 Criminal Records 1st Western Court of the Cape of Good Hope Provincial Division of the Supreme Court of South Africa 1910 - Criminal Session held in Beaufort West 16 March, Case 4: Rex v. Jooste. His escape from prison cannot be used to explain this, see KAB CSC 1/2/1/138 Criminal Records 2nd Western Court of the Cape of Good Hope Provincial Division of the Supreme Court of South Africa 1910 - Criminal Session held in Beaufort West 16 March, Case 5: Rex v. van Eden.

¹¹⁹ After the implementation of the Children's Protection Act No. 25 of 1913. Further provisions were made for juveniles in the Juveniles Act No. 33 of 1921. See for example the case of Frederick Muggles and Izaak Jacobs, KAB CSC 1/2/1/143 Criminal Records 1st Western Court of the Cape of Good Hope Provincial Division of the Supreme Court of South Africa 1913 - Criminal Session held in Worcester 1 April, Cases 5 and 6 respectively or the case of Adam Lamour, aged 16, incarcerated in a Juvenile Adult Reformatory for four years, KAB CSC 1/2/1/144 Criminal Records 2nd Western and Northern Court of the Cape of Good Hope Provincial Division of the Supreme Court of South Africa 1914 - Criminal Session held in Worcester 14 October, Case 14: Rex v. Lamour.

¹²⁰ GPB *Official Yearbook of the Union of South Africa 1910-1922 no. 5*, p. 381.

¹²¹ *Ibid.*, p. 385.

adjusted accordingly.¹²² By 1923, juvenile offenders were rapidly on the increase. Between 1922 and 1923, the number of white juveniles convicted and incarcerated in prisons, excluding the number sent to reformatories, decreased from 506 to 362 males and 42 to 34 females. The statistics were much bleaker for non-white offenders. Female offenders decreased from 2 274 in 1922 to 2 606 in 1923 but males increased drastically from 10 700 to 12 239.¹²³ These figures further increased in 1924 and by 1926, of the 16 768 juvenile offenders, only 337 were white.¹²⁴ This would suggest that the socio-economic situation of non-white juveniles had radically deteriorated and their propensity for criminal activity vastly increased during the early 1920s. It also questions the effectiveness of the special treatment accorded to juvenile offenders after 1913 on the long-term eradication of criminal activity.

Official statistics on the state of juvenile crime reveal that white juvenile crimes increased from 1923 to 1936. There was a sharp decrease from 1936 to 1946, where after it rose, still below the peak 1936 level. Coloured juvenile statistics were almost five times higher.¹²⁵ Cape coloured juveniles will be further discussed in Chapter 6.

Juvenile rapists were considered to be young men led astray by their environments or by the company they kept. Some had a history of violence and criminal activity. Some were irredeemable, incurable and sent to prison. Here, a distinction was made about the services and rehabilitation programmes offered in reformatories, compared to the purely retributive punishments of prisons. Alan Paton and Linda Chisholm have eloquently outlined the benefits of Diepkloof Reformatory and Porter Reformatory.¹²⁶ Chisholm points out that the boys in Porter reformatory in the Western Cape were separated according to the crimes they committed and were taught an apprenticeship skill to use after release. This was particularly

¹²² KAB CSC 1/2/1/144 Criminal Records 2nd Western Court of the Cape of Good Hope Provincial Division of the Supreme Court of South Africa 1914 - Criminal Session held in Paarl 10 September, Case 2: Rex v. Abrahamse.

¹²³ GPB *Official Yearbook of the Union of South Africa 1910-1924* no. 7, p. 333.

¹²⁴ GPB *Official Yearbook of the Union of South Africa 1910-1925* no. 8, p. 332; GPB *Official Yearbook of the Union of South Africa 1926-1927* no. 9, p. 339.

¹²⁵ J. Venter, "The Incidence of Juvenile Crime in South Africa", *National Bureau of Educational and Social Research*, Series 2, 1964, pp. 3-12.

¹²⁶ A. Paton, *Diepkloof: Reflections of Diepkloof Reformatory* (Cape Town: David Philip, 1990)

important in moments of financial crisis and for boys from impoverished backgrounds.¹²⁷ Psychologist W. A. Willemse, also pointed out that in the 1930s, concerns were raised about the environmental influences impacting on juvenile delinquents.¹²⁸ They were increasingly becoming products of their environment and the judiciary was increasingly unable to dissuade them from criminal activity.

Unfortunately, violence was also being bred in Cape institutions tasked with rehabilitating prisoners. Concerns were raised by the Minister of Justice, Mr. Erasmus, on the allegations of assaults between prisoners at Roeland Street Gaol between 1958 and 1960. Daily assaults were causing concerns amongst officials as to the impact this would have on prisoner rehabilitation.¹²⁹ In 1961, The Dutch Reformed Church Synod reiterated that shifts from penal methods to rehabilitation meant that criminals were sent to prisons as punishment and not for rehabilitation.¹³⁰ By 1962, Justice Beyers called for a proper investigation into the prison services after a warder helped kick a convict to death.¹³¹ Later that year, the state of the prison system was so alarming that one newspaper article reminded readers that “Fifty years ago, Winston Churchill said that the treatment of crime and criminals was one of the unfailing tests of how civilised any country was”.¹³² The effective treatment and rehabilitation of criminals was a particularly important aspect for recidivism of rapists and habitual criminals

One of the key social activists against the ill-treatment of criminals during the 1960s was Fanny A. Gross. She was a frequent contributor to the *Cape Argus* and bridged the intellectual gap between professional evaluation of criminals and public understanding. Her role in compelling political debate cannot be underestimated if we consider the press debates and responses by politicians and religious leaders. In a presentation on “Prisoners are

¹²⁷ L. Chisholm, “The Pedagogy of Porter” The Origins of the Reformatory in the Cape Colony, 1882-1910”, *The Journal of African History*, 27(3), 1986, pp. 481-495.

¹²⁸ W. Willemse, *The Road to Reformatory* (Pretoria: South African Council for Educational and Social Research, 1938).

¹²⁹ Parliamentary Correspondent, “Erasmus admits gaol assaults”. *The Cape Argus*, 1 March 1961.

¹³⁰ Author unknown, “N. G. K. Synod told of rehabilitation methods in prisons”, *The Cape Argus*, 8 November 1961.

¹³¹ Author unknown, “Judge seeks a gaols enquiry: Shock at mutilation of Convict”, *The Cape Argus*, 28 September 1962.

¹³² J. Lewin, “Misgivings About SA’s Prison System”, *The Cape Times*, 12 October 1962.

people”, Gross argued that there was no clear demarcation between law-abiding citizens and wrongdoers save for “a little kink in the brain, the little twists of circumstance”. It is Gross who reiterated the words of Olive Schreiner, “We are only wood carved by the knife of circumstance”. She argued that “drab surroundings, monotony, lack of mental stimulus and inability to grapple with the economic, social and personal problems of life, have led many John Citizens to crime”. She encouraged society to help change the ways of criminals by understanding the circumstances under which he/she committed the crime.¹³³

The stance by social activists to reform and rehabilitate criminals was met with much resistance by people suffering under the reign of terror of “skollies”. “Township resident”, from Bridgetown, argued that while much debate was taking place on the treatment of criminals in 1967, as a resident who lived in constant fear it was argued that much more severe sentences should be passed down to alleviate the criminal menace. The author of the letter distinguished between the sympathisers living in comfort, and the activists, constantly fighting for “skollies” to be hanged.¹³⁴ The press debate was protracted by contributions from “Justice of the peace” who asked when it was acceptable to shoot a criminal¹³⁵ and “Desperate”, a coloured resident, who reiterated the need to kill “skollies”.¹³⁶ He also pointed out that they knew that they would receive light sentences and would psychologically torture their victims by flaunting this “fact”. The author then warned the readers that if more was not done, township residents would mete out their own capital punishments. The judicial system and method of dealing with criminals was clearly being challenged and this was reflected in the general concerns raised about crime in the Cape.

Public Reaction to the Cape Judiciary by the 1960s

According to *Penal Reform News*, there existed a sharp increase of crime between 1913 and 1960. Convictions rose from 235 114 to 1 394 449. It was argued that the increase

¹³³ See for example, Author unknown, “Crime in modern society”, *Cape Argus*, 6 May 1974; “Crime: time for a rethink”, *Cape Times*, 9 January 1975.

¹³⁴ Letter to the editor, “We’d like to hang the skollies...”, *The Cape Argus*, 23 June 1967.

¹³⁵ Letter to the editor, “When can I shoot a skolly”, *Cape Argus*, 5 June 1967.

¹³⁶ Letter to the editor, “Public executions?: Skolly crimes and the question of punishment”, *Cape Argus*, 10 June 1967.

coincided with the process of urbanisation and industrialisation that commenced after the First World War and the increase in population. Between 1913 and 1921, convictions increased by 57 000. Between 1921 and 1936 this increased by 344 000 and between 1936 and 1951 by 462 000. This was attributed to economic pressure and poverty: as city dwellers torn from the ‘anchors’ of moral, religious, and social standards, the urban way of life brought about social decay and the disintegration of the family as a social institution. Socio-pathological phenomena such as neglect of children and family, juvenile delinquency, alcoholism, and the degradation within cities that allowed for greater contact with antisocial personalities, criminal gangs, and a better chance of escaping the police, were possible reasons.¹³⁷ Chief Magistrate C.E. Cuff blamed the population influx of coloureds and blacks on the increase in crimes appearing before the Wynberg Magistrate’s court in 1960.¹³⁸ The population of the Magisterial District of Cape Town at the time was 252 556. 112 800 were classified as “European”, 123 280 “Coloured”, 3794 “Asiatics” and 12 682 “Bantu”.¹³⁹ The communities were becoming increasingly anxious in the absence of what they perceived to be an ineffective policing system and a relaxed intervention strategy by the *apartheid* State.

In 1962, a letter to the editor of the *Argus* pleaded with Justice Minister B. J. Vorster to allow the rise of vigilante groups to combat crime in the Cape. “What we need are groups of young men from all races to be trained for one year as vigilantes. How many would be willing to join?” “...such a group of well-trained men would strike terror in the heart of any skolly or would-be skolly”.¹⁴⁰

By 1965, under the guidance of the Archpriest of the African Orthodox Church at Facreton, Fr. van Aarde, there was some decrease in crime at Bonteheuwel and other coloured areas after inhabitants began organising themselves against criminal elements. Meetings at Bonteheuwel and Facreton had established that residents were no longer prepared

¹³⁷ Author unknown, “Crime Connections up 600% in 50 Years: Urban areas show great increase”, *The Cape Argus*, 20 November 1962.

¹³⁸ Author unknown, “Wynberg has increase in crime”, *The Cape Argus*, 18 January 1961.

¹³⁹ Author unknown, “Decrease in immorality act cases”, *The Cape Argus*, 28 January 1961.

¹⁴⁰ C. B. Plea to B. J. Vorster, “Vigilantes”, *The Cape Argus*, 7 December 1962.

to accept lawless elements that make their life difficult. One hundred coloured volunteers joined the coloured police reserve.¹⁴¹

In 1966, women in Rylands were tired of the “relaxed approach of Indian men” to the criminal activity in the area and decided to take matters into their own hands. They planned to patrol the suburbs on their own. One activist, Mrs. H. Hamdulay, pointed out: “We did not come to live in Rylands from choice; we had to move from Mowbray that had been proclaimed White” and that “[u]nless the men act soon and take up the offer of Mr. Rogers, Head of the Bonteheuwel police reservists, and get a section formed with his help, we women will set about organizing ourselves to patrol the streets and routing the skollies. I will personally canvass the women”.¹⁴²

Because of the Group Areas Act, over 100 000 inhabitants had to rely on two police stations in Athlone and Phillippi. While the police force and vigilante groups were attempting to enforce law and order in the non-white townships of Athlone, Lavistown and Bonteheuwel, some dedicated men and women tried to reform the unruly elements by means of religion. One of the chief activists of the spiritual approach was Rt. Rev. C. J. Slingers, Moderator of the Missionary for Christ Church of South Africa, who had been living in Lavistown for over 12 years. Through his network of 11 parishes in the Western Province, he embarked on a “crusade of prayer against crime”.¹⁴³

From December 1967, A. Parson and A. Russell began a survey on the background of violence in the Cape. They interviewed victims of assaults. In 1969, the survey of 2000 victims had been completed.¹⁴⁴ It concluded that if the violence in coloured townships was not stopped, it would seep into the leafy white areas. They somehow overlooked the fact that this was already the case. It was argued that coloured people were unable to fight the crime on their own for lack of material wealth or political power. Government and white voters

¹⁴¹ Author unknown, “Crime dips after mass meeting”, *The Cape Argus*, 8 July 1965.

¹⁴² H. Hamdulay, “Rylands women plan to stop skollies”, *The Cape Argus*, 27 September 1966.

¹⁴³ Author unknown, “Crusade against crime on the Flats”, *The Cape Argus*, 1 April 1965.

¹⁴⁴ Author unknown, “Anatomy of Cape Violence”, *Cape Argus*, 9 August 1969.

were urged to stop the spread of the menace.¹⁴⁵ Liberal theorists were thus clearly identifying the causes of the social delinquency outside of the communities involved and by extension were removing from the debate the role of personal agency and choice.

Political scientist, criminologist, historian and journalist, Don Pinnock, suggests that coloured gangs in Cape Town can be traced back to youth displacement during the forced removals from District Six to the Cape Flats. He concludes that the youth, in an attempt to escape overcrowding and poverty, turned to ganging as a “pseudo kin” to the absent socialising factors of schooling and family life. He estimated that gang membership in the Western Cape was close to 80 000 in the mid-1980s.¹⁴⁶ Criminologist Wilfred Schärf investigated the re-emergence of youth gangs and the community responses to these gangs in Cape Town after 1985.¹⁴⁷ By 2002, the SAPS Gang Unit estimated membership on the Cape Flats to be between 80 000 to 100 000 in 137 gangs.¹⁴⁸ This has been attributed to vigilantes, corrupt police officers, ineffective prosecution, and poor cooperation between policing agencies that has led to a window of opportunity for gang leaders in the Cape Flats.¹⁴⁹

Political responses to coloured crime varied. The Progressive Party of South Africa drafted a four point remedy for the eradication of crime amongst coloureds. They argued that one in six coloured men were convicted of crime, five and a half times more than that of whites. They, too, argued that poverty, insecurity and abuse of liquor were to blame and suggested that the forced removals be stopped, job reservations removed, a basic standard of education for all and equal financial compensation in the work force.¹⁵⁰ By 1973, the United Party called “the Cape of Good Hope [...] the Cape of Fear” and urged Government to wage war on all fronts in the spate of increases of violent crime.¹⁵¹ Government responses to this

¹⁴⁵ Author unknown, “Threat of violence”, *The Cape Argus*, 4 May 1970.

¹⁴⁶ D. Pinnock, *The Brotherhoods, Street Gangs and State Control in Cape Town* (Cape Town: David Phillip, 1984).

¹⁴⁷ W. Schärf, *The Resurgence of Urban Street Gangs and Community Responses in Cape Town during the Late Eighties* (Cape Town: Institute of Criminology, University of Cape Town, 1989).

¹⁴⁸ M. Merten, “A Brotherhood Sealed in Blood”, *Mail & Guardian Online*, <http://mg.co.za/article/2002-08-05-a-brotherhood-sealed-in-blood> (accessed 10 April 2011).

¹⁴⁹ I. Kinnes, “From urban street gangs to criminal empires: the changing face of gangs in the Western Cape”, *Institute for Security Studies*, Monograph 48, June 2000, <http://www.iss.org.za/Pubs/Monographs/No48/National.html#Anchor-The-8432> (accessed 21 November 2012)

¹⁵⁰ Author unknown, “4-point remedy for Coloured crime rate”, *Cape Argus*, 1 October 1969.

¹⁵¹ Author unknown, “New Attacks as U.P. calls for ‘war’ on crime”, *Cape Argus*, 10 March 1973.

saw the Cape Town City Council plan to upgrade services and amenities in the townships.¹⁵² The National Party's Minister of Defence, P. W. Botha, urged opposition parties and the English press, not to use party politics to destabilise the harmony in the country. He urged them to emphasise the positives rather than the negative state of affairs in the country.¹⁵³

What unfolded was a large scale attack on both a perceived ineffective judicial system, lethargy by the *apartheid* State to respond to the needs of certain racial groups and the call for more community intervention strategies.

Conclusions

The Cape judiciary worked independently. It judged cases of sexual violence according to the evidence presented to the courts despite any political racist rhetoric. In maintaining certain deeply entrenched myths about women and “acceptable” behaviour, it inadvertently provided both explanation and excuse for certain rape behaviour. Under certain conditions, rape was explainable. Similar rhetoric was expressed by suspected rapists during the court process but it remains unclear if they simply used these social mores, reinforced by the judiciary, to avoid the death sentence. This is unlikely to have made any difference to those rapists who may have been rehabilitated with adequate psychological intervention. Those rapists sentenced to death at the Cape had a long history of repeat offences and their acts were described in even greater and more gruesome detail than other accounts of rape which led to less austere sentences. Indeed, one cannot assume that the evidence was not packaged in such a way as to avoid any suspicion during the possible appeal process but this assumption is not supported by those cases of a “lower profile” and not ending in the death sentence. The courts were still a patriarchal and racial setting controlled by white men. This is visible through certain comments that are made during sentencing. Similarly, there is a class-bias towards those able to afford a private defence or team of medical experts. Repeat offenders were also a product of an ineffective judicial system. Rather than applying the three-stroke rule and passing an indeterminate sentence, repeat offenders were reintroduced

¹⁵² Author unknown, “Amenities in new townships”, *Cape Argus*, 14 May 1973.

¹⁵³ Author unknown, “Emphasise the positive- appeal by Botha”, *Cape Argus*, 24 March 1973.

into society after serving a period of imprisonment in an even more brutal environment. What is apparent is despite the efforts to curb rapists, the judicial system along with the State, as well as the prison services, failed to rehabilitate young offenders in particular. The question whether a sexual offender can indeed be rehabilitated. Attention will now be turned to the identifiable types of rapists visible in the Cape courts.

Chapter 5

Identifiable Types of Rapists in the Cape Courts, c. 1910 to 1980

The secondary literature on categories of rapists as discussed in Chapter 1, does not necessarily have a racial undertone. Colonial settings, such as those mentioned in Chapter 2, have a tendency to draw parallels between race and the propensity of men found in these contexts, to rape. Negotiating these two variations of categorisation has been difficult due to the porous and changing nature of definitions over time and place. This chapter will therefore attempt to identify types of rapists according to the global theories using the racial categories of rapists mentioned, and identified, in the primary sources of the Cape Supreme Court.

Superficially, racialised categories of rapists found in the Cape Court archives prove to be notably stable over time. The race-rape connection is further entrenched in contemporary surveys on rape in South Africa. Three observations should be made. Firstly, there existed a category of person excluded from being a potential rapist based on either legal or social definitions. Women, for example were only considered potential rapists in South Africa after 2007. Only one example of a woman convicted of rape could be found in 1904 but this was clearly a case of mistaken identity. Charlie October was convicted for assault with intent to rape and sentenced to two years' hard labour and 25 cuts with the cane. It was only during the flogging that the authorities realised their rather embarrassing blunder. The press were quick to mock the judiciary.¹ According to both the law and societal norms, women were not capable of such offences. Secondly, there were some contentious cases of rape brought before the courts which were subsequently dropped. These "false rapes" normally involved extortion.² Thirdly, male-male rapists were almost invisible. This is not to suggest that they did not occur but rather that they remained hidden from the public eye. Historically, there are particular sites in which male rape is most prolific. These include

¹Author unknown, "Befooled", *Ilanga Lase Natal*, 27 May 1904.

²See for example KAB CSC 1/1/1/70 Criminal Records Cape of Good Hope Provincial Division of the Supreme Court of South Africa 1910 - Criminal Session held in Cape Town 18 May, Case 7: Rex v. Roux; KAB CSC 1/2/1/140 Criminal Records 2nd Western Court of the Cape of Good Hope Provincial Division of the Supreme Court of South Africa 1911 - Criminal Session held in Malmesbury 5 September, Case 3: Rex v. Maree.

prisons but this is hugely under-researched because access to the information is limited.³ These types of rapes are largely explained by gender and power theories.⁴

Very little historical research has been conducted on rape in South African prisons for the obvious reason that sources are almost non-existent and inmates are not always willing to admit sexual transgressions.⁵ This, as independent researcher Jonny Steinberg has pointed out, is attributed to pre-1990s conditions in which South African prisons were closed institutions and the reporting on the conditions in jails was illegal until the mid-1980s. This has also been compounded by the bonds of secrecy so entrenched amongst gang members.⁶ Most studies are sociological or psychological and consequently, an historical understanding proves disjointed. A general South African survey of rape in prisons and compounds between 1890 and 1920⁷ is followed by Steinberg's attempts to compare pre and post-*apartheid* conditions between the 1970s and 1990s in the Western Cape. He relies solely on oral

³ D. Benatar, *The Second Sexism: Discrimination Against Men and Boys*, pp. 38-41.

⁴ See for example D. Peacock & A. Levack, "The Men as Partners Program in South Africa; Reaching Men to End Gender-Based Violence and Promote Sexual and Reproductive Health". *International Journal of Men's Health* 3(3), 2004, pp. 173-188.

⁵ See for example S. Brownmiller, *Against our will : Men, women and rape* (New York: Ballantine Books, 1975) in which she discusses rape in war, power rapes such as prison rapes, police assaults and child abuse; S. Merry, *Gender violence: a cultural perspective* (Oxford: Wiley-Blackwell Pub, 2009) in which definitions of gender violence according to social and cultural norms, domestic violence, rape, murder, wartime sexual assault, prison and police violence, genital mutilation, efforts to diminish gender violence, gender violence being deeply rooted in inequalities of class, race, nation and gender are investigated. Local studies include S. Gear, "Imprisoning men in violence: Masculinity and abuse: a view from South African Prisons", *SA Crime Quarterly*, 33, September 2010, pp. 25-32; S. Gear & K. Ngubeni, *Daai Ding: Sex, Sexual Violence and Coercion in Men's Prisons* (Johannesburg: CSVR, 2002); S. Gear, M. Isserow & C. Nevill, *Situational Analysis of Boksburg Youth Centre: Sexual Violence in Prison Pilot Project* (Johannesburg: CSVR, 2006); S. Gear, *Doing Time in a Gauteng Juvenile Correctional Centre for Males* (Johannesburg: CSVR, 2007); S. Gear, *Fear, Violence and Sexual Violence in a Gauteng Juvenile Correctional Centre for Males* (Johannesburg: CSVR, 2007); W. Schurink, "The World of the Wetslaners: an analysis of some organisational features in South African Prisons", *Acta Criminologica* 2(2), 1989, pp. 60-70; N. Haysom, "Towards an understanding of prison gangs", MA thesis, University of Cape Town, 1981; S. Gear, "Rules of engagement: structuring sex and damage in men's prisons and beyond", *Culture, Health & Sexuality*, 7(3), 2005, pp.195-208; L. Albertse, "Gang members' experiences of victimisation the perpetration of rape in prison", MA thesis, University of the Western Cape, May 2007; K. Booyens, "The sexual assault and rape of male offenders and awaiting-trial detainees", PhD thesis, University of Pretoria, 2008; R. W. Dumond, "The Impact of Prisoner Sexual Violence: Challenges of Implementing Public Law 108-79 – The Prison Rape Elimination Act of 2003", *Journal of Legislation*, 32(2), 2006, pp. 142-164; A. Whitehead, "Man to Man Violence: How Masculinity May Work as a Dynamic Risk Factor", *The Howard Journal*, 44(4), 2005, pp. 411-22; L. Muntingh & C. Tapscott, "HIV/AIDS and the Prison System" in P. Rohleder, L. Swartz & S. Kalichman (eds.), *HIV/AIDS in South Africa 25 years on: A psychosocial perspective* (New York: Springer, 2010); S. Gear, "Behind the Bars of Masculinity", *Sexualities*, 10(2), 2007, pp. 209-227; D. Singh, "Women and men as vulnerable victims" in L. Davis & R. Snyman (eds.), *Victimology in South Africa* (Pretoria: Van Schaik Publishers, 2005).

⁶ J. Steinberg, *Nongoloza's Children: Western Cape prison gangs during and after Apartheid* (Johannesburg: CSVR, 2004).

⁷ Z. Achmat, "'Apostles of Civilised Vice': 'Immoral Practices' and 'Unnatural Vice' in South African Prisons and Compounds, 1890-1920", *Social Dynamic*, 19(2), 1993, pp. 92-110.

interviews with prisoners and the usual methodological problems of memory and bias seep through. He does provide, however, a plausible explanation as to why gang members in prisons commit acts of sexual violence and why they consider these acts as part of the institutional culture.

Within the Cape records, only one mention of rape in institutions has been found in the case of Gulzaar Ebrahim, 1970. He makes mention of the sexual advances of men at Pollsmoor prison but it is an isolated case as far as these records are concerned. It is also unclear whether he mentioned this to avoid the gallows. Nonetheless, little attention was paid to his claim by the authorities but clearly, there is an indication that they were aware that such activities were not uncommon from the 1970s at Pollsmoor prison.⁸

This chapter will firstly identify different categories of rapists that appeared in the Cape Courts, largely defined by race. Reasons for why they raped are unfortunately restricted to the court testimony of both victim and perpetrator, witnesses and finally the judge. While an attempt will be made to present identifiable rape trends, individual motivations beyond what the records provide would necessitate a level of caution. Broad generalisations based on scant evidence or localised and targeted studies, as mentioned in Chapter 2, might further skew the perception of rape in the country.

Classifying the Unclassifiable: Racially Segregated Rapists?

Black Rapists

Global and local literature, as discussed in Chapter 1 and 2, has suggested that black rapists had a proclivity to rape, especially if in close proximity to white women and under the influence of alcohol. Turrell has suggested that by the turn of the 20th century, all men were

⁸ KAB CSC 1/1/1/ 1/ 1515-1519 Cape Supreme Court Records, Case 69/1971, State v. Gulzaar Ebrahim, Mogamat-Zane Nastedien, James Petersen, Roy Sampson and Daniel Arendse.

assumed to have had a hidden passion. Here, one is already confronted with the divergent views between rape theories in colonial settings and gender theory, as discussed in Chapter 1.

White men and women were not the only races to have exhibited racism nor to have conflated perceived black lasciviousness with rape. In the case of John Elliot, a “native labourer” residing at Ndabeni, for example, charged with raping Christina Maria Koopman, a coloured housewife from Maitland, near her home on 2 November 1928, the details of the case prove illuminating, even though he cannot be considered a rapist as he was found not guilty.⁹ On the night in question, she testified that she had gone to visit her daughter. On returning to her home at about 11pm, she was attacked from behind, thrown to the ground, had her bloomers removed and raped, by, in her words “a kaffir man”. She was eventually helped by three acquaintances, John Rodgers, George Adams and Japie Theunissen. The suspect was apprehended and escorted to the police station. The complainant was unable to identify her attacker but was later encouraged to identify the accused as her rapist by other witnesses. This was not uncommon. John Rodgers argued that he was passing by when a marauding group of screeching coloureds grabbed him, assaulted him and stabbed him in the back and head. His savings of £8 was later stolen by the men. A concurrent arrest warrant was issued for the man accused of robbing Elliot. Throughout the ordeal, his attackers verbally used the derogatory term “kaffir”. Despite his injuries, he was escorted to the police station where he became even more traumatised. “I was afraid of the police because they beat you as soon as they get you inside”.

In this example, not only did the coloured men find the most obvious suspect, but there is some similarity in the race-rape rhetoric of the Black Perils and the racism of the *apartheid*-era. John Elliot also expressed fear of the police force. Racial stereotypes appear to be entrenched amongst the victim, the witnesses and the accused. Interestingly, the court deviated from these stereotypes. Even during the *apartheid* era, this seemed to continue. 16-year-old July Mpokoqo was sentenced to Diepkloof Reformatory after having raped Evelyn Brown, a white female on 6 September 1948 near Hermanus.¹⁰ While clearly his actions were condemned, his sentence was comparable to those of intra-racial rapes of the period. It could,

⁹ KAB CSC 1/1/1/153 Cape Supreme Court Records, Case 11/ January 1929, Rex v. John Elliot.

¹⁰ KAB CSC 1/1/1/250 Cape Supreme Court Records, Case 17/ December 1948, Rex v. July Mpokoqo.

of course, be argued that he was saved from a particularly harsh sentence because of his age and a clean record prior to the assault. His probation officer suggested leniency even though the victim was a white woman. He was clearly a worthy candidate to be rehabilitated. His attack was not brutal.

Johannes Mavuso was a little less fortunate, not because he was black but because of the nature of his attack. He was charged with the attempted rape of Anna Elizabeth Boschoff on 15 February 1941 at her home in Claremont, Cape Town. She was in her bedroom when he allegedly broke in, pushed her to the floor, throttled her and attempted to rape her. He was disturbed by Mr. van Helewyn. He was sentenced to 10 years' hard labour and 10 cuts by Justice Davis because the case was described as one of the worst he had heard.¹¹ Johannes Msesenjana Matebula, was also sentenced to a stiff 10 years' hard labour and eight lashes with the cat-o-nine tails for housebreaking with the intent to rape and attempted rape of Lorraine Gallimore on 1 January 1952 at St. James, near Simonstown. In passing sentence, Justice Hall commented, "You pleaded guilty to attempting to commit one of the most serious crimes that any native man can possibly commit, the rape of a white woman". Gallimore managed to fight off the attack. "I can only say it is very fortunate for you that she put up that fight and stopped you from achieving your purpose. But an attempt in itself to rape a white woman is a very serious crime".¹² This sentence for attempted rape towers over many passed down for actual rape. It would be easy to conclude that the race/rape debate regarding black rapists was still prevalent in the 1950s. The case of Nelson Sihlala in 1955, for example, would prove otherwise,¹³ so too, would sentences passed on black men raping black women.¹⁴ During this period, protecting all women was of great importance for the Cape courts. Justice Herbstein closed his case stating: "these women who have got to go out to work and return to their homes late at night are entitled to expect that they will be allowed

¹¹ KAB CSC 1/1/1/200 Cape Supreme Court Records, Case 16/ June 1941, Rex v. Johannes Mavuso.

¹² KAB CSC 1/1/1/286 Cape Supreme Court Records, Case 72/ March 1952, Rex v. Johannes Msesenjana Matebula.

¹³ KAB CSC 1/1/1/ 346 Cape Supreme Court Records, Case 173/1955, Regina v. Nelson Sihlala.

¹⁴ See for example, KAB CSC 1/1/1/237 Cape Supreme Court Records, Case 15/ September 1947, Rex v. Titus Gabelana. KAB CSC 1/1/1/237 Cape Supreme Court Records, Case 18/ September 1947, Rex v. Matthews Kwetani & James Kwetani. KAB CSC 1/1/1/238 Cape Supreme Court Records, Case 14/ October 1947, Rex v. Edward Mbanga. KAB CSC 1/1/1/241 Cape Supreme Court Records, Case 38/ February 1948, Rex v. Leonard Dotwana.

to do so without interference”.¹⁵ The leniency of certain judges did not necessarily serve as a deterrent to “potential rapists”.¹⁶

One repeated explanation for black rapists was the consumption of liquor prior to the act. Justice Herbstein, for example, blamed the consumption of “kafir [sic] beer” during the rape of Dolly Arendse by Jack Faku on 20 May 1949. He was subsequently sentenced to a minimal six cuts for the offence.¹⁷ Alcohol continued to be a viable reason for leniency.¹⁸ The social status of both victim and perpetrator as well as their criminal history continued to also be mitigating circumstances during sentencing.¹⁹ Raping the elderly, and especially “respectable” elderly women was also severely condemned.²⁰ Similarly, those victims who were frail received adequate compensation from the judicial system.²¹ As with other forms of sexual crime, not all cases of “native on native” rape resulted in conviction.²² Regardless, attempts were made to send a strong message that acts of sexual violence would not be tolerated in white South Africa. In passing sentence on Jacob Nstabo, convicted for the rape of Norah Ruba on 17 October 1948 in Hout Bay, Justice Searle remarked, “if people like you are allowed to go round raping native women then it is not safe for husbands to leave their wives at home. You are not allowed to do this in your own tribe and you cannot do it when you come and live down here”.²³ One is confronted with the perception that black men, once away from their traditional homes, lose all sense of self-control.

It can be concluded through sentencing patterns that black rapists in the Cape were treated very much like most rapists, even during the *apartheid* era. The statistics on rape as

¹⁵ KAB CSC 1/1/338 Cape Supreme Court Records, Case 7/1955, Regina v. Gilbert Myeki.

¹⁶ See for example, KAB CSC 1/1/227 Cape Supreme Court Records, Case 26/ June 1946, Rex v. Simon Dhlamini; KAB CSC 1/1/352 Cape Supreme Court Records, Case 294/1955, Regina v. Isaac Mtatsa.

¹⁷ KAB CSC 1/1/254 Cape Supreme Court Records, Case 17/ August 1949, Rex v. Jack Faku.

¹⁸ See for example, KAB CSC 1/1/235 Cape Supreme Court Records, Case 18/ May 1947, Rex v. Stanley Plaaitjie.

¹⁹ See for example, KAB CSC 1/1/246 Cape Supreme Court Records, Case 20/ August 1948, Rex v. Maxim Gqalizinto; KAB CSC 1/1/247 Cape Supreme Court Records, Case 29/ August 1948, Rex v. Arthur Magadla.

²⁰ KAB CSC 1/1/253 Cape Supreme Court Records, Case 6/ May 1949, Rex v. Simon Nogxadiya; KAB CSC 1/1/253 Cape Supreme Court Records, Case 14/ May 1949, Rex v. Jackson Mdwangu.

²¹ See for example, KAB CSC 1/1/250 Cape Supreme Court Records, Case 24/ December 1948, Rex v. Gibson Moni.

²² See for example KAB CSC 1/1/251 Cape Supreme Court Records, Case 23/ February 1949, Rex v. Vice Mtitsilana; KAB CSC 1/1/251 Cape Supreme Court Records, Case 10/ February 1949, Rex v. Geelbooi Qeqe, Nelson Latzeya & Walter Salemane.

²³ KAB CSC 1/1/251 Cape Supreme Court Records, Case 21/ March 1949, Rex v. Jacob Ntsabo.

well as death sentences passed during the entire period covered in this study, does not suggest that they were arbitrarily sent to the gallows. Intra-racial sentences were rather contentious, though, but black rapists, much like their contemporaries, were expected to abide by the laws regulating sex and sexual violence. Alcohol consumption was the most common, and consistent, reason given by rapists to explain their actions throughout the period under investigation. Most charged with raping a white woman, would deny that they were involved arguing that they were incorrectly identified.

White Rapists

White rapists, as suggested by the literature previously discussed, were generally hidden during colonialism and segregation. “Lapsed whites” were largely to blame for any proliferation of white rapists. In moments of upheaval, namely during war, or during *apartheid*, when the State systematically tried to control the bodies of all white people, certain cases of white rapists would become more frequent within the court records. White rapists were simply classified as social truants,²⁴ or foreigners. Their behaviour had to be explained in terms of being the “other”, not accustomed to white South African social mores. There were very few exceptions to this rule.

Gunner Willem Thomas Bothma, for example, was attached to the S.A. Artillery on Robben Island. He was charged with raping Pvt Doreen Mavis Blanckenberg (Women Auxilliary Army Service), at Kloof Nek, Cape Town on the night of 28 February 1942. He boasted of his conquest to fellow servicemen and was later reported, charged, found guilty and sentenced to five years and eight cuts.²⁵ Jack Marais was also attached to the army and was convicted on 18 October 1946 of raping 9-year-old Christina Smit. He was sentenced to three years’ hard labour and six cuts. In passing sentence, Justice Herbstein commented that he found it strange that the accused had learnt no discipline during his time in the army.²⁶ In both cases the actions of the servicemen were considered a sign that they were suffering from

²⁴ See Author unknown, “Slapped, chased, court told: Servant says White youths assaulted her”, *Cape Argus*, 25 May 1962.

²⁵ KAB CSC 1/1/1/204 Cape Supreme Court Records, Case 9/ June 1942, Rex v. Willem Thomas Bothma.

²⁶ KAB CSC 1/1/1/231 Cape Supreme Court Records, Case 31/ October 1946, Rex v. Jack Marais.

an undeveloped ability to regulate their desires, very similar to the Freudian theory on desire. These infrequent cases would receive much public attention.

One of the most notorious cases of rape and murder within the white communities preoccupied the media between 1907 and 1908,²⁷ ironically when much attention was being placed on the perceived onslaught of black rapists within the broader Cape region, and not simply upon white victims.²⁸ Thomas Henry Kerr was charged with the rape and murder of Edith Pinnock in what was called the “Grahamstown Golf House Tragedy”. The young girl was brutally raped, killed and her remains so severely damaged that she was unrecognisable. The case was originally heard in the Eastern District Circuit and later retried in Cape Town. He was eventually found not guilty of both charges in February 1908. Nevertheless, the thought that a white man could inflict such barbarity upon a white child created a sensational response amongst the white readership both locally and beyond the borders of South Africa. This would suggest that despite an obsession with black rapists, or potential black rapists, particular details of a rape case, irrespective of the race of both victim and perpetrator, could lead to an increased public interest in the actual details of a rape case. This becomes a compelling factor in rape cases which led to the passing of the death sentence.

Prior to *apartheid*, white rapist testimony was rigorously challenged especially if it transgressed social norms. Ben McCullum and Winton Maie, for example, were found guilty of raping Sinnie Cupido in Sea Point, Cape Town on 18 September 1938. They both pleaded not guilty in front of Justice Sutton and a jury of nine men. They were sentenced to two years’ hard labour and six cuts each and warned to “leave the Coloured girls alone in future”. Justice Sutton also concurred with the verdict of the jury by adding that he, too, did not believe the ridiculous story of the white defendants.²⁹ What is of importance is that white testimony was not automatically accepted over that of non-whites and this was not restricted

²⁷ The local press releases included *The Journal*, 23 November 1907, 30 November 1907, 14 December 1907, 21 December 1907, 31 December 1907, 7 January 1908, 11 January 1908, 30 January 1908; *Mafeking Mail and Protectorate Guardian*, 16 January 1908, 30 January 1908, 1 February 1908; the regional press coverage included *The Bulawayo Chronicle*, 18 January 1908; *The Rhodesia Herald*, 31 January 1908.

²⁸ Nyose, a native man was accused of the rape and murder of a native girl in 1908, Author unknown, “Sequel to the Recent Murder Trial at Francistown”, *Mafeking Mail and Protectorate Guardian*, 2 November 1908.

²⁹ KAB CSC 1/1/1/191 Cape Supreme Court Records, Case 3/ December 1938, Rex v. Ben McCullum & Winton Maie.

to cases of sexual violence.³⁰ These boys' actions could also be explained in terms of their "lapsed" whiteness in which they had a liking for coloured girls.

Other white rapists would attempt to discredit the victims, an aspect scrutinised in the previous chapter. Christian John Lassen, for example, was a white painter aged 33, charged with raping Loraine Caramel Fullex (11) and Iris Shenton (12) in August 1946 and re-raping Loraine on 10 October 1946. Defended by Mr. Katz, Christian was found guilty and sentenced to a negligible six months' hard labour for raping the two white girls. He attempted to discredit the young girls by claiming to have been seduced by one of the victims. His rather disturbing testimony would certainly pique the interest of any psychoanalyst:

She was randy already – all wet between the legs ... as I bolted the [front] door Loraine was standing by me in the dining room and had her dresses lifted up already. I then went and sat on the settee and she came and sat on top of me, facing me with her legs apart across my legs [...] she jumped off and walked to the kitchen [...] She laid across the table in the kitchen with her legs apart. When I got into the kitchen I found her like that and thought 'Well her[e] goes' and then had full intercourse with her [...] Previous to this she had sucked my private parts and she admitted to me that she has sucked other men in the same way".³¹

Unfortunately, the raping of children was increasingly widespread. Johannes Liebrandt, for example, was convicted of raping a nine-year old Margaret Fourie on 28 November 1941 while travelling by train between Rietpoel and Langkuil. In passing sentence, Justice van Zyl expressed his revulsion towards a white man raping a white child and sentenced the rapist to five years' hard labour.³² On the 20 May 1966, Dimitrios Tsimitakopolos, of Greek extraction, aged 33, was charged with the rape of Nicolene

³⁰ Hendrik Nicolaas van Rhyn and Johannes Stephanus Carstens, for example, were charged with the murder of Daniel Lander on 23 June 1934 in Bellville. Both were found guilty of culpable homicide and sentenced to two years hard labour with one year suspended for three years. Lander was killed after an altercation between a group of white and coloured youths on the night in question. Contesting testimonies unraveled during the trial. In passing sentence, Justice Sutton remarked: "I may tell you that I believe these coloured people and I think the whole lot of you white people are lying. The explanation of this whole business is that you were under the influence of liquor". He did however justify this somewhat lenient sentence by outlining that they were inebriated and had no previous convictions. Their testimony, however, may have also been discredited because they were both also charged with assault with intent to do grievous bodily harm, KAB CSC 1/1/176 Cape Supreme Court Records, Cases 14 and 14a/ October 1934, Rex v. Hendrik Nicolaas van Rhyn & Johannes Stephanus Carstens.

³¹ KAB CSC 1/1/235 Cape Supreme Court Records, Case 5/ May 1947, Rex v. Christian John Lassen.

³² KAB CSC 1/1/203 Cape Supreme Court Records, Case 15/ April 1942, Rex v. Johannes Liebrandt.

Petersen, a white girl aged 15 on 9 January 1966.³³ The case was heard before Justice van Heerden and one assessor, Lewin. While the accused pleaded and was found not guilty, much emphasis in the initial stages of the investigation was placed on his foreign origins. More importantly, the defence actually tried to argue that the child was indeed coloured and not white, clearly hoping that this would make some difference to the severity of the charge, which alarmingly, it did. Her age was hardly discussed.

Very few cases of white South African males, in relation to other racial groups, were heard by the Cape Supreme Court in the 1960s and 1970s and when they did appear, the cases presented were incomplete, and/or incoherent and some files had their actual contents removed. This could be explained by the political climate and the conscription of white men into the army. Even if they had committed a sexual offence, this might have been swept under the carpet. Nevertheless, there are a few scattered examples. In the case of Jacob Hermanus Albertus van der Venter in 1970, the accused blamed his “convulsions” on his epileptic condition.³⁴

Young white offenders’ actions were normally attributed to social truancy. In the sentencing of Wynand du Plessis, a 19-year-old white male, charged with raping Nicolette Lever (16), a white female, on 5 September 1972 in Tokaibos, Justice Baker explained his decision and the policy of the Cape Division of the Supreme Court with regards to redeemable sexual offenders:

In cases of this sort people expect the Courts to impose terms of imprisonment and normally, in a case of this sort this Court would have no hesitation in doing so. As you know, rape in this country can carry the death penalty, very often a very stiff prison sentence. In this particular case the accused is a young man who is just about nineteen. He was at the time in the Reformatory as a result of having shown problems in his family life as a direct result of having bought goods on his father’s account in 1970, two years ago, and thereby having committed fraud. He was sent to this Reformatory because he was definitely showing signs of being a problem boy. The Reformatory people have reported on him, the Social Welfare Department has interviewed him and seen him and reported on him, and they say that he has a rather low intelligence, with this very unhappy background of animosity between him and his father. And this has led to his

³³ KAB CSC 1/1/1/769 Cape Supreme Court Records, Case 147/1966, State v. Dimitrios Tsimitakopolos.

³⁴ KAB CSC 1/1/1 1613 Cape Supreme Court Records, Case 210/1971 State v. Jacob Hermanus Albertus van der Venter.

having rather less sense of responsibility than he should have [...] the boy will be sent to reform school for 4 years to be taught to become a useful citizen. Jail will do him no good at all. Jail is, in the view of the Judges of this Division, and I think most people think so, are really meant for people who should be locked away because there is nothing else to do with them. This fellow, I think there is some prospect for him. Although I am very sympathetic to you, Mr. and Mrs. Lever, and particularly to your daughter for all that happened, she, I think, will get over it and this young man, whom I have just sentenced, might ultimately turn out to be a worthwhile person. That is why I am taking this rather unusual course of explaining to you why he has gone back to the Reformatory and not to prison.³⁵

Barnard Harris, a 22-year-old, white male of “English extraction”, was charged with assault with intent to commit rape on Frances Piedt, a coloured woman aged 24 on 8 November 1969.³⁶ He chased the complainant down a busy road, undressed her and attempted to have intercourse with her in the open street. Witnesses eventually helped her and Harris was apprehended. He was sentenced to five years imprisonment. Naturally, there were ample witnesses who testified that this was indeed an attempted rape, which the court could not overlook. However, this does not explain the relatively lengthy sentence compared to other sentences passed down on white rapists. Some cases of actual rape received much lighter punishments and clearly the man was delusional to think that attacking a woman in the middle of the street in broad daylight would not attract attention. The severity of the sentence may be related to his origins. The fact that he was of “English extraction” was highlighted within the court record.

Naturally, there were obvious cases in which white rapists were simply considered “bad men” - pathological. In 1962, two white men, Willem Johannes Oosthuizen (29) and Wilhelm van Luiters (20) were both charged with the rape of Thora O’Shea, a white woman aged 18 on 31 January 1962.³⁷ During the two-day trial from the 13 - 14 August 1962, the two accused men were both found guilty by Justice Beyers and assessors Lewin and du Plessis and sentenced to seven years and six cuts each. The case attracted much public attention.³⁸

³⁵ KAB CSC 1/1/1879 Cape Supreme Court Records, Case 286/1972, *State v. Wynand Du Plessis*.

³⁶ KAB CSC 1/1/1348 Cape Supreme Court Record, Case 43/1970, *State v. Barnard Harris*.

³⁷ KAB CSC 1/1/513 Cape Supreme Court Records, Case 248/ 1962, *State v. Willem Johannes Oosthuizen and Wilhelm van Luiters*.

³⁸ See the *Cape Argus* 14 April, 19 April, Special Issue of 8 May 1962; Author unknown, “Allegation by girl: 2 in court”, *Cape Argus*, 3 February 1962.

Oosthuizen was completing a six-month prison sentence for the indecent assault of a 27-year-old white woman on 27 February 1962. Van Luiters also had a previous conviction for grievous bodily harm. Both men were considered undesirable, and as Justice Beyer put it during sentencing: “on the road to becoming bad criminals; you are both a danger to the community. Young girls have got to be protected against people like you”. He informed them that they could receive the death penalty but because they did not dump the girl in the sand dunes but took her home, he would give them the least possible sentence.

On 31 January 1962, they took Thora to Bloubergstrand where they raped her. She was under the impression that she was to be engaged to van Luiters and therefore went voluntarily. The judge acknowledged that the complainant was frail but continued to point out several characteristics to justify not sending the men to the gallows. These included the poor intelligence and “menial employment” of the complainant, the “impediment in her speech”, and her “hysterical” nature. While he sympathised with her hysteria, he described it harshly as “pathetic”. Adding to this, the defence argued that she had fabricated the entire story. In summation, the Judge weighed in favour of the complainant. However, his comments resembled many of the rape myths used to dismiss the testimony of even white women:

This court is fully aware of the difficulties and the dangers that lie in the evidence of women who are inclined to be hysterical, especially when it deals with sexual cases. It is argued that the reason some aspects of her recollection are cloudy is because of the fact that she is not making up the story. If she had simply accused suspect number 2, the judge might have believed him as he had promised to marry the 18-year old but after taking her virginity, he hit her. Considering this, she might have made a false claim.

Thora had not told anybody of her ordeal. She hid it from her parents because she was ashamed. It was only when Thora’s sister told her mother that Thora cried all the time that she confessed. Nonetheless, she tried desperately not to have the matter reported to the police. These actions, according to the judge, were not the workings of a “scheming woman”. Furthermore, the State witness, Jean Wolmarans, changed her story and it later transpired that

she had been intimately communicating with accused number 1 and had been manipulated into giving evidence against the complainant. Oosthuizen also managed to convince his wife to say that they had sexual relations on the night in question, a ploy to explain the presence of semen on his trousers after his arrest.

Both men appealed against the sentence. Van Luiters later sent an affidavit exonerating Oosthuizen from the events of that night. Both appeals were subsequently denied and the sentences were carried out accordingly. It cannot be discounted that the act of manipulating witnesses as well as the perceived “poor psychological and economic situation” of Thora affected the outcome of this rape case. The two men had not simply violated her sexually but had breached the societal rules of dealing with “weaker” white women in need of patriarchal protection.

White rapists, especially during *apartheid*, when the State sought to protect the white populace, were treated with the same disdain as rapists from other groups, because they were transgressing acceptable social behaviour. Having been hidden from possible prosecution during colonialism, with only “lapsed whites” being possible rapists during segregation, the Cape judicial system clearly made few distinctions between white and black. Again, notions of a class based approach to dealing with rapists is revealed by the evidence. The reasons given for raping by the rapists reflect those given by other races. Official explanation, however, had to find either a pathological reason for behaviour or one distancing white South Africans from those of foreign extraction. Many of these “racially defined” rapist categories overlap with the identifiable rapists groups at the Cape. The reason for their rapes overlaps largely with those discussed above, with a few exceptions.

Identifiable Types of Rapists at the Cape

There are two broader categories of rapists identified which are consistent over time. There are similarities between their motivations and these extend over the various categories identified. The first, serial rapists, can largely be explained in terms of pathology. The second

comprises a combination of factors from both the nature and the nurture debates as to why men rape.

Serial Rapists

There exists a difference between habitual criminals and serial rapists. Elias Botha, for example, was convicted for the raping of Clara Thebus, aged 15, on 6 April 1929 near Retreat Flats. Justice Jones pointed out that the prisoner had a large number of previous convictions for theft and housebreaking and that this was his first sexual offence. Botha was sentenced to seven years' hard labour and ten cuts because the judge felt that "it was not the result of sudden passion because [he] carefully and deliberately planned to take her from where she was waiting with a message some five miles towards Princess Vlei, and there [he] overcame her resistance by giving her wine and threatening her with a razor".³⁹

By 1936, cases of serial rapists or "molesters" were becoming so prevalent that the press had to warn unsuspecting victims.⁴⁰ Peter Mayhetto, a labourer residing in Parkwood Estate, Wynberg, was charged with assault with intent to commit a rape upon Florrie Abrahams, a minor daughter of Koos Abrahams on 6 August 1932 near Parkwood Estate. He was unanimously found guilty by a jury and Justice Sutton and sentenced to two years hard labour and eight cuts. "People like you must be taught a lesson that they must leave young children alone". He was also warned of the indeterminate sentence. During the period of 1923 and 1931, he had 14 counts of theft and housebreaking and one case of assault with intent to commit rape before the Wynberg court on 16 September 1927 for which he was sentenced to 10 weeks hard labour.⁴¹ While this was his second conviction for a sexual offence, he had a long history of criminal behavior.

In the case of Dickie Cleenwerck, charged with theft and Contravening Section 2(1) of Act No. 3 of 1916 in September 1933 upon Minnie Mentoer, a girl under the age of 16,

³⁹ KAB CSC 1/1/1/154 Cape Supreme Court Records, Case 16/ May1929, Rex v. Elias Botha.

⁴⁰ See for example, Author unknown, "Vrou in Mowbray Gemolesteer", *Die Burger*, 22 August 1936, p. 1.

⁴¹ KAB CSC 1/1/1/168 Cape Supreme Court Records, Case 12/ November 1932, Rex v. Peter Mayhetto.

despite having eight previous convictions for theft, two convictions for 6 counts of indecent assault and one conviction for contravening the same act from 1909, he was given two years hard labour for both offences, He was later found guilty of contravening the 1916 Act when he had connection with Anna van Wyk near Salt River, Cape Town, on 29 July 1938. He was sentenced to three years hard labour and warned, yet again, of the indeterminate sentence by Justice Sutton. Richard's use of language and structure of the letter applying for legal counsel clearly indicated that he was a well-educated person. It was most likely his more privileged background which kept him from receiving the indeterminate sentence.⁴²

John Johnson, was charged with assault with intent to rape Maria Absalom on 8 March 1934 at Caledon. He was sentenced to 18 months' hard labour and 10 cuts by Justice van Zyl on 21 June 1934. He had several previous convictions for indecent assault on 17 May 1927 for which he was sent to a juvenile reformatory. Clearly he was not rehabilitated. He also had two convictions for three counts of *criminal injuria* in 1931 and 1932 for which he received six months and eight months respectively.⁴³ The court system was failing society.

John Adams, was another example. He was convicted of assault with intent to commit rape on Anna Davidse on 28 May 1934 near Drievlei, Caledon. He appeared before Justice Louwrens and was given the indeterminate sentence after admitting his previous convictions for four counts of theft in 1919 and 1920 and theft and assault with intent to rape on 18 November 1920 for which he was sentenced to three years hard labour and 12 cuts at Cape

⁴² KAB CSC 1/1/171 Cape Supreme Court Records, Case 12/ September 1933, Rex v. Dickie Cleenwerck; KAB CSC 1/1/191 Cape Supreme Court Records, Case 9/ December 1938, Rex v. Richard Cleenwerck.

⁴³ KAB CSC 1/1/175 Cape Supreme Court Records, Case 6/ June 1934, Rex v. John Johnson. On 5 May 1937 and 10 December 1939, he was convicted for the same crime and sentenced to six months' hard labour with rations and solitary confinement in the last three months (for two counts) and three months' hard labour respectively. He was charged with indecent assault or alternatively *criminal injuria* after trying to rub his exposed penis upon Kathleen Black, a young child, on 9 March 1938 near Cape Town. Appearing before Justice Howes and a jury, he was found guilty of indecent assault and sentenced to three years hard labour and warned of the indeterminate sentence. The crime was considered less serious because the child simply suffered from shock and no "great harm" had come to her, KAB CSC 1/1/191 Cape Supreme Court Records, Case 15/ August 1938, Rex v. John Johnson. He was later charged with the same crime against Maria Jacoba Catherina Hanekom, Esther Catherine Britz and Catherine Barnard on 5 August 1940. He appeared before Justice van Zyl on 10 October 1940. Prior to his court case, he was sent to Valkenberg Hospital for a mental evaluation. Unable to declare him mentally disordered, he was sentenced to five years hard labour with two years suspended for three years, KAB CSC 1/1/197 Cape Supreme Court Records, Case 16/ October 1940, Rex v. John Johnson. He was later charged for sodomy with Mosavel Fortuin near Goodwood, Bellville on 31 December 1941, and finally declared a habitual offender by Justice van Zyl on 24 April 1942, KAB CSC 1/1/203 Cape Supreme Court Records, Case 36/ April 1942, Rex v. John Johnson.

Town. He was warned of the indeterminate sentence on 6 December 1922 and released on probation on 17 August 1923 until 17 November 1923. On 20 January 1926, he was once again convicted in Cape Town of assault with intent to rape and sentenced to three-and-a-half years hard labour and 10 cuts and was warned, again, of the indeterminate sentence on 18 February 1927 and 18 January 1929 after being convicted on two counts of assault at the Caledon Magistrate's court. Despite his pleading guilty, Justice Louwrens proceeded to sentence him to the indeterminate sentence but only after a long spate of sexual offences.⁴⁴

These trends continued into the 1940s. Solomon Dhlamini, for example, was sentenced to four years' hard labour and warned of the indeterminate sentence by Justice Herbstein on 18 October 1946. He had been convicted of raping Maria Weavers, a coloured woman near Tyger Valley, Bellville on 30 June 1946.⁴⁵ Solomon had previous convictions for rape in Ermelo on 30 March 1928, two counts of rape on 5 April 1930, another case of rape on 22 March 1934 and assault with intent to commit rape in Cape Town on 10 August 1943. In passing sentence, Justice Herbstein commented that upon considering his record, he found it odd that Solomon was let out on probation on previous occasions. "Your record shows that you are a special category of people who probably needs medical attention". In February 1951, and soon after release from prison, Solomon was convicted yet again of assault with intent to commit rape of Elizabeth Ntandani on 28 October 1950 near Voëlvlei, Bellville. He was subsequently declared a habitual offender by Justice Steyn after having molested a number of coloured women.⁴⁶

Rapists with previous convictions generally received steeper sentences.⁴⁷ This was not always the case if indecent assault convictions occurred between men or boys.⁴⁸ Nevertheless, according to the South African Medical Journal of 1959, a local Cape Town surgeon suggested that up to 90% of sexual criminal offences involved repeat offenders.⁴⁹

⁴⁴ KAB CSC 1/1/176 Cape Supreme Court Records, Case 3/ August 1934, *Rex v. John Adams*.

⁴⁵ KAB CSC 1/1/231 Cape Supreme Court Records, Case 28/ October 1946, *Rex v. Solomon Dhlamini*.

⁴⁶ KAB CSC 1/1/271 Cape Supreme Court Records, Case 19/ February 1951, *Rex v. Solomon Dhlamini*.

⁴⁷ See for example, KAB CSC 1/1/341 Cape Supreme Court Records, Case 73/1955, *Regina v. Pieter Stewart*.

⁴⁸ See for example, KAB CSC 1/1/341 Cape Supreme Court Records, Case 117/1955, *Regina v. Andries Fourie*.

⁴⁹ Author unknown, "Sterilisation for sexual crime urged", *The Cape Argus*, 4 July 1959.

While much attention can be drawn to the pathology of the serial rapist, there is an underlying problem in which the judicial system did not adequately regulate the behaviour of these repeat offenders or send a clear message to potential rapists. The three-stroke-rule could have been applied in which the indeterminate sentence would have kept these offenders incarcerated. Repeat offenders would either be re-incarcerated for short periods or simply sent to the gallows and the threat of the indeterminate sentence would remain simply a threat rather than acting as a deterrent to potential rapists.

The Fine Line Between Incest and Rape

Certain cases straddled the divide between rape and incest. Some were clear-cut.⁵⁰ Cases of incest required solid evidence that was naturally hard to gather in cases of consensual sex. Even so, good defence attorneys were adept at planting just enough doubt in the minds of the judges to have the case squashed. Julius George Kemper, for example, a Land Bank Inspector residing in Calitzdorp was charged with the crime of incest upon his daughter, Julina Georgina Kemper between 1 December 1929 and 6 December 1930. He was able to hire a private attorney and despite the details of this case, he was found not guilty and discharged.⁵¹ Even with compelling evidence, dismissal of charges was common and this included moments of sheer inefficiency on the part of the investigators. John Mbomishwa, for example, was charged with incest or alternatively contravening Section 2(1) of Act No. 3 of 1916 upon his daughter, Evelyn Mbomishwa aged 13 between 1 November 1942 and 5 February 1943 near Kensington, Cape Town. He was found not guilty despite clear evidence that the complainant was no longer a virgin, even though witnesses testified that he slept in the same bed with his daughter and even after submission of a letter previously sent by the complainant to her mother pleading for money so that she could flee as “father sleeps with me, he does something bad to me, a thing I do not like” (translated from Xhosa). The accused appeared before Justice Davies on 1 June 1943 but the jury was dismissed as the evidence

⁵⁰ See for example, KAB CSC 1/1/154 Cape Supreme Court Records, Case 4/ March 1929, Rex v. Michael Bodkin & Dorothea Wilhelmina Bodkin.

⁵¹ KAB CSC 1/1/161 Cape Supreme Court Records, Case 23/ March 1931, Rex v. Julius George Kemper.

was wrongfully presented. The case was postponed to 9 June but the Crown subsequently dropped the charges for reasons not explained in the records.⁵²

In some instances, the charge of rape or attempted rape was chosen in order to secure a more severe sentence. For example, John Dempers was charged with three counts of rape on his stepdaughter, Louisa Williams, under the age of 12 on 15 September 1933. He pleaded not guilty to all the charges but was sentenced to five years' hard labour for all three counts.⁵³ Jacob Jafta, aged 40, was also charged with the rape of his stepdaughter, Lea Magrieta Springhaal, aged 11, at Koelbaai on 9 August 1935. He had a previous conviction for, amongst other things, rape on 22 January 1923 for which he had been sentenced to three-and-a-half years' hard labour and 10 cuts. He was found guilty of contravening Section 2(1) of Act No. 3 of 1916 by Justice Gane and sentenced to four months' hard labour and six cuts even though the maximum punishment for this offence is six years imprisonment and 24 cuts. In passing sentence, the judge acknowledged that he had stayed out of trouble for a number of years and decided "not to make too much of the conviction for rape because it was 12 years ago".⁵⁴ Robert Sampson, a coloured male aged 38 was charged with assault with intent to rape his daughter, Minnie Sampson (Wilhelmina), on 4 August 1940. In this instance, Sampson suggested that his daughter had seduced him because she was inebriated at the time of the assault. It turned out that he had himself over-indulged and subsequently apologised for committing the offence. He was found guilty but sentenced to no more than one year hard labour.⁵⁵

In cases where rape or attempted rape were not proven, the charges of statutory rape could secure a conviction. Jan Johnson, for example, was initially charged with the rape of his daughter Christina Johnson (13) on 11 October 1947. He was subsequently found guilty of contravening Section 2(1) of Act No. 3 of 1916 and sentenced to four cuts with a cane and two years' hard labour, 21 months suspended for three years because he had no previous

⁵² KAB CSC 1/1/1/208 Cape Supreme Court Records, Case 11/ June 1943, Rex v. Join Mbomishwa.

⁵³ KAB CSC 1/1/1/171 Cape Supreme Court Records, Case 9/ September 1933, Rex v. John Dempers.

⁵⁴ KAB CSC 1/1/1/180 Cape Supreme Court Records, Case 6/ October 1935, Rex v. Jacob Jafta.

⁵⁵ KAB CSC 1/1/1/197 Cape Supreme Court Records, Case 21/ October 1940, Rex v. Robert Sampson.

convictions and because his daughter pleaded for mercy because her father was inebriated at the time of the offence.⁵⁶

W Rudolph Schultz, a 44-year-old white male, was charged with the rape of his daughter, Frieda, aged 12, in Strandfontein on 11 March 1970.⁵⁷ It is alleged that he came home drunk on the day in question and took her to the beach in his car where he proceeded to rape her. Hannah, her older sister aged 15, then alerted the authorities. Schultz initially defended himself and pleaded not guilty to the charges. His children were called to testify, *in camera*, but because he conducted his own defence, his children were required to testify in his presence. The court acquitted him of the charges because he suggested that Frieda had fabricated the story and that she had been encouraged to do so by Hanna, who, it was determined, was slightly disturbed. Three sketches were entered as evidence by the defence. Signed by Hanna, these drawings were used to prove her advanced “sexual enlightenment” and “warped imagination”. Even though clear indications of sexual abuse were visible, it was argued that Hanna might have been responsible for her sister’s injuries but no further investigations were conducted after the father was acquitted of all charges.

While these examples illustrate a possible abuse of power between parent and child, parents, too, could become victims of sexual assault by their children. William Cutting, for example, was charged with rape and incest upon his mother, Clara Cutting in Milnerton, Cape Town, on 9 April 1938. He appeared before Justice Howes and a jury and was found guilty of common assault and sentenced to six cuts with a cane. William had a history of becoming unruly after getting inebriated at shebeens. On this occasion, he “quarrelled” with his mother and eventually raped her.⁵⁸

These cases reflect the liminal boundaries between incest and rape as well as serving as examples, in most instances, of statutory rapists. Most often they blame the victims or suggest that they were inebriated at the time of the assault.

⁵⁶ KAB CSC 1/1/1/240 Cape Supreme Court Records, Case 14/ February 1948, Rex v. Jan Johnson.

⁵⁷ KAB CSC 1/1/1/1386 Cape Supreme Court records, Case 140/1970, State v. Rudolph Schultz.

⁵⁸ KAB CSC 1/1/1/191 Cape Supreme Court Records, Case 17/ August 1938, Rex v. William Cutting.

Statutory Rapists

The difficulty of investigating statutory rape is its pervasive nature of being, by legal definition rape and on the other hand, a criminal act according to the law but consensual in nature. This proved problematic for the judiciary. Annie Adams and Ismael Ibrahim, for example, were both charged with abduction of Maria Magdalena Stander, a white girl aged 13, “for the purpose that the said Ismael Ibrahim might have carnal connection with her the said Maria Magdalena Stander”. They were both found guilty and fined £50 each, or six months’ hard labour. However, they were “invited” to appeal to the Court of Appeals because the complainant admitted to having consenting carnal intercourse with Ismael. Questions also arose about convicting Annie as it was debatable “whether one female [could] in law be convicted of the crime of abduction of another female” according to the provisions of Section 34 of Act No. 35 of 1896.⁵⁹ So why the conviction of abduction and not a conviction of Contravening Section 1, Sub-section 1 of the Criminal Law Amendment Act No. 25 of 1893, intercourse with a girl between the ages of 12 and 14?

According to the court records, Maria knew the defendants as she often bought sweets from Ismael’s establishment. One day he gave her free sweets and told her to go to the house of Annie and Muzza Adams. Annie then led her into a bedroom where Ismael supposedly raped her. Once he had finished with her, Annie escorted her out and told her not to tell anybody about what had occurred. The complainant then admitted to returning to the said house on several occasions where she had intercourse with Ismael. One evening Muzza Adams approached her and she ran out of the house and bumped into her brother. It was clear that Maria came from a low-income white household as court exhibit B showed that she sent a telegram stating that she had gained employment with Annie Adams for £1 per month. This was part of the plot to allow her to frequent the Adams household. Having been found out, plans were being arranged to send Maria to Annie’s family in Port Elizabeth. Maria was told “the Indians in Port Elizabeth were better than white people at Oudtshoorn”. The young Maria also testified that Muzza Adams often had sex with her in the presence of his wife Annie. She also admitted that after having intercourse with Muzza Adams, she had sexual

⁵⁹ KAB CSC 1/2/1/140 Criminal Records 2nd Western Court of the Cape of Good Hope Provincial Division of the Supreme Court of South Africa 1911 - Criminal Session held in Oudtshoorn 3 October, Case 5: Rex v. Adams and Ismael.

relations with Ismael. It was established that Maria testified and “cried rape” because she was ashamed to admit that she had “connection” with an Indian man for fear of retribution and community ostracisation. She repeatedly went back to have sexual relations with Ismael and it was more than probable that there were signs of affection between the two. The court record does not give the age of Ismael so it is difficult to ascertain whether any immoral sexual offence had been committed.

The parents of the young girl wanted both Annie and Ismael punished for transgressing what they considered a moral crime, as they had not transgressed any judicial crime. Annie could not be convicted under the Criminal Law Act because no provisions were made for accomplices. By prosecuting under the Criminal Act, the parents would be admitting that their daughter had sexual relations with a Muslim man. Lastly, during the trial, a baptismal certificate was produced that actually placed the age of the girl at 17 years of age. What this case serves to show is that despite the absence of any judicial transgression, the two accused were found guilty of a rather dubious charge of abduction.

It is within this category of rapist that one finds more evidence of adult men sodomising young boys, a crime which would in contemporary circles also be classified as rape if non-consensual. Gert Joubert, for example, a 29 year old coloured male was convicted and sentenced to nine months’ hard labour for sodomising Hendrik Peters, a five-year old coloured boy in Boskloof, Caledon on 27 May 1943.⁶⁰ Joseph Louw was convicted of a similar offence against William Wens, a coloured boy near Kraaifontein, Bellville on 3 October 1950, and was sentenced by Justice Steyn to three years hard labour. Ernest Philander was convicted of sodomising Charlie Wilson, a young male child in Claremont, Cape Town on 31 October 1951. He was sentenced to three years’ hard labour and eight cuts with a cane because he had 11 previous convictions, two of which were for immoral acts with a young girl and sodomy in 1950.⁶¹ If one of the accused was a minor, this was more reprehensible and could be considered attempted statutory rape in contemporary terms.⁶² In most of these sodomy cases, as was common in discussions about homosexuality at the time, offenders were considered to be suffering from a mental condition.

⁶⁰ KAB CSC 1/1/1/210 Cape Supreme Court Records, Case 5/ August 1943, Rex v. Gert Joubert.

⁶¹ KAB CSC 1/1/1/286 Cape Supreme Court Records, Case 64/ March 1952, Rex v. Ernest Philander.

⁶² KAB CSC 1/1/1/271 Cape Supreme Court Records, Case 25/ February 1951, Rex v. Joseph Louw.

Contributor to the *Christian Outlook*, Edward King, suggested that homosexuality be considered according to the types of relationships. Condemning the “deliberate pervert, the seducer of the young, or the wilfully vicious” – those who raped – he was of the opinion that invoking a law condemning homosexuality would lead to moral chaos for those who expressed true love and Christian mutuality. He added that the law would increase suffering, strengthen prejudice and above all fail to reflect the compassion of Christ.⁶³ In the *South African Medical Journal* in 1968, homosexuality was seen as a form of deviant sexual orientation and behaviour, classified as a psychosocial disorder combining inherent and psychological factors. It was thought that the adult homosexual could not be held responsible for his/her behaviour and could therefore not be held accountable like others exhibiting deviant sexual behaviour. Criminologist, Louis Freed suggested that homosexuality was no greater a menace than heterosexual promiscuity, alcoholism, drug addiction and other forms of violence against the person. The contributor also pointed out that transgressions by child molesters were already adequately being dealt with in the courts and that research showed that adult homosexuals should not be confused with paedophiles.⁶⁴

In cases where no penetration had occurred and therefore no medical testimony could be accrued, but where the courts wanted to send a message condemning male-male sexual activity, witnesses were of importance. In the case of John Marshall, for example, charged with committing an unnatural offence with Douglas Judson on 1 March 1942 near Woodstock. John was alleged to have placed his penis between the legs of Douglas. A 13-year-old boy, Jacob Damas, saw the white and coloured pair through his window and alerted the authorities. Marshall had previous convictions for theft and housebreaking and was declared a habitual criminal in 1916. He was released on probation in 1925 and committed a further six infringements, including one of indecent assault on 22 April 1940 for which he was fined £5. Justice Sutton sentenced him to two years’ hard labour and warned him of the indeterminate sentence. No cuts were given because it was believed that these had proven to be ineffective on the prisoner.⁶⁵ These sentences are comparable with many given in cases of

⁶³ E. King, “Homosexuality”, *The South African Outlook*, April 1968, pp. 56-57.

⁶⁴ L. Freed, “Correspondence”, *South African Medical Journal*, 42(20), 1968, p. 567.

⁶⁵ KAB CSC 1/1/1/204 Cape Supreme Court Records, Case 8/ June 1942, Rex v. John Marshall.

rape or attempted rape. Having a previous conviction for sodomy could also secure a stiffer sentence in cases of rape.⁶⁶

What is of interest in cases of statutory rape or sodomy, especially with young victims, was the physical damage that could be inflicted upon them. In rare instances, the perpetrator would realise this before fully committing the act. Stoffel Williams, for example, realised that he was far too big for his 10 year old victim: “If I had connection with her I would have killed her”. He was still found guilty and sentenced to two and a half years’ hard labour and 10 lashes. In most instances, the perpetrators were oblivious to the physiological differences between themselves and their victims and they would compound the psychological trauma with immense physical damage. Rachel Tities, aged 11, had her sexual organs literally torn by “the admission of something too large for reception by the organ”. Despite the horrific details, the defendant argued that the child had enticed him to have connection with her.⁶⁷

It is overwhelmingly evident that the raping of children was a constant feature in the Cape records. By the 1930s, Justice Jones showed particular concern. In sentencing James Rwegane, he remarked that “it is this class of crime which is very frequent and more particularly in the country districts and I must deal with it severely”.⁶⁸ Rwegane was sentenced to a mere two years’ hard labour and eight cuts even though the verdict was unanimous. These relatively lenient sentences did little to reduce the proliferation of child rapes which increased quite considerably by the 1970s.⁶⁹

One example that was met with utter condemnation was the case against Daniel Fourie, a 24-year-old coloured male, charged with raping 12 year-old Muriel Jantjies in Paarl

⁶⁶ See for example, KAB CSC 1/1/1/ 1398 Cape Supreme Court Records, Case 167/1970, *State v. Stanley Presley*.

⁶⁷ KAB CSC 1/2/1/141 Criminal Records 1st Western Court of the Cape of Good Hope Provincial Division of the Supreme Court of South Africa 1912 - Criminal Session held in Clanwilliam 13 March, Case 6: *Rex v. Visagie*.

⁶⁸ KAB CSC 1/1/1/186 Cape Supreme Court Records, Case 13/ August 1937, *Rex v. James Rwegane*.

⁶⁹ Author unknown, “Attacks soar”, *Cape Argus*, 22 January 1972.

on 29 April 1966.⁷⁰ He pleaded not guilty but was sentenced to 15 years on the 30 August 1966. He had a previous conviction for the assault of a coloured woman in 1962, for which he served six months and received six strokes, rape of a “Bantu” woman in the same year for which he received the same sentence and in 1963, sentenced to another 3 months for assaulting a coloured male. Compounding his list of previous convictions was the medical report submitted by the District Surgeon, Dr. Stals. “No description of mine can do justice to this genital trauma. This child was certainly assaulted by an inhumane monster. I have never yet in my years, seen the private parts of a girl so grossly mutilated as this”. While Muriel had suffered enormous physical mutilation during her rape, the harrowing ordeal continued during the investigation. Still recovering from her injuries, she had to identify her assailant in the same manner as adult victims.⁷¹

As with cases of adult rape and corresponding with the sexual offences laws of the time, penetration with a penis had to be proven in cases of child rape even though the physical damage was as brutal when other objects were used. In the case of Ralph Moerat, a coloured male aged 45, charged with raping Bridgette Wood, a coloured girl aged 9 in the Strand on 4 October 1969, medical reports showed that she had been penetrated with the assailant's fingers. Despite the damage to her genitals, he was found guilty on a charge of indecent assault and sentenced to four years on 2 March 1970.⁷²

If the child was not a virgin prior to the assault, they were treated in the same manner as adult women in cases of rape. Stefanus Monsee, for example, was sentenced to a mere two years' hard labour for raping a native girl, Lydia Konjane near Nuweberg, also in Caledon on 14 February 1942. The child was under 12 but because she was examined and found to have lost her virginity before the assault, Justice van Zyl quite alarmingly reduced the sentence.⁷³

⁷⁰ KAB CSC 1/1/1/789, Cape Supreme Court Records, Case 233/1966, *State v. Daniel Fourie*.

⁷¹ Several suspects were lined against a wall and the complainant had to place his/her hand on the accused and have their photograph taken for the court records.

⁷² KAB CSC 1/1/1/1348 Cape Supreme Court Record, Case 42/1970, *State v. Ralph Moerat*.

⁷³ KAB CSC 1/1/1/203 Cape Supreme Court Records, Case 16/ April 1942, *Rex v. Stefanus Monsee*.

Sentencing in these cases proved to be largely dependent upon previous convictions of the rapist but also the amount of physical damage that was done to the victim. Sentencing of baby rapists further proves this point.

Baby Rapists

Existing literature would suggest that baby rape in South Africa was a post- *apartheid* phenomenon. Court records reveal that babies have been the victim of rape already from the 1970s. The most notorious case of baby rape, led to the passing of the death sentence in 1971.

Johnny Pietersen alias Adam Lewis, was a coloured boy aged 17 and was sentenced to death and executed on 25 March 1971 for the rape of 15 month-old Angela West on 4 December 1970.⁷⁴ On the night in question, the Wests were looking after their baby. They had just changed her napkin and placed her in her cot for the night. She was particularly niggly that evening so they paid no heed to her cries later that night. After a while, she fell silent. Before retiring, her mother went to kiss her good night only to find that she was missing and her bedroom window ajar. The police were called. The infant was found outside in the garden in a state of shock. After 2 weeks in hospital, she was finally released and Pietersen was captured.

The mental state of the accused was obviously called into question during the trial. The welfare report sent in by Mrs. M.M.J. de Beer on 3 December 1970 from the Administration of Coloured Affairs was not particularly favourable. Pietersen had recently appeared before the juvenile court on charges of assault. He was described as exhibiting very aggressive inherent characteristics and even his spell at a reformatory school did not seem to curb his aggression. During his five years there, he received 84 cuts but nothing seemed to curb his anger. He was described as un-rehabilitative. Taking this into consideration as well as the nature of the crime, he was considered a menace to society and condemned to death. It could be argued that the death sentence was passed because the infant was white. However, Eric Booysen, a coloured male aged 29, who raped Madeline Bailey, a coloured girl aged 10

⁷⁴ KAB CSC 1/1/1/1467 Cape Supreme Court Records, Case 340/1970, State v. Johnny Pietersen.

at Killarney, Stellenbosch on 12 December 1971, was also condemned to death in 1972. This sentenced was in part motivated by Booyesen's list of previous convictions as well as the irreparable damage done to Bailey. Her hymen was completely shredded.⁷⁵ Having repeatedly committed offences on the same victim, however, had somewhat different consequences.

Morris Baadjies, a coloured youth aged 19, was also charged with the rape of 4 year-old Bonetta Piet, a coloured child living in Bishop Lavis, Cape Town on 15 August 1970.⁷⁶ The accused defended himself and was sent for psychiatric evaluation to Valkenberg because of a history of mental illness in his family (his father had been interned at Valkenberg for a brief spell), and because he had attempted to commit suicide on two separate occasions. The court also considered the "charge [...] of such a nature that it would normally constitute some form of mental disarrangement". Baby rape was therefore being explained in terms of pathologised minds of the rapist.

During Baadjies' three-week evaluation, it was concluded that he had a history of truancy, dishonesty and abuse of alcohol and dagga, together with petrol and benzene sniffing. He exhibited signs of anxiety over his situation – the incarceration rather than the attack – and he showed no signs of depression or suicidal characteristics. He even admitted that his previous attempts were not to inflict any real danger to his person but rather an attempt to seek attention from those around him. According to the evaluation, he expressed himself well and there were no signs of hallucinations or delusions. He had a good IQ of 106 and his memory for remote and recent events was intact. He did admit to consuming alcohol on the day of the attack but no evidence of memory lapses was visible as he could recount the sequence of the events very vividly. The evaluation therefore declared him not mentally defective according to the terms of the Mental Disorders Act. As a result, he was to be remanded back into police custody when, on 24 September, he attempted to hang himself. The physician, on this occasion, did not think this attempt was to seek attention but rather a sign of remorse for the rape. However, it was still recommended that he should stand trial for his actions. On 5 March 1971, Baadjies was found guilty and sentenced to six years

⁷⁵ KAB CSC 1/1/1777 Cape Supreme Court records, Case 116/1972, State v. Eric Booyesen.

⁷⁶ KAB CSC 1/1/1510 Cape Supreme Court Records, Case 59/1971, State v. Morris Baadjies.

imprisonment. Two years were suspended on condition of good behaviour and because he was considered slightly imbalanced but not completely certifiable. The alcohol and drug abuse were taken into consideration during the sentencing procedure.

David Jantjies was also charged with raping Magdalena Snyman, a 2-year-old coloured infant, on 30 December 1970 at Elsiesrivier. He was convicted of indecent assault and sentenced to three years (with 18 months suspended for three years). While under the influence of alcohol, he violently inserted his fingers in the child and despite causing damage to her genital area, he could not be convicted of rape, which legally required penetration with a penis.⁷⁷ The fact that there was some “reasonable” explanation for his actions, namely that he was inebriated at the time, also explains why he was incarcerated for a mere 18 months.

Sentencing depended not only on the severity of the offence but also any lasting medical (but not necessarily psychological) effects this would have on the victim. Jan Johannes Karolus, a coloured male aged 25, had been convicted of raping Elizabeth Mentoor, a coloured infant aged 4 on 3 July 1971 in Vredenburg. She suffered vaginal tears that stretched to the anus and was so severely damaged that she had to be placed under anaesthetic and transferred to the Children’s Red Cross Hospital in Cape Town for reconstructive surgery. The suspect, when examined by the District Surgeon, also suffered from a penile discharge that, it was proven, he had passed on to the infant. He was sentenced to seven years imprisonment.⁷⁸ This would suggest that despite venereal diseases no longer being considered “a death sentence” after 1948, the long-lasting damage perpetrated on the minor warranted an even more severe punishment.

Naturally, compound attacks were even more severely punished. Jonathan Stevens, a 23-year-old coloured male was sentenced to six years for the rape of Susan Weber, a coloured infant aged 7. She was playing at Muizenberg beach when she needed to relieve herself in the bushes. Stevens followed her, raped and sodomised her. The infant was covered with blood

⁷⁷ KAB CSC 1/1/1/1619 Cape Supreme Court records, Case 226/1971 State v. David Jantjies.

⁷⁸ KAB CSC 1/1/1/ 1709 Cape Supreme Court Records, Case 374/1971, State v. Jan Johannes Karolus.

and because he had also sodomised her, the sentence was more severe.⁷⁹ On account of the compound assault, the severity of injury and the age of the infant appeared to secure a more severe punishment. Samuel Benjamin Sebastiaan, a coloured male aged 24, was found guilty of raping Shirley Michaels, a coloured infant aged 4 at Vyeboom, Lourensford outside Somerset West. Sebastiaan pleaded guilty to the charge. Because her injuries required hospitalisation for 19 days and extensive reconstructive surgery, he was sentenced to 10 years imprisonment even though it could not be conclusively ascertained whether he had penetrated her with his penis, his fingers or a foreign object.⁸⁰

The Rise of the Juvenile Rapists

Juvenile persons were aged between 7 and 16 while juvenile adults were between 17 and 20.⁸¹ While the distinction between adult and juvenile sexual offenders reflected a growing concern on the environment in which young boys were being socialised, motivations for rape provided by the rapists themselves, correlates with that given by adult men.

Young offenders were generally sent to a reformatory. In 1930, Peter Andrews was sentenced to three years at Tokai Reformatory.⁸² In this instance, the details of the attack warranted incarceration. Abraham Vlotman, not only a juvenile child rapist but also a serial rapist, was charged with five counts of rape on 2 August 1935. He was 17 at the time. He pleaded guilty to all five charges. He was incarcerated at Tokai Juvenile Adult Reformatory until 1939 for the first four counts and eight cuts with a juvenile cane under the supervision of the District Surgeon for the last count of rape.⁸³ What is of interest in all five indictment sheets is that the victims were all described as women, when they were not. Their ages were inexplicably irrelevant. The offender's age, however, was taken into consideration in the sentencing. Secondly, all four of the medical reports describe the condition and mental health of the four victims as "normal" despite obvious physical, and no doubt lasting, mutilation. In

⁷⁹ KAB CSC 1/1/1501 Cape Supreme Court Records, Case 43/1971, State v. Jonathan Stevens.

⁸⁰ KAB CSC 1/1/1473 Cape Supreme Court Records, Case 352/1970 State v. Samuel Benjamin Sebastiaan.

⁸¹ J. Venter, "The Incidence of Juvenile Crime in South Africa", *National Bureau of Educational and Social Research*, Series 2, 1964, p. 2.

⁸² KAB CSC 1/1/160 Cape Supreme Court Records, Case 7/ November 1930, Rex v. Peter Andrews.

⁸³ KAB CSC 1/1/179 Cape Supreme Court Records, Case 17/ August 1935, Rex v. Abraham Vlotman.

this case, a psychological explanation was required to ascertain why the young man preyed on much young victims. Abraham was examined by the court psychiatrist, W. Myburgh. He was found to be of a nervous and hysterical disposition and suffered from a mild stutter. Visibly afraid and frightened by the procedure, he was subsequently found to be exhibiting no mental disease. “He is dull and rather backward, but not feeble-minded”. His dullness, it was suggested, would disappear with the removal of his adenoids and tonsils; therefore, his actions were almost excused because of this rather lamentable medical diagnosis.

Not all juvenile rapists were sent to reform schools. It was at the judge’s discretion whether young offenders would benefit from rehabilitation in a reform school. Martin Abrahams, for example, was convicted for assault with intent to rape Marie Anthony on 22 January 1935 in Salt River. Justice Jones said, in passing sentence: “You got a very light sentence on the last occasion for criminal behaviour towards a woman, but I must make your sentence a good deal harder this time. I had thought of sending you to a reformatory but I don’t know whether you are the desirable kind of individual to send there”. He had a previous conviction for *criminal injuria* on 12 June 1934 for which he was fined £3 or six weeks hard labour. This time, he was sentenced to 18 months’ hard labour and five cuts with the cane.⁸⁴ It was also concluded that he was not a suitable candidate for rehabilitation so he was consequently incarcerated.

Justice Jones, in passing sentence on Johannes Mentoor who was found guilty of the lesser charge of assault with intent to rape and sentenced to six cuts with a cane, callously remarked that “You fortunately did not do any harm and seeing that you have no record I am not going to start you with one by putting you in gaol”.⁸⁵ Justice Jones believed that incarceration would have a negative effect on soft criminals. In sentencing Fred Jacobs for the rape of Annie Pypers, it was also noted that, “I do not want to send you to gaol because you may meet people there who will do you no good”.⁸⁶ Even in cases where clearly the juvenile had most likely become one of these hard criminals, Justice Jones was reluctant to incarcerate the offenders. Willie Petersen and John Moses, for example, were convicted of

⁸⁴ KAB CSC 1/1/178 Cape Supreme Court Records, Case 13/ April 1935, Rex v. Martin Abrahams.

⁸⁵ KAB CSC 1/1/174 Cape Supreme Court Records, Case 14/ April 1934, Rex v. Joseph Mentoor.

⁸⁶ KAB CSC 1/1/174 Cape Supreme Court Records, Case 21/ April 1934, Rex v. Fred Jacobs.

raping Lilly Sardien in Woodstock while she was out strolling with her boyfriend on 3 May 1937. They were sentenced to 10 cuts with a cane. Justice Jones justified his decision stating:

In view of your ages and the fact that there are no previous convictions against No. 2 and only one in 1933 against No. 1 I do not propose to send either of you to prison. I think the chances are that you might meet persons there, if I send you there for a long time, who may show you no good [...] I want you and others who hear of these cases to understand that this sort of thing of accosting lovers and friends at night when they are out courting must be put a stop to. Women who are out with other men do not belong to anybody who just happens to come along.⁸⁷

Juvenile and adult rapists were supposed to be dealt with in different ways but this was left to the discretion of the presiding judge. Some received similar sentences to adult perpetrators. Juvenile rapists, Klaas Bruintjies and Bennie Becket, were both sentenced to two years' hard labour and eight cuts with the cane for raping Bessie Woodman, in 1942.⁸⁸ This may have been because the complainant was considered a "decent girl" and because Justice Jones remarked, in sentencing, that the rate of assaults on women and rapes of women were becoming too prevalent to make any age distinction between perpetrators. Having said that he should be strict, he took into consideration that the two boys were intoxicated on the evening in question because it was a public holiday, a compelling piece of evidence in all trials during the period investigated. Some cases were horrific and yet the sentences still reflected the age bias. Hendrik Charles, for example, was found guilty of raping Dina Adams on 26 December 1947. He also slit her throat and was, therefore, found guilty of assault with intent to do grievous bodily harm. Despite the double conviction, Justice Fagan wanted to give him a "chance" and he was incarcerated for one year at a reformatory.⁸⁹

⁸⁷ KAB CSC 1/1/186 Cape Supreme Court Records, Case 15/ August 1937, *Rex v. Willie Petersen & John Moses*.

⁸⁸ KAB CSC 1/1/204 Cape Supreme Court Records, Case 22/ August 1942, *Rex v. Klaas Bruintjies & Bennie Becket*.

⁸⁹ KAB CSC 1/1/245 Cape Supreme Court Records, Case 41/ May 1948, *Rex v. Hendrik Charles*.

By the 1940s, the number of juvenile rapists appearing before the courts and receiving light sentences, such as cuts with a cane, but not being compelled to undergo any rehabilitation process, was glaringly obvious. Many were gang-related rapes.⁹⁰

In 1972, the Department of Social Welfare and Pensions declared the Cape Peninsula the urban area with the most juvenile offenders in the country across the colour spectrum. In Pretoria, these were mostly white juvenile delinquents.⁹¹ Clearly, the living conditions of coloureds and the forced removal of coloureds to new locations in the Cape, which was used to explain delinquent behaviour by both scholarly theorists and white liberals, cannot explain the proliferation of white juvenile offenders. Nor does it explain the existence of juvenile delinquents prior to the 1960s. Similarly, these conditions affected many more coloured and Asian men, many of whom refrained from any criminal activity. One plausible explanation, therefore, could rather be found in the conditions under which these men and women were socialised.

Gangs and Gang Rapes in the Cape

By 1910, there is evidence to suggest that men committed acts of gang rape. In keeping with the general literature on gang rape, these will be defined in cases where three men/ boys or more were involved in rape. Joseph de Roos, a cart driver, Jacob White, an ex-police officer (convicted of assault in January 1910) and Thomas Osborne, an engine driver, were convicted of raping Elsie October on 3 July 1910 and sentenced to 7 years' hard labour and 10 lashes each. They abducted Elsie, dragged her to the bushes and along with "a very black man", never identified nor prosecuted, proceeded to take turns raping her. During the trial, each prisoner cross-questioned the complainant, as was common practice during this period. White suggested that the investigating detective tried to influence Elsie into identifying him as one of her assailants as part of a conspiracy against his police background and subsequent conviction. The rest of the defendants followed suit. From this testimony,

⁹⁰ See for example KAB CSC 1/1/1/245 Cape Supreme Court Records, Case 6/ May 1948, Rex v. George Dudley & 2 others; KAB CSC 1/1/1/245 Cape Supreme Court Records, Case 7/ May 1948, Rex v. Eli Martin.

⁹¹ Author unknown, "Peninsula has worst of S.A's juvenile crime", *The Cape Argus*, 3 June 1972.

Elsie's past sexual history became an area of contention.⁹² While it is unclear in this case whether the men were part of an organised gang, they did act out as a gang. The court testimony also suggests that their actions could not be "justified" in terms of economic, social, or political oppression. Most cases straddle various rape theories however this case epitomises the theory that rape is purely about power.

In the 1920s, there are examples of young boys raping in packs. Alfred Harding, for example, a young labourer from Cape Town, was found guilty of assault with intent to rape Issie Green on 6 November 1928. A group of boys tried to hold the complainant down while the defendant lifted up her clothes, and attempted to penetrate her. He was found guilty and sentenced to a meagre six months' hard labour and 10 cuts by Justice Louwrens. Startlingly, the judge made a comment quite often used in cases of delinquent behaviour: "I will take into consideration that perhaps you got excited. You fortunately did not succeed in your attempt. You are quite a young boy and except for this case you have never been in gaol before".⁹³ This is yet another example of failing to send a strong message to potential rapists.

By 1933, gang rapes are explicitly linked to gang cultures within the Cape Court records. Henry Muller and his wife were asleep on the night of the 10th when they were awoken when a gang of 14 *skollies* broke the window of their children's bedroom. At least one of the gang members was known to the witnesses. Fortunately, no rape was committed. The gang then moved to a shack in the vicinity where they forcefully entered the home, stole some items of clothing, assaulted George Stemmett and raped his common law wife, Sallie Jantjies in his presence. Both were threatened with a large knife. The defendants argued that she was willing to have sexual connection with the men but the medical testimony corroborated the charge that she had in fact been raped. Annie Adonis was then raped by three of the accused. The families of the accused tried to provide alibis during the trial but none were believed by the court.

⁹² KAB CSC 1/1/1/71 Criminal Records Cape of Good Hope Provincial Division of the Supreme Court of South Africa 1910 - Criminal Session held in Cape Town 19 September, Case 6: Rex v. de Roos, White and Osborne.

⁹³ KAB CSC 1/1/1/153 Cape Supreme Court Records, Case 1/ January 1929, Rex v. Alfred Harding.

It was common practice to suggest that gang rapes had occurred in cases such as these because it often lessened the severity of being solely responsible for rape. Group dynamics and peer pressure were often considered mitigating circumstances, grossly reducing the sentence. In the case of Dulla Fakir, the accused had signed a statement on 22 August 1933 saying that he, along with seven other friends, were walking along the beach on the day in question when they stumbled upon the complainant, sitting with another man. Fakir was charged and convicted of raping Margaret Platten on the beach in Cape Town and was sentenced to two years' hard labour and eight cuts. They spoke to the girl and her companion then mysteriously ran away. Dulla then testified that the girl asked them not to hurt her, that she would give them money, but suddenly, one member of the group pounced on her. He claimed to have been the fifth one to have had connection with her. This claim would lessen his sentence as he would not be considered the instigator of the group. During the trial, Dulla then attempted to retract his previous statement and declared that he was nowhere in the vicinity at the time of the assault. Justice Sutton and the jury believed that Dulla was lying and therefore convicted him of being the sole rapist.⁹⁴

But this could also lead to a more severe sentence being passed down if a stronger message needed to be sent. By the 1940s, there existed a complicit understanding between judges and those coloured communities most affected by the rapes in the Cape that harsh sentences in rape trials would curb incidences in coloured areas. In the trial of Abraham Rhooda, Hendrik Moses and Adam Kamaar, convicted of raping Mary Greeves, a coloured girl in Cape Town on 22 December 1943, the men were described as *skollies*. Justice Sutton wanted to send a strong message because of the very long previous records of accused one and two, and because the community needed protection. "I hope that this will be a warning not only to you three in the future but to the large number of coloured people who seem to be interested in the case, and I hope that they will be pleased that you are removed from this part of the world for a time".⁹⁵ No doubt, this depended on the sentiments of the presiding judge. Cecil Jones, Jacob Solomon and Frank Lewis, for example, were found guilty of raping

⁹⁴ KAB CSC 1/1/1/172 Cape Supreme Court Records, Case 9/ November 1933, Rex v. Dulla Fakir.

⁹⁵ KAB CSC 1/1/1/214 Cape Supreme Court Records, Case 18/ April 1944, Rex v. Abraham Rhooda, Hendrik Moses & Adam Kamaar.

Sylvia Brown but Cecil was sent to Porter Reformatory and the other two convicts sentenced to a light eight cuts by Justice Ogilvie Thompson.⁹⁶

Gang rapes by juveniles appear to have increased by 1945. During the December 1945 Court session alone, Andrew Howes, William Fredericks and Sadick Bennett were convicted of raping Alice Matthews,⁹⁷ Moses January, Johannes Pietersen and John Frame were also sentenced to three years' hard labour and eight cuts for raping Lilly Jackson in Kraaifontein on 26 September 1945.⁹⁸ Some of the gang rapes were dismissed because the complainant was deemed immoral. Martin Das, Gamat Salie, Andrew Christians, Gamat Safodien, Gamat Amien Salie, for example, were charged with raping Katie Williams, a 19-year-old coloured female near Cape Town on 28 December 1945. The case was eventually withdrawn after medical reports showed that Katie was used to having sexual intercourse and that she showed signs of having a syphilitic rash upon her body.⁹⁹ Her testimony would not have been considered credible, so the Attorney-General found it pointless to even send the case to the court.

Youth gangs were becoming even more common by 1946. Ebrahim Sadick, Gamat Salie, Andrew Christiaan, Gamat Amien Salie and David Burmeister were all convicted of raping Hilda Marie Jansen on 2 January 1946 in Cape Town. Besides prison sentences, they were all sentenced to eight cuts each with the juvenile cane.¹⁰⁰ Gang rape was certainly becoming a concern for the court. Justice Jones, in passing sentence upon Narodien Gester, George Sampson, Martin Sampson, Carriem Samuels and Titus John Brown for raping Veronica Eyssen on 30 March 1946, each of the accused received a sentence of seven years' hard labour and 10 cuts each. In passing sentence, the following observation summed up the Court outlook on gangs and rape:

⁹⁶ KAB CSC 1/1/1/241 Cape Supreme Court Records, Case 5/ March 1948, Rex v. Cecil Jones & 2 others.

⁹⁷ KAB CSC 1/1/1/224 Cape Supreme Court Records, Case 18/ December 1945, Rex v. Andrew Howes, William Fredericks & Sadick Bennett.

⁹⁸ KAB CSC 1/1/1/224 Cape Supreme Court Records, Case 22/ December 1945, Rex v. Moses Januarie, Johannes Pietersen & John Frame.

⁹⁹ KAB CSC 1/1/1/225 Cape Supreme Court Records, Case 41/ April 1946, Rex v. Martin Das & 4 others.

¹⁰⁰ KAB CSC 1/1/1/227 Cape Supreme Court Records, Case 57/ April 1946, Rex v. Ebrahim Sadick and 4 others.

This type of crime, this hunting of young woman in packs and assaulting them in the way this woman was assaulted, that requires very severe treatment indeed [...] I think I am right in saying that during the last 18 months there have come before this court at least four previous cases in which a body of young men have assaulted some women in this way or have not succeeded in the attempt, it seems to me that when you are run to earth in connection with offences of this sort, going after women like a pack of young animals, you must be so severely dealt with that it will be a lesson to you for the rest of your lives and serve as a deterrent to others. The various forms of lawlessness we are getting in this community are too appalling to think of. Nobody seems to be safe. It is not only in the night time that people are not safe, they are not even safe in the day time; and I must do what I can to protect the public against offences of this sort and cognate offences where persons are assaulted either for the purpose you had in view or for the purpose of taking their property. One of these days if this sort of thing goes on there will not only be imprisonment and cuts with the cane for offences of this sort but there will be the death sentence. I want everybody who hears what has happened in this case to realise that there is always the possibility.¹⁰¹

This trend continued into 1948. In passing sentence upon convicted rapists Alfred Afrika, Donald Bridgens, James van der Lily and Pieter Noble (Henry Petersen was charged but found not guilty), Justice de Villiers stated:

This is another of those instances which show the increasing tendency on the part of young men to band themselves together for the purpose of committing crimes. This is a particularly dastardly crime against an elderly woman of 56 [...] It is no good sending these youths to a reformatory and at the same time they cannot be dealt with lightly. Somehow or other this tendency to criminality on the part of any person must be stopped and the only way that can be achieved is by the imposition of a salutary sentence and the imposition of cuts. Each of the accused will be sentenced to two years' imprisonment with hard labour and eight cuts.¹⁰²

Robert Calvert, Ernest Fouten, Cedric Diniso and Fred van Zyl were all convicted and sentenced to five years' hard labour and six cuts each for raping Kathleen Bowers in Athlone, on 23 July 1949. In this instance, and quite unusually, three of the convicted rapists, wrote personal letters of appeal claiming that the complainant had given permission to have connection. They claimed that she was inebriated at the time in the hope that the court would dismiss the charges. Despite suspicion of women who consumed alcohol, Justice Fagan found

¹⁰¹ KAB CSC 1/1/229 Cape Supreme Court Records, Case 40/ August 1946, Rex v. Narodien Gester and 4 others.

¹⁰² KAB CSC 1/1/246 Cape Supreme Court Records, Case 10/ June 1948, Rex v. Henry Pietersen & 4 others.

no cause to contemplate an appeal and they had to serve their sentences.¹⁰³ Willie Smit, Abdullah Manawel, John Davids and Allie Lawrence were all convicted of raping Minnie Jordaan on 23 June 1953 despite the defence proving that the complainant often over indulged in both alcohol and dagga. The first three rapists were sentenced to 18 months' hard labour and six cuts each and the last was declared a habitual offender.¹⁰⁴ No doubt, their previous convictions played an influential role in securing the conviction.

Gang rapes, multiple rapes and multiple offenders continued throughout the 1950s. But by 1951, it was not simply rape that was visibly on the increase in the courts, but all forms of criminal activity. Justice Steyn, in sentencing 18-year old William Lasher for rape, pointed out that "The newspapers are full of cases of violent assault. One type of violence often resorted to is robbery. These crimes of violence, as I say, are on the increase, and it is only because of your youth that I am giving you a very light sentence for this offence that you have committed".¹⁰⁵

The Cape coloured reaction to the rise of gangs during the 1960s and 1970s is visible in the newspaper reports of that period.¹⁰⁶ Strong correlations are made between gang violence, gang rape and the social upheavals of the forced removals era in Cape Town. This community observation is supported in the Court records and also suggests that poor home environments were contributing to the increase in gang rape.

Four coloured youths, James Ross (16), Nicolaas Sauls (15), Lukas Swanepoel (15), Patrick Hearne were accused of raping Veronica Fortuin, a 16-year-old coloured girl in Elsiesrivier on 19 December 1970.¹⁰⁷ Heard by Justice Diemant, Ross was incarcerated in a reformatory school, while the remaining three were sentenced to cuts with a cane and placed into social care because their home environments were considered not conducive for social

¹⁰³ KAB CSC 1/1/1/257 Cape Supreme Court Records, Case 18/ November 1949, Rex v. Robert Calvert and 3 others.

¹⁰⁴ KAB CSC 1/1/1/318 Cape Supreme Court Records, Case 384/ September 1953, Rex v. Willie Smit & 3 others.

¹⁰⁵ KAB CSC 1/1/1/281 Cape Supreme Court Records, Case 288/ November 1951, Rex v. William Lasher.

¹⁰⁶ Discussed further on in this Chapter.

¹⁰⁷ KAB CSC 1/1/1/1582 Cape Supreme Court Records, Case 151/1971, State v. James Ross, Nicolaas Sauls, Lukas Swanepoel and Patrick Hearne.

reform. Veronica had visited her friend Georgina van der Heever when she was accosted by the youths and gang raped by two of them. The others were found guilty of aiding and abetting the rape. Because of their age, the parents of all four accused posted bail until the trial began in 1971. A coloured investigator, Jacob Fennie, was placed in charge of the case and secured a conviction in all four cases. Of particular importance to the trial was the report by Mrs. B. Prins of the Department of Coloured Affairs Administration.

James Ross was the youngest of three children. His father died when he was 8 and his mother, a domestic worker for a white family in Parow, was described as sober but suffering from asthma and a heart condition. She lived with her children in a two-roomed abode, described as an unstable environment for children, and was unable to control her son's temperament. Discipline was severely lacking after the death of Ross' father and he frequently abused alcohol and dagga. He was described as a "*skollie-tipe*",¹⁰⁸ and this, it was claimed, was because of the influences of friends in his neighbourhood. Nicolaas Jacobus Saul came from a "sober home", an environment in which morals were deeply entrenched, as his father was an active member of the Dutch Reformed Mission Church. However, his friends had a negative impact on his character even though he was generally described as a non-aggressive child. Commending the family environment, the social worker recommended that the child be removed from his neighbourhood environment as he could be rehabilitated given the right influences. Lukas Ernest Swanepoel was the second eldest of seven. His mother, aged 40, had remarried and worked as a domestic worker for a white family away from the family home. All nine people lived in a two-roomed home. Because of her meagre wages, she could not keep her son in school and her eldest daughter, aged 17, also had to procure employment as her stepfather was unable to work. Swanepoel worked intermittently but his mother complained that he surrounded himself with bad influences. Passive by nature, his mother felt that his friends were negatively influencing her son's demeanour. Patrick Hearne's father earned a decent living but consumed large amounts of alcohol. His mother was described as having a sober character and he too, like his accomplices, stopped school at an early age and surrounded himself with undesirable friends.

¹⁰⁸ A thug-type.

In the case of these four youths, their home environments were not extraordinary but the social environment in which they lived was deemed to have had a negative impact on their behaviour. Of the four, Ross exhibited early signs of truancy and aggression and was considered the personality who manipulated the other boys. Because none had previous convictions, prison sentences were avoided and an attempt to rehabilitate them meant removing them from their deprived social environments.

The most notorious gangs in the coloured townships by 1970 included the Bun Boys who operated in District Six; the Lawbreakers, also based in District Six and who required prospective members to have a criminal record to join the gang; the Stalag 17, outcasts from other gangs who also had to have criminal records for violence; the D. K. Gang, rivals of the Stalags; the Bunny Boys, comprised of former reformatory school boys; the Globe Gang; the Playboys; the Terror of Terror Gang; the Bandelleroes Gang; the Panorama Kids; the Casbah Gang and the Mongrels and the Viking Gang.¹⁰⁹ City gangs often clashed with Cape Flats gangs over territory.¹¹⁰ They also attempted to expand their areas of control to other provinces.¹¹¹

Not part of the most notorious gangs of Cape Town and therefore in need of establishing their authority, were the Wonder Boys. Members of the Wonder Boys coloured gang went searching for a rival gang member of the T.O.T's gang, Pasi, at his sister's home in Elsiesrivier, Bellville, Cape Town on 14 November 1971. Mervin Pietersen, Chris Robyn (20), Johannes Januarie (21), Eloë Meyer (20), Frank Duiker (20), Pieter Samuels (18), Solomon Overmeyer (28), Pieter Kleinsmit (19), Robert Meyer (27), Samuel Philander (18), Abdulaman Markus (28), Peter Antha (20) entered the home of Maureen Hoffman, aged 22, and then proceeded to rape her because they could not find her brother. They were charged with 14 counts of housebreaking, robbery and rape within a 16-hour period and stood before Justice J. van Wyk and assessors Barnard and Hartogh on 20 July 1972. They all pleaded not guilty to the charges but Chris Robyn and Johannes Januarie were eventually convicted for the rape of Maureen. Robyn was sentenced to 12 years for rape and Januarie was sentenced to

¹⁰⁹ Author unknown, "The Gangs", *Cape Argus*, 2 May 1970.

¹¹⁰ Author unknown, "Big time background in battle for territories", *Cape Argus*, 2 May 1970.

¹¹¹ Author unknown, "Cape gang in Natal trouble", *The Herald*, 7 July 1974.

death. Both appealed against their sentences but both appeals were denied and Januarie was hanged at Pretoria Prison on 8 March 1973.¹¹²

It was rare for non-white men to be condemned to death for raping non-white women but the rise of gang rapes in the Cape and concern over law-abiding coloured citizens by the courts no doubt played a part in the passing of the death sentence. There were other gruesome details that also secured this conviction. At the time of the attack, Maureen was seven months pregnant. The gang also threatened to burn down their home, threatened to rape Maureen's younger sister, raped Maureen in front of her husband and Januarie raped her a second time in the garden after her initial attack by seven men. The court clearly admired Maureen's demeanour mentioning in sentencing that the sentence was, "a tribute to her careful submissiveness in the face of multiple force which she could not resist for fear of being further injured".

Both convicted rapists appealed against the decision based on the legal technicality of probabilities. It was argued that the State had failed to provide sufficient evidence, despite the positive identification of Maureen and her siblings, to link the two convicted to the crime of rape. The defence attorney quoted the case of the State v. Mthetwa 766/1972, p. 768 A-C, in which reasonable doubt was proven through the fallibility of human observation. It was argued that the honesty of the witness was not enough to secure a conviction and that other aspects such as lighting, visibility, eyesight, proximity of witnesses, opportunity for observation, prior knowledge of accused, mobility at the scene, corroboration, suggestibility, the accused's face, voice, built, gait... should be considered. It was argued that all the evidence should have been weighed up and the probabilities assessed. Maureen had only positively identified Januarie as one of her rapists and after being told that Robyn was involved by the witnesses, the element of suggestibility was questioned. Similarly, she herself had said that the room was dark, cramped and that these conditions made it difficult for her to positively identify all her assailants. The appeals court agreed that there was reasonable doubt as to the involvement of Robyn in the rape and his sentence was overturned. In the case of

¹¹² KAB CSC 1/1/1791-1795, Cape Supreme Court Records, Case 144/1972, State v. Mervin Pietersen, Chris Robyn, Johannes Januarie, Eloë Meyer, Frank Duiker, Pieter Samuels, Solomon Overmeyer, Pieter Kleinsmit, Robert Meyer, Samuel Philander, Abdulaman Markus and Peter Antha.

Januarie, however, it was argued by the Appellate that Maureen had ample time to observe him and that his sentence of death should be commuted. In addition, the Appellate sent a stern warning to gangs in the Cape Flats. The broader violence of gang warfare certainly played a role in re-affirming the death sentence passed on Januarie. The Supreme Court of South Africa Appellate Division sat in Bloemfontein 2 October 1972. Justice Holmes, Jansen and Rabie echoed the voices of the people, visible in the media during this period: “truculent gang warfare terrorises the community, which is entitled to protection under the law”. The appeal however argued that Januarie, as a member of the Wonder Boys gang, was acting in the interests of his community.

Coloured gangs were also rivalled by black gangs in the Cape trying to carve out a fearsome reputation. In this example, we get a glimpse into the role of female gang members in gang related rapes. Wilton Pani (19), William Pani (17) and Welcome Jack (20) were charged for the brutal raping of Sindiswa Maviya on 31 January 1970.¹¹³ All three men pleaded and were found not guilty by Justice Baker and assessor Hartogh on 4 August 1970. It was alleged that Sindiswa was waiting for a bus on the morning of the incident when she was attacked by three men and dragged to a nearby bush. In total 11 ‘Bantu’ men and one woman were waiting for her. She struggled and was beaten. One of the men and the girl forcefully removed her under-garments and tied her to a tree where she was raped by all 11 men and watched by the woman. When they were done, one man suggested they kill her to avoid capture but they opted to further assault her and then went in search for a new victim. The five remaining men then released her from the tree and proceeded to stab her. After this, they smoked dagga and fell asleep. She ran and stumbled upon two coloured girls aged 14 and 15, who helped her get home. A motor vehicle then stopped and took her to the police station. She was later taken to Groote Schuur hospital.

According to the District Surgeon, Dr. Stoch, the complainant had suffered multiple bruises and lesions, “too numerous to count”. She had been beaten with a stick and, although his findings were inconclusive, recorded that she alleged to have been raped by 11 men from 5.30am to 1pm. She also had knife wounds to her legs; in his words, it was indeed “a most

¹¹³ KAB CSC 1/1/1/1400 Cape Supreme Court Records, Case 168/1970, State v. Wilton Pani, William Pani and Welcome Jack.

savage assault”. She was not considered a virgin prior to the attack and mysteriously, her medical examination concluded that she showed no signs of recent sexual injury although the pathology laboratory report recorded various smears of spermatozoa on her person. She identified one of her assailants who lived in her area, and through him, the other two were arrested. Unfortunately, because of the inconclusive findings of the District Surgeon and because of a gross mishandling of the evidence by the “Bantu” investigators - they forgot to read the accused their rights before questioning them, and laid the incorrect charges against the men – the court had no option but to dismiss all the charges against the men.

Welcome Jack, the leader of the group, however, was not as fortunate as he was later convicted on another charge of rape later that year. On 26-28 October 1970, Welcome Jack (23), Benjamin Sekepane and Peter Jack (19) were tried for two counts of rape also by Justice Baker and assessors Frank and de Vos.¹¹⁴ All three defended themselves but on this occasion they were all found guilty and sentenced to 15 years for the two counts of rape and theft. It was alleged that on 12 February 1970, the men had raped Elizabeth Henu, a “Bantu” female aged 16. A week later, on 19 February 1970, near Nyanga, the men assaulted Elizabeth Gumede, a “Bantu” woman aged 29. They then robbed her, hit her with an electric cable and then raped her. It is worth noting that Elizabeth was considered a good woman, “civilised and a trustworthy source because she spoke good Afrikaans, had an engagement and wedding ring as well as powder make up in her bag...”.

Ruth Mapipa also testified that she had been raped by the Jack brothers. The accused attacked her while her boyfriend was in a shop. When he returned, they told him they were trap boys, searched him for weapons, and then *sjambokked* – flogged – him. Welcome laughed throughout her testimony. He denied raping her and declared, rather, his love for her. Because the “Bantu” investigating officers had once again made a few errors in the investigation, only the charges of rape could be prosecuted.

¹¹⁴ KAB CSC 1/1/1/1455, Supreme Court Records, Case 298/1970, State v. Welcome Jack, Benjamin Sekepane and Peter Jack.

Despite the protracted fear of the *skolly* menace and gang violence, some cases failed to dissuade gangs from sexual violence. Nine members of the Mongrel gang, for example, were accused of raping a girl in Woodstock in 1972. Five were discharged and the remaining four convicted for indecent assault and received a twelve-month suspended sentence.¹¹⁵ The case appeared in the media and symbolised the perceived leniency on gangsters that frustrated the coloured communities of the Cape.

By 1969, in a letter to the *Cape Argus* in response to the public debate on the *skolly* menace, Father Albert Versmissen, from Kommetjie, connected the rise in criminal activity amongst coloureds with their ever increasing loss of dignity and self-worth. The resultant frustration was visible in the turmoil of their family, religious and social life, he argued. He also added that within white communities all the religious, educational, economic and social benefits were found but even then white misfits were visible because they, too, were frustrated in the absence of a broader sense of belonging. Fr. Versmissen suggested that restoring coloured dignity, a sense of belonging, and security, would have a marked impact on restoring peace and stability.¹¹⁶ Irene Conybeare applauded Fr. Versmissen's observations. She added that she was shocked by the lack of compassion shown by "church-going" white people in responding to the problems of the coloureds. She also condemned them for not paying heed to organisations, such as the Black Sash, which tried to institute some cohesion. Her letter condemned the tenets of segregation and forced removals on the souls of young coloured children.¹¹⁷ Her contribution, needless to say, was met with some opposition.¹¹⁸

By 1970, Mr. Gerald Stone, a post-graduate student of psychology, argued that boys joined gangs to protect their manhood at all costs. "A male must prove his masculinity. When circumstances stop him from doing so because he knows nothing but deprivation, because he distrusts all others as much as he distrusts himself, because he cannot hope...then, if he cannot be a good man, he will be a bad man, but he will be a man".¹¹⁹

¹¹⁵ Author unknown, "Outrage: Mongrels Again? Accused 'typical skollies'", *The Herald*, 5 August 1972.

¹¹⁶ Letter to the editor, "Basic reason for 'skolly' problem", *Cape Argus*, 26 August 1969.

¹¹⁷ Letter to the editor, "The Crime: Not caring", *Cape Argus*, 9 September 1969.

¹¹⁸ Letter to the editor, "Colour and crime", *Cape Argus*, 22 September 1969.

¹¹⁹ Author unknown, "Born to suffer", *The Cape Argus*, 2 May 1970.

Sociologist, T. Dunbar Moodie quite rightly explained that specific case studies on violence must be handled with caution as they illuminate the uniqueness of a particular historical moment rather than providing an overarching epidemiology across time and place. He argues that violence was actually a favoured form of labour control in the South African gold mines. This was at times unwarranted, yet, was widely accepted as a rite of passage when new methods of labour and production had to be implemented, or for policing and controlling violence in the mines.¹²⁰ Dunbar Moodie provides ample testimony from migrant black workers especially on the gold mines in South Africa on how they dealt with power structures and negotiated, amongst other concepts, their manhood, sexuality and conditions of violence.¹²¹

Feminist scholars have shown that certain types of masculinities legitimate unequal power and violent relationships between men and women. Many authors have investigated the relationship between poverty, rape and masculinity.¹²² Masculinity theorist Raewyn Connell (née Robert William Connell), suggests a hierarchical system of changing masculine identities, all of which, it should be added, considered superior to women. In a particular context, one ideal of masculinity becomes hegemonic, even achieving consent from those who are dominated. While dominant on one level, it may become subordinate in another.¹²³ In South Africa, it is argued that hegemonic masculinity gives centrality to heterosexual performance, toughness and strength in which performance is measured according to

¹²⁰ T. Dunbar Moodie, "Maximum Average Violence: Underground Assaults on the South African Gold Mines, 1913-1965", *Journal of Southern African Studies*, 31(3), 2005, pp. 550, 555-557, 560.

¹²¹ See for example, T. Dunbar Moodie & V. Ndatshe, *Going for Gold: Men, Mines and Migration* (Berkeley: University of California Press, 1994); T. Dunbar Moodie, "South African Mine Migration and the Vicissitudes of Male Desire", in R. Morrell (ed.), *Changing Men in South Africa* (Pietermaritzburg: University of Natal Press, 2001); T. Dunbar Moodie, "Mobilization on the South African Gold Mines", in D. Meyer, N. Whittier & B. Robnett (eds.), *Social Movements: Identity, Culture, and the State* (Oxford: Oxford University Press, 2002); T. Dunbar Moodie, "Race and Ethnicity in South Africa: Ideology and Experience", in P. Spickard, *Race and Nation: Ethnic Systems in the Modern World* (New York: Routledge, 2005); T. Dunbar Moodie, "The Uses of Violence on South African Gold Mines", in F. Coronil & J. Skurski (eds.), *States of Violence* (Ann Arbor: University of Michigan Press, 2006).

¹²² P. Bourgois, "In search of masculinity - Violence, respect and sexuality among Puerto Rican crack dealers in East Harlem", *British Journal of Criminology*, 36(3), 1996, pp. 412-427; K. Wood & R. Jewkes, "'Dangerous' love: reflections on violence among Xhosa township youth", R. Morrell (ed.), *Changing men in Southern Africa* (London: Zed Books, 2001), pp. 317-336.

¹²³ R. Connell, *Masculinities* (Cambridge: Polity, 1995); R. Connell, *Gender and Power: Society, the Person and Sexual Politics* (California: University of California Press, 1987); T. Shefer, K. Ratele, A. Strebel, N. Shabalala & R. Buikema (eds.), *From Boys to Men: Social constructions of masculinity in contemporary society* (Cape Town: University of Cape Town Press, 2007).

effective control of women even if this requires sexual or physical violence.¹²⁴ Gang rape is considered a collective heterosexual performance in which the woman is ultimately objectified, and becomes a casualty in the power struggles between gang members.¹²⁵ Masculinity theorists, such as Robert Morrell, also point to the role of corporal punishment as a normal, and a socialising part of growing up a male in South Africa in the 20th century, not only within educational institutions but, also within certain domestic settings. This, it was argued, occurred amongst all races.¹²⁶ While masculinities were certainly being challenged across the board, Connell reminds us that non-racial patriarchal hegemony exists in instances in which men somehow flock together in the face of a larger impending danger such as a perceived onslaught

While the courts were becoming increasingly inundated with gangs and gang rapes, the most extreme example of the masculine crisis, the sentences were expected to send a message to broader Cape society. As has been shown, the prevalence of gangs and gang rapes has a much earlier history than has previously been suggested in Chapter 2. Similarly, many of the reasons, such as more oppressive State policies and dislocation certainly explain the increased visibility but fail to locate the initial reasons for gang membership and gang rape. Certain oversights can be attributed to State inattention or even a judiciary which was tasked with either incarcerating or rehabilitating rapists while sending a strong message to potential rapists. However, by the 1960s, attention begins to shift towards another interesting site in which these men were being socialised: the home.

Conclusions

Delineating the purely racial categories of rapists presented by the evidence into global categories of rapists has proved challenging because of the dominance of racial

¹²⁴ R. Jewkes & R. Morrell, “Gender and sexuality: emerging perspectives from the heterosexual epidemic in South Africa and implications for HIV risk and prevention”, *Journal of the International AIDS Society*, 13, 2010, p. 6; H. Coovadia, R. Jewkes, P. Barron, D. Sanders & D. McIntyre, “The health and health system of South Africa: historical roots of current public health challenges”, *The Lancet*, 374, 2009, pp. 817–834.

¹²⁵ R. Jewkes, K. Dunkle, M. Koss, J. Levin, M. Nduna et al, “Rape perpetration by young rural South African men: prevalence, patterns and risk factors”, *Social Science and Medicine*, 63, 2006, pp. 2949–2961.

¹²⁶ R. Morrell, “Corporal Punishment in South African Schools”, *Men and Masculinities*, 4(2), 2001, pp. 140-157.

classifications at a political, social and communal level and to a lesser-degree through the judicial records. There are a few observations which can be made which transcend these boundaries.

When assessing the convictions of white, black and coloured rapists, it is possible to suggest that the highest convictions were for blacks, followed by coloureds and then whites. Indian rapists hardly appeared in the Cape records. Interestingly, more white rapists are brought before the Cape courts prior to, and from, the second half of the *apartheid* era, perhaps because sexuality in general was being regulated. This must be read in terms of sporadic reports in the previous era, so it does not suggest any great proliferation of white rapists. The numbers of coloured rapists, according to the statistics and suggested by the surveys mentioned in Chapter 2, have continued to grow exponentially. Some categories of potential rapists were hidden under State legislation regulating sexuality implemented during *apartheid* but they are revealed in the post- *apartheid* era as more progressive State legislation has been implemented. There was also a considerable decline in the general population's interest in rape after the Black Peril era but this picked up considerably by the 1960s. This correlated with confrontation over *apartheid* laws and the forced removals in Cape Town. During this period, there was also a marked increase in the general state of crime in the Cape. Of particular importance is the gang menace as well as gang rapes. Alcohol and substance abuse as a mitigating factor also decreased over time. Juvenile rapists also increased over time. Race and class bias within the Cape records are truly inconclusive as judges tended to evaluate the evidence presented to them on a case by case basis. The fact that few death sentences were overturned by the Appellate suggests that the procedure was adequate. Individual cases presented thus far, would also support this claim.

Comparing theory to practice, the notion of “all men as rapists” tends to decrease exponentially over the segregation and *apartheid* era. So, too, does the pathological explanations of rape. However, psychiatric evaluations and explanations do tend to increase, along with progression in the discipline in South Africa. Masculinities in crisis tend to fluctuate according to political and economic trends but there is a general increase over time, especially in the post- *apartheid* era and in the concerted movement towards greater gender

equality. This is most visible in the Cape from the 1960s as gangs were competing not just against each other but also in the context of hardening oppressive State legislation.

While the previous chapters have reflected on how rape theories, scares, statistics, legislation and policing have framed the rapists in the Cape against the backdrop of South Africa and have provided some explanations for their actions, much can be said about black and white rapists. The under-researched coloured rapists also share many similarities in method and motivation with their counterparts. But is there something historically specific about the most prevalent and consistent rapist in the Cape – the coloured?

Chapter 6

The Cape Coloured Rapist, c. 1960-1980

Reference has already been made to the issue of coloured rapists in the extant literature. Rape in the Cape has since the 18th century been linked to class issues.¹ By the 1830s, few coloured men were charged with raping white women.² Between 1948 and 1994 in South African townships, most rapes were intra-racial.³ One rapist study conducted amongst coloureds in Johannesburg argued these men had a fundamental desire to control women's bodies, and reacted in forms of rape during economic exploitation, racial oppression, social violence or when they felt they were being emasculated.⁴ One study conducted in the Cape has even suggested that the battle against rape was more appropriately fought during *apartheid*.⁵ It also argued strongly that environment influenced the behaviour of rapists. Alcohol and drugs were considered mitigating circumstances in rape and helped these men overcome the emotional turmoil brought on by cases of poor living conditions, unsafe neighbourhoods, poverty and parental neglect. Arguably, this contributed to continued cycles of violence in coloured areas. A 2009 sample study also revealed that more coloured men admitted to having raped than other racial groups.⁶ Nevertheless, not all men, nor coloured men in this instance, who lived through similar conditions, raped.

Findings in this study confirm that the majority of reported cases of rapes and convictions in the Cape courts involved coloured men at the Cape between 1910 and 1975. Most were cases of intra-racial rape. Their motivations for rape, as well as explanations given for why they raped, are not strikingly different to those of other racially-defined types of rapists, yet the existing literature continues to do so because of the history of the country. Racial categorisation largely determined living spaces, and these require further probing to

¹ N. Penn, "Casper, Crebis and the Knegt: Rape, Homicide and Violence in the Eighteenth-Century Rural Western Cape," *South African Historical Journal*, 66(4), 2014, pp. 611-634.

² R. Watson, *Slave Emancipation and Racial Attitudes in Nineteenth-Century South Africa* (Cambridge: Cambridge University Press, 2012), p. 188.

³ M. Campbell, "Discourse Analysis of Rape in South African Townships (1948-1994): A Case Study for 'Policing the Penis'", MA, Dalhousie University, Nova Scotia, December 2000.

⁴ L. Vogelmann, *The Sexual Face of Violence: Rapists on Rape* (Johannesburg: Raven Press, 1990), p. 6.

⁵ J. Spoor, "South Africa: The State of Rape – A study of the social, economical, political and cultural factors influencing rape in Cape Town", unpublished MA (Social and Cultural Anthropology), Vrije Universiteit, Amsterdam, October 2004, p. 7.

⁶ R. Jewkes, Y. Sikweyiya, R. Morrell, K. Dunkle, "Understanding men's health and use of violence: interface of rape and HIV in South Africa", *MRC Policy Brief*, June 2009. pp. 1-2.

ascertain the role of environments in the possible nurturing of rape behaviour beyond personal testimonies of the rapists themselves. The role of State legislation as well as judicial processes and sentencing practices have already identified types of coloured rapists and have shown similarities between rapist motivations across the colour-divide. The role of these forces in shaping these rapists has also been discussed. Class concerns, rather than racial concerns have been very prevalent. However, the literature would suggest that coloured rapists proliferated because of environmental conditions in the Cape during the 1960s. Further investigation into the environmental influences particular to coloureds as well as to the community policing mechanisms used to regulate coloured rape, may further contribute to answering two of the questions posed at the outset of this study: why did they rape and how different are they?

Public Reactions to Rape in the Cape: Environmental Issues that Framed the Rapists, c. 1960 – c.1980?

Previous political dispensations have undoubtedly created a black/white dichotomy in which black men were in particular, policed by the State and the judiciary. “Lapsed white men” were scrutinised during segregation and all men were expected to conform to sexual norms during *apartheid*. Community intervention and policing was another mechanism expected to help men conform. But these too differed according to race.

The Black Peril rhetoric argued that black men removed from their traditional constraints were uncontrollable and more likely to act out in rape. Township settlements would sometimes include community *kgotlas* to accommodate this lack of “authority” in urban settings.

Under the Cape laws, traditional leaders could resolve civil cases between their subjects. Rape cases were supposed to be reported to the authorities. Conflicts in definitions

and differences in punishing rapists occurred. Nevertheless, black rapists were punished.⁷ By 1945, there is evidence to suggest that a community justice system was in place in a black township in Philippi, Cape Town.⁸ By the 1960s, “The People’s Court” was in full force in Johannesburg.⁹ By 1962, township justice systems were encouraged by sociologists Fanny Gross. She advocated for an alternative justice system to ensure that children did not turn to crime as adults. “Urban African life is characterised by disintegration. Having discarded the mores of his tribe and finding the cultural pattern around him impossible, the urban African youth often finds himself in a mental and cultural vacuum”. The new Western way of life, it was argued, was a “poor substitute for his traditional *modus vivendi* with its code of conduct, strong sense of unity, and close-knit communal relations. Community action and neighbourhood enterprise helped to build up bulwarks against deterioration and demoralisation of an area, thus preventing the spread of delinquency and crime”.¹⁰ By the 1980s, these courts actively tried cases of theft, robbery and rape, even in rural settings.¹¹ Both white and black rapists therefore had a supplementary system of policing rapists: one an informal *kgotla*, the other, their families and communities.

It is through the press reporting on rapes in the Cape that one better understands the environmental factors moulding coloured rapists in particular from the 1960s. In 1962, the Police Department had to issue a statement to dispel an impending moral panic amongst “European” women that a rapist was “on the loose” in the Cape Peninsula.¹² That aside, rape cases were prolific and even led to certain areas demanding that the Cape Town City Council should intervene. The Epping Garden Village, for example, petitioned the Council to clear a strip of overgrown bushes, “the Safety Belt”, to protect women and children from assaults.¹³ By 1964, in due course, the predicted moral panic of 1962 came to fruition. The Chief Magistrate of the Wynberg Court issued a press statement in which he expressed shock at the

⁷See for example, Author unknown, “Baralong Chief”, *Mafeking and Protectorate Guardian*, 24 April 1907; KAB CSC 1/2/1/141 Criminal Records 1st Western Court of the Cape of Good Hope Provincial Division of the Supreme Court of South Africa 1912 - Criminal Session held in De Aar 25 March, Case 5: Rex v. Brak.

⁸ KAB CSC 1/1/1/227 Cape Supreme Court Records, Case 50/ April 1946, Rex v. Samuel Bantwini.

⁹ Author unknown, “People’s court: Bold social experiment is answer to juvenile delinquency”, *Zonk*, 12(7), 1960, pp. 33-37.

¹⁰ F. Gross, “Preventing crime: Right environment for the child vital”, *The Cape Argus*, 15 August 1962.

¹¹ See for example the case studies of Kagiso and Sekhukhuneland in I. van Kessel, “Legitimacy and generational conflict in the UDF: the struggles behind the struggle”, *Transformations*, 46, 2001, pp. 37; I. van Kessel, “*Beyond our Wildest Dreams*”: *The United Democratic Front and the Transformation of South Africa* (USA: University Press of Virginia, 2000), p. 118.

¹² Author unknown, “Police say there is no link between assaults on women”, *Cape Argus*, 28 March 1962.

¹³ Author unknown, “Safety Belts to stop assaults at Epping”, *Cape Argus*, 23 October 1961.

number of rape cases presented before him. “In all my experience as a magistrate in various centres I have never encountered a roll like this in one day. It has certainly never happened at Wynberg before, and it may even be unparalleled in South African legal history”. This statement followed 28 rape cases presented to the court on 14 December 1964 for offences against women and children between October and November 1963 in the areas of Bonteheuwel, Athlone and Philippi alone.¹⁴ By 1964, women were warned by the authorities not to go out alone.¹⁵ Similar shock was expressed by Attorney-General Mr. W. M. Van den Berg in 1965 when he described the court roll for the June criminal sessions to be “shocking and unprecedented in the history of the Cape”.¹⁶ This followed a flippant comment by the police chief in the Western Cape, who described the rise in crime as “normal” when considering the increase in population size in the Western Province.¹⁷

Major H. S. Mathee, District Commandant at Woodstock, later issued a press release about the special measures taken to protect residents of Windemere, Factreton and Kensington but asserted that despite community reports of gang attacks they could not, as yet, find proof to corroborate the allegations. He dismissed their claims, adding “we have found that some of these rumours are just figments of people’s imaginations with no foundation on [sic] fact”.¹⁸ By 1966, in the aftermath of the general elections, and after another reported gang rape on a white woman, police admitted that the menace was getting worse.¹⁹ However, on 28 March 1966, police said that they were in control of the sex maniacs of the Cape and that most of the offenders had been punished by the courts. They also said that the statistics had not increased in the first three months of the year. It must be added that this was in response to the panic in Johannesburg about a sex maniac on the loose, terrorising women in the city. Of the cases in the Cape, the police reported that the majority of people involved in sex crimes were coloured with only six white women having been assaulted.²⁰

¹⁴ Author unknown, “Criminal Assault cases in one court”, *Cape Argus*, 14 December 1964.

¹⁵ Author unknown, “Women told not to go out alone at night: police warning on risks of attacks”, *Cape Argus*, 27 January 1964.

¹⁶ Author unknown, “Court roll shocking and unprecedented”, *The Cape Argus*, 29 May 1965.

¹⁷ Author unknown, “No crime wave in WP says Police Chief”, *The Cape Argus*, 20 May 1965.

¹⁸ Author unknown, “Special watch by police on non-White trouble area”, *Cape Argus*, 16 September 1965.

¹⁹ Author unknown, “Spate of crime and violence hits Peninsula”, *Cape Argus*, 1 April 1966.

²⁰ Author unknown, “Police say no sex maniacs in Cape Town”, *Cape Argus*, 28 March 1966.

Murder and rape occupied the majority of cases in the Criminal Session on 30 April 1965. Attorney General, W. Van den Berg, described it as a shocking roll in which 15 men were charged for murder and 10 for rape.²¹ By 1969, women and children in Rylands were being attacked even during the day.²² However, official statistics released by the Attorney-General in 1969, showed a decrease in the number of crimes such as robbery, murder and rape but an increase in the numbers of petty crimes.²³ Reference should be made to the findings of Mrs Grasser, a criminologist who, despite some resistance from top police officials, determined in 1968 that the Cape Peninsula had the highest crime rate in the country and that the most prevalent serious crimes were for immoral and indecent crimes.²⁴ By 1970, readers of the *Cape Argus* had confirmation by Mr. Justice Steyn, chairman of the National Institute for Crime Prevention and Rehabilitation, that the ratio of white to coloured crime was 1:5 and that this was indeed reflective of the grave conditions of the urban slums, where overcrowding, high birth-rates (indicative of the active sex lives of coloureds coupled with poor birth control), low income, drunkenness, violence, and the absence of basic amenities such as schooling, street lighting, and transport were factors that brought about drunkenness, violence, and crime. The crimes of the Cape were linked to global trends. He added, “There were no grounds, on the basis of scientific thinking, for the assertion that this section of the community *in the Western Cape* was more inclined to lawlessness than any other section of the population” (my own emphasis added to reiterate that this was specific to Cape coloureds, the majority of rapists in the region). He contended that the socio-economic disparity between whites and coloureds had brought about the crisis.²⁵ Fears were also visible in coloured townships in Johannesburg after a wave of rapes perpetrated by gangsters in 1972.²⁶ By 1974, the number of rapes, murder and culpable homicides in the Cape had increased compared to the previous year.²⁷

Newspapers did not simply give impetus to growing social fears. They also provided a voice for those living in stricken areas. Many contributors were coloured people who probably had nothing more to gain than improved conditions in their suburbs. It was also a

²¹ Author unknown, “Murder and rape sessions theme”, *Cape Argus*, 12 April 1965.

²² Author unknown, “Action call on skolly menace”, *Cape Times*, 17 September 1969.

²³ Author unknown, “Serious crime showed drop in West Cape”, *Cape Argus*, 9 January 1969.

²⁴ Author unknown, “Crime rate is highest in Peninsula”, *Cape Argus*, 10 August 1968.

²⁵ Author unknown, “Ratio of White to Coloured crime is 1:5”, *Cape Argus*, 25 November 1970.

²⁶ Author unknown, “Torture, rape in terror wave”, *The Herald*, 4 November 1972.

²⁷ Author unknown, “Murders, Rapes increases in Peninsula”, *Cape Argus*, 16 April 1975.

space in which they could vent their frustration of having been forcibly removed from certain areas in Cape Town.

The resentment and lack of adequate policing facilities made visible by an Athlone resident: “We have been forced to move from better areas and have no objection to living with respectable people, but when we have to move to an area which is still largely underdeveloped, badly lit and infested with hooligans, it does not present a pretty picture. We are quite satisfied to accept separate development if that is the law of the country (we cannot do anything about it), but then, give us the necessary amenities to make life tolerable; above all, give the area a police station”.²⁸ Sociologist Dr. Oscar Wollheim also argued that the crimes were a repercussion of relocating people to new environments. He placed the blame for social degradation squarely on the Group Areas Act. “I warned of this in a leader page article in the Argus on 30 Sep 1959 when the Tramway Road Community was moved out of Sea Point [...] The uprooting of a whole community and its dispersal is an act of social murder. A living growing organism is to be torn from its natural habitat and the component parts distributed in a completely foreign environment”.²⁹

By the 1960s, much more social activism against crime was visible. Police and social workers in 1964 commented that the increase in violence at the Cape was firmly located amongst coloureds and was due to a combination of idleness and alcohol, poverty, poor housing, broken family units, poor education, and a lack of ambition.³⁰ In the midst of public outcry for the authorities to intervene, Col A. J. van Zyl, a Criminal Investigation Officer, argued that the problems were social rather than judicial in nature. One sociology scholar stated that the overcrowding in coloured areas such as District Six meant that many inhabitants spent most of their time on the streets and embarked on criminal activity. Sociologists, psychologists and social workers all blamed poverty, insecurity, liquor and

²⁸ Justice, “‘We were forced to move’: Skollies reign in poorly policed areas”, *The Cape Argus*, 21 November 1963.

²⁹ O. Wollheim, “Bonteheuvel violence should not surprise anyone”, *The Cape Argus*, 9 June 1965.

³⁰ Author unknown, “Knifings said to stem from poverty, bad housing”, *Cape Argus*, 6 August 1964.

access to weapons³¹ as the leading factors which led to the increase in delinquency from an early age amongst people in coloured townships when they presented their findings in 1965.³²

One anonymous social worker explained that the growing social disease needed careful consideration of the causes rather than attacking the symptoms. She added that even hanging all criminals would not solve the growing menace. Poverty was cited as the key issue and situations where both parents had to work, leaving children to their own devices. “The delinquents of yesterday”, she said, “are the murderers and rapists of today”. Accepting responsibility for producing children was seen in a letter signed by Mrs. C. Jane from Cape Town, in which she appealed to all mothers to ensure that they instilled in their sons the ability to decide right from wrong. She argued that the religious and spiritual upbringing of children was left in the hands of the mother.³³

On 6 August 1964, the increase in dagga and drink abuse led one contributor to write that the attacks reported in the media were not isolated incidents. “They happen night after night, week after week in coloured areas of the Peninsula. Elsie’s River, Matroosfontein, Lavistown, Athlone, Bonteheuwel or Retreat, the story is the same: drink and dagga, rape and robbery, knife and knuckle-duster”. “Our Coloured areas are turned into a little hell on Friday nights”. In a letter to the *Argus*, Mr. Morkel also wrote: “Murder, assaults and robbery are becoming the order of the day”. “As a minister of religion who has been working on the Cape Flats for 20 years, I am desperate when I appeal to the authorities: Please help us protect those who cannot protect themselves”. One resident who wanted to remain anonymous said that there were “groups of young people in every coloured area. They hang about in the streets waiting to molest somebody. It is not only the women who are frightened of them. Men who interfere with them know that they will be attacked”.³⁴

³¹ Knives were considered the preferred weapon of the Cape criminal. So much so that a protracted debate amongst contributors occurs in the *Cape Argus* about the punishment for those found with knives or those who use knives in criminal acts. See “The Knife and the penalty”, “Hang them”, “Skolly crimes”, *Cape Argus*, 20 April 1967.

³² Author unknown, “Coloured lawlessness: Delinquency begins early in life”, *Cape Argus*, 11 February 1965.

³³ Letter to the editor, “Others can do more”, *Cape Argus*, 8 January 1968.

³⁴ Rev I. D. Morkel, “Terror in Friday nights of dagga and drink: Concern in coloured areas”, *The Cape Argus*, 6 August 1964.

On the 22nd, Rodwell Lakey from Crawford endorsed the observations of Rev. Morkel and appealed to the State to intervene. “Sir, I can only endorse what has been written by the Rev I. D. Morkel and other correspondents in recent letters to the Argus on the subject of *skolly* violence and their reign of terror. I say that a state of emergency exists. Could not the army be called to assist the police in protecting the innocent, law-abiding citizens of the Coloured areas?”³⁵ Clearly, those affected by the violence were willing to allow oppressive security forces to enter their suburbs, even at a time when the forces were actively removing coloureds from “white zones”. The Government was also urged to pay less attention to the “barbarism of Africans living amongst us” in the light of the “Coloured hooligans. In Elsie’s River a gang of 20 go about terrorising people”.³⁶ These public outcries continue into 1965. A letter to the editor from a coloured man in Facreton not only outlined the situation in the area but also pointed to an absence of police intervention. “Sir, Facreton Estate seems to have been taken over by skollies who are out to rob, murder and rape [...] We residents need more protection; we do not mean that police must pick up decent people, which is becoming the practice [...] I say hang any skolly who rapes or stabs [...] As a coloured man I have much admiration for Mr. Vorster, who has rid us of the Communists. I now appeal to him to rid us of the scum called skollies”.³⁷

While some frustrated citizens were willing to ask for State intervention, others warned of an impending vigilantism. “I have before me a letter written to the Argus many years ago warning the authorities that unless better protection and law and order can be assured to the coloured community, we shall be forced to carry some kind of weapon in self-defence [...] I have personally gone to the assistance of a number of girls who have been criminally assaulted. When, a few years ago, some ducktails got out of hand in the Sea Point area, meetings were called and the matter raised in Parliament for drastic steps to be taken. If violence and lawlessness are left unchecked in any area, they will spread farther and farther”.³⁸ In a letter to the editor, a resident of the black township of Gugulethu also warned, “It was said the White man’s justice requires too many formalities and takes too long. We

³⁵ R. Lakey, “It’s a task for the army”, *The Cape Argus*, 22 August 1964.

³⁶ S. U from Matroosfontein, “Skollies are more of a menace”, *The Cape Argus*, 1 December 1962.

³⁷ Resident, “S.O.S from Facreton Estate: Mr. Vorster, Please rid us of the skollies”, 30 November 1965.

³⁸ Rev. I. D. Morkel, “Terror reigns in the Peninsula’s coloured areas: It’s time to get tough with skollies”, *The Cape Argus*, 3 August 1964.

decided we would make it ‘murder for murder; an eye for an eye’.³⁹ By 1970, reports appeared that volunteers were patrolling the streets, either in collaboration with police or on their own, in an attempt to make coloured areas safer.⁴⁰

Attacks were not restricted to coloured areas. A letter to the editor from a woman attacked in the black township of Langa drew attention to the dangers faced by “lone, respectable women visiting relatives in the location”. Two men had attacked her and attempted to rape her near the bus terminus. She appealed to all location-dwellers to cease tolerating the *tsotsis* and to make the area safe for respectable black people.⁴¹

Conditions in coloured areas seemed to get progressively worse and the authorities remained detached. Colonel A. J. van Zyl, Criminal Investigation Officer, preferred to warn women living in non-white areas to refrain from going out unaccompanied.⁴² Colonel J. J. Rheeder, District Commandant at Athlone, simply reinforced racial stereotypes: “When the Bantu and the Coloured man are under the influence of liquor they do not think twice before pulling out the knife”.⁴³ In an attempt to broaden public sympathy and intervention, F. H. Purdy stated that “Many people think that this is not bad, as it usually happens between Coloured and Coloured. I wish to warn people who think like this that the person that uses a knife to settle a dispute does not take colour into consideration. Many Whites are being subjected to abuse by certain Coloured men who, when taken to task, slip their hands into their back pockets in silent intimidation”.⁴⁴

By 1969, women were also being blamed for the assaults. Rev. Morkel made a statement that mini-skirts were linked to vice, the increase in consumer desire amongst young girls and the proliferation of prostitution and sexual vice in the Cape.⁴⁵ “Naked Truth”, a

³⁹ Resident of Gugulethu, “Peninsula stabbing season: Your white man’s law moves too slowly”, *The Cape Argus*, 12 December 1963.

⁴⁰ Author unknown, “Volunteers in war on crime”, *Cape Argus*, 26 November 1970.

⁴¹ Worried from Camps Bay, “It’s risky to visit Langa”, *The Cape Argus*, 31 December 1963.

⁴² Author unknown, “Women told not to go out alone at night: Police warning on risks of attacks”, *The Cape Argus*, 27 January 1964.

⁴³ Author unknown, “Liquor law blamed for knifings”, *The Cape Argus*, 4 November 1963.

⁴⁴ F. H. Purdy, “Skollies and their knives”, *The Cape Argus*, 19 December 1963.

⁴⁵ Author unknown, “Alarm over increase in vice”, *Cape Argus*, 9 August 1969.

resident of Sea Point, blamed the clothing of women for the increase in sexual assaults. The author was commenting on a young girl wearing hipsters and a minute bodice walking on the beach in Sea Point. “Had she heard, as I did, some of the remarks made about her by several non-European loafers, she would have dived into the nearest shop or hotel and asked for police protection [...] are some parents really protecting their daughters by encouraging them to flaunt their near-nudity in public thoroughfares?”⁴⁶

By 1983, Patricia Schonstein and Mana Slabbert, criminologists at the Institute of Criminology at the University of Cape Town, continued to argue that understanding the causes, prevalence, effects and manifestations of rape implied analysis of the socio-political contexts in which they occurred. Of particular concern was the role of the press in enforcing dominant political ideology as well as their interpretation of moral issues and social problems.⁴⁷

Their analysis of newspaper reports on rape was initiated by concerns over periodic “calls for action”. This, they suggested, was not primarily launched out of concern for the crime but in an attempt to restore credibility in the status quo when in a crisis of hegemony because they had failed to alleviate the social problems, the main cause of the crime. This was in the context of another moral panic amongst the public between 1979 and 1981. They argued that the way rape was being portrayed, highlighted and dramatised by the press, meant that the judiciary, the politicians and the public, confused the actual issues and obscured the facts. The impression created was that there was a dramatic increase in reported rapes in this period. However, they pointed out that a concerted decision was taken by the Attorney-General, Mr. Neil Rossouw, to deliberately group the number of rape cases of the Cape Supreme Court to draw attention to the problem. This led to a sizeable, yet manipulated, increase of 895 cases between 1979/1980 and 1980/1981. Parliamentarians voiced the fact that this increase was visible across the colour line and appeared to be “a new form of terrorism”. The public called for the castration of rapists or the bringing back of the “good old time hanging judges”. Clearly, rape statistical manipulation would pose a problem for

⁴⁶ Letter to the editor, “The Clothes they don’t wear: Girls like these provoke sex assaults”, *Cape Argus*, 5 October 1963.

⁴⁷ P. Schonstein & M. Slabbert, *Rape: Criminology Source Book* (Cape Town: Institute of Criminology (UCT), 1983).

adequate analysis of rape trends. It also indicates how the judiciary, too, was attempting to draw State attention to the prevalence of rape. Since the Black Peril scares at the turn of the 20th century, the State, through commissions of enquiry, attempted to alleviate an unfounded fear of rape amongst the white communities. The judiciary, the public and the press was now attempting to persuade the State that there was a real problem of rape in the Cape, outside of the Black Peril or *apartheid* rhetoric.

The authors also called for a better understanding of rapist motivations in order to address their behaviour. Through surveys, they concluded that some rapists displayed psychopathological tendencies, but the main reason behind rape was anger and frustration, and the need to demonstrate power. In particular, there was deep-seated hatred and anger amongst black males against discrimination by white and black women. They were frustrated at women because of some insecurity or inability to relate to them. There was also a strong tradition of coercive sexuality where men saw themselves as the dominant sex and considered women as mere objects. Other explanations suggested that they were acting out in rape as a defence mechanism against strong homosexual tendencies. Rape was also considered a manifestation of being in isolated places, such as in institutions. This, it was suggested, explained rape amongst men and boys. It was also suggested that “victim precipitation may play a role”.

It was then concluded that if the motive for rape was one of anger and frustration, and if these issues were addressed, then incarceration of rapists would do little to solve the potential for more sexual attacks. Naturally, changes in the conditions of men were posed as long-term solutions, including the socio-political environment. In the short-term, the authors suggested easier mechanisms for the reporting of rape, including changes to the existing reporting systems that humiliated the victim, such as having to provide details to male officers, normally in public spaces within the police station. Naturally, the cross-examination of rape victims was heavily criticised as contributing to the “second trauma”. Better support systems were not only suggested for victims of rape but programmes for rapists were strongly recommended. These programmes, they suggested, would change the offender’s behaviour and his attitude towards women. Despite these recommendations clearly deflecting any blame

away from the victims, women and girls were still warned to be cautious about walking on their own.

Rapists in the Cape between the 1960s and the 1980s, the majority of whom were coloured, were therefore explained in terms of both nature and nurture debates. Re-emergence of the instinctual desires of men and the precipitation of rape by women as well as the psychopathological reasons for rape emerge in the 1983 study. Between 1960 and 1980, however, most explanations are environmental (poor housing, overcrowding, poor facilities), socio-economic, due to poor education and poor parenting, idleness and the usual suspects of alcohol and drug abuse. There are strong suggestions that these were related to the conditions imposed by the *apartheid* State during forced removals in the Cape which had led to a similar familial disintegration used to explain black migrant workers raping in urban centres at the turn of the century. While there can be no denying that the political shifts had certainly contributed to contexts in which criminals, and rapists, could be shaped, all of these conditions were also prevalent during the segregation era. In fact, they were critically evaluated in the 1937 *Commission of Inquiry Regarding the Cape Coloured Population of the Union*. These findings correlate with the testimony given in the court proceedings throughout the period under investigation.

During the First National Coloured-European Conference held in 1933, the “tot” system in place on farms was debated and firmly condemned and argued to be “one of the most fertile causes of degeneration and degradation of the Coloured people”.⁴⁸ There were also pleas “urging the Coloured people to combine for the uplift of their race, by the development of moral qualities such as thrift, sobriety, honesty in word and work, etc”.⁴⁹ Rev P. Theunissen of Caledon pointed out the evils of drink, tuberculosis and immorality. He concluded that the “tot” system was responsible for the spread of disease in the Western Cape.⁵⁰ In response to this, Mr. C. Bailey of ‘French Hoek’ (modern day Franschhoek) suggested that these “evils” could be fought in the homes and that teachers and ministers could play a great role. In keeping with the social ills, some concerns were raised over the

⁴⁸ Africana E NAT, First National Coloured-European Conference: report of Proceedings, 26-28 June 1933, Cape Town, p. 18.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*, p. 19.

high birth rates within coloured communities and there was some discussion over birth control for women. Mr. J. A. de Jager of Wynberg pointed out that housing and economic conditions also contributed to moral degradation and those that should also be attended to urgently.

Economically, statistics between 1959 and 1980, suggested that the personal income of coloureds would be increasing from 5,5% to 8,2%, the most rapid increase amongst the three racial groups. 84,2% of that spending occurred in the Cape Province. However, 39,6% of that income was spent on food and this was described as being a good marker and indication of the relative poverty amongst coloureds, especially in non-metropolitan areas. 19,2 % of coloured households were living under the minimum living level in July 1975. 38,3% of the coloured population had an income below the supplemented living level. This figure was higher amongst rural coloureds.⁵¹ Only 25% of the buying occurred in coloured and Indian enterprises, thus limiting successful entrepreneurship from within and thus no sizeable capitalist class could emerge from their ranks. “The development of Coloured entrepreneurs is not merely an aim in itself, but is also important for the development of community leaders in the Coloured community”.⁵² This was attributed to the size of family and standard of education. It could also be attributed to another phenomenon. Interestingly, more money was spent on clothing than housing, and 2,3% of income in 1974/75 was spent on liquor and tobacco.⁵³ This gives some indication that while there were issues of relative poverty, questions could arise as to the priorities within this racial group. Overall, the statistics revealed that there was a continued economic problem which could only exacerbate the criminal activity at the Cape. Equally, it should be pointed out that economic power or status was not synonymous with social status or class in the conventional sense. Rather, the deportment of victims and rapists determined their social standing in the courts.

That said, in 1962, the Coloured Development Corporation (CDC) was established by the Minister of Coloured Affairs after appeals were made by members of the coloured community themselves as well as from the Council for Coloured Affairs. The aim was to

⁵¹ RP 38/1976, *Report of the Commission of Inquiry into Matters Relating to the Coloured Population Group*, p. 60.

⁵² *Ibid.*, p. 76.

⁵³ *Ibid.*, pp. 42-43.

assist coloureds to develop towards full participation in commerce and because of “an earnest desire on the part of the Government to encourage and promote the advancement of the Coloured population”.⁵⁴ Three problems were identified. A shortage of capital for coloured entrepreneurs, a shortage of trained and experienced entrepreneurs and a shortage of business facilities to be used by coloured entrepreneurs and to meet the needs of the inhabitants of coloured areas.⁵⁵ Initially run by whites, two coloured representatives eventually joined the Board. Capital was provided by Central Government, the Department of Coloured, Rehoboth and Nama Relations and by the Treasury. By 1970, it was estimated that 12 000 to 15 000 coloured entrepreneurs existed compared to 158 000 white employers. They were mainly active in construction, commerce and service activities, many of which were one-man businesses, thus not creating further employment for other coloureds. The CDC experienced some initial problems in establishing coloured businesses although by 1974, had made limited contributions to coloured entrepreneurship and in providing services to the community. Coloured entrepreneurship was considered particularly lucrative in the building industry, especially in the Western Cape Province where the majority of artisans were coloured. Many independent contractors were also visible. Some signs of progress were also visible in the rock lobster industry and the diamond mines in rural coloured areas.⁵⁶

While these developments may have represented mitigating circumstances which might have framed the material circumstances of some of the coloured rapists, they are by no means the only ones that can be considered in the 1960s context.

Intra-racial Class Distinctions?

There was one particular case of rape in 1961 which could be seen as illuminating. In the *State v. Saul Jeftha*,⁵⁷ a coloured male, he was sentenced to two years and six strokes with the cane for raping Maureen Schultz, a coloured woman aged 24, on 8 April 1961. After

⁵⁴ RP 38/1976, *Report of the Commission of Inquiry into Matters Relating to the Coloured Population Group*, p. 69.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*, pp. 76-77.

⁵⁷ KAB 1/CT 6/469 Cape Town Magistrates' Court Proceedings 1961, Vol II, Case 348/1961, *State v. Jeftha*.

visiting a friend in Woodstock, she tried to catch the last bus back to her home in Athlone at about 11pm. Three coloured men brandishing a knife approached her and dragged from the road to a nearby lane. Only the accused addressed her. In a secluded spot, the complainant said that one attacker held her arms, the other her legs whilst the third raped her. Each of the three rapists, according to her testimony, “took quite a while to finish with her” and later repeated the act. After the initial attack, they dragged her along the road, ignoring her plea of being a married woman with children. Even her plea to their humanity for the sake of her unborn child was met with “*Julle Verwoerd se mense maker dit*”. She was neither married, nor had children nor was she pregnant but she hoped it would make a difference if she was perceived to be a “respectable Coloured woman” by her attackers.

Stripping her naked, the men raped her a second time. The victim bit the private parts of one of her attackers. It was considered normal for her to resist the attack as none of the suspects reacted to her assault. Ironically, despite the brutal attack a battle ensued between Jeftha and the second attacker who attempted to steal her watch. Somehow, rape was justifiable for Jeftha, while theft was considered an offence. He was certainly conscious of his actions. One could speculate that he was pre-empting a possible multiple conviction if caught, as compound cases received harsher sentences, or it could have reflected the manner in which he considered sexual violation of a woman as lower down the scale of moral offences in comparison to theft.

Maureen was eventually allowed to get dressed and after two of the rapists left the scene, Jeftha decided to “have another round”. The ordeal lasted for six hours and she had been raped between nine and eleven times by the three different rapists. Exhausted, she stumbled upon a man in a cart, and explained that she had been “outraged”. She was taken to the police station and then for a medical examination.

The defendant was the only one accused of the crime and pleaded not guilty. His defence argued that the sentence was “excessive” and an appeal was lodged on 25 October 1961. It was denied because the sentence was deemed lenient for this type of rape. Despite the negligible punishment for the attack, the rapes were not the only violations suffered by

Maureen. The system itself also proved ineffectual in securing a more severe conviction for several reasons. Firstly, her petticoat, the only piece of evidence that could be used in court as her “panties” were discarded by her assailants, was sent for examination but later mislaid between the Preparatory Examination and the rape trial. Secondly, the District Surgeon, Marcus Getz, who examined Maureen on the morning of the 9 April, testified that he did not examine her with any instruments but with his fingers. Not only was this a cursory examination but probably traumatic after an already harrowing experience. His report coldly remarked that “two fingers easily entered the victim’s vagina”, that her mental state was “normal” and that “her injuries were consistent” with the charges brought against Jeftha.

Throughout the testimony, the usual questions as outlined in previous chapters were asked. The prosecution had to ascertain whether full intercourse had occurred in order to prove the crime of rape rather than assault. Unable to confirm that she felt “anything inside her”, it was assumed that the rupture to the vagina was caused by a penis. However, the defence aimed to discredit Maureen by using the usual *modus operandi* representative of the social taboos that discredited women at the time. Did she go to parties or hotels? Why did she not fight back more? Why was she out so late? Was she sure it was the defendant who had removed her panty and, therefore, instigated the rape? Not perturbed by these aggressive questions, Maureen responded with confidence and conviction. She even mustered the energy to tell the court, “I think that is my business”. Unavoidably, she was required to respond. It was, of course, argued that she had consented to sexual intercourse because she was deemed to be not a virgin and therefore of questionable morals and because she could not say whether she felt a penis enter her. The case then had to divert to her non-medical virgin status rather than the crime of rape. It was explained by the prosecution that she had suffered a bicycle accident when she was 18 but Maureen pointed out that the absence of her hymen did not mean she was no longer a virgin. In all, Maureen’s work status, salary and demeanour in the court room and her ability to face her adversaries – her rapist as well as the legal and medical profession – led to a conviction even if the sentence did not fit the severity of the crime.

There are two important points of departure in this case, one social, the other political: Firstly, Schultz needed to show the court that she was a “respectable” woman. This would ensure a conviction and further suggests how important class distinctions were in cases of

rape brought before the Courts. Secondly, Jeftha made reference to “your Verwoerd”. Schultz was considered a “better class of coloured” and this would have set her apart from her attacker. Jeftha either mistook her for a white woman or he believed that she was the type of coloured woman who would have had a vastly different political leaning compared to him.

In 1943, the formation of the Coloured Advisory Council (CAC) by the Smuts Government led to dissension amongst the coloureds. Some coloured leaders later admitted their error but this had left a lasting effect amongst the coloured communities. “During these years, whilst all of these Acts have been passed by Parliament, the Coloured people do not seem to have had an effective way of meeting the attack on their rights. Perhaps it was because of internal division”.⁵⁸ Younger anti-CAC men against the conservative and moderate Board launched personal attacks against the men on the Council rather than on their policies. The battles unfolded in education, sports and even the church. These men were highly respected in their communities and so no clear group of people rejected the personal attacks. However, by 1948, the Board was already ready to resign and when it was prohibited from discussing politics by the National party, they did resign in 1949. While the broader structure dissolved, the communal tensions and cleavages continued to proliferate. The National Party thus faced a divided coloured community. As new laws were promulgated, sporadic and ineffective protest saw new laws being passed, further disenfranchising coloureds. There existed a crisis in leadership, within the community and no clear idea on how to move forward.⁵⁹

It was with the idea of drafting a new representative constitution that the “Coloured Convention” came to fruition. They would respond to the proposed policies of the Prime Minister, to create cohesion amongst coloureds before claiming the respect of the other groups but most importantly, this was in effect, also going to bring coloured voices closer together. “To unify the main currents of thinking and put an end to the many small groups

⁵⁸ Africana E Pam 35 WHY The Planning Committee of the South African Coloured National Convention, Why a “Coloured” National Convention, p. 9.

⁵⁹ *Ibid.*, p. 10.

which from time to time claim to speak for the Coloured people without ever giving the people an opportunity publicly to accept or refute these ideas”.⁶⁰

Prime Minister Dr H. Verwoerd addressed the Council for Coloured Affairs in Cape Town on 12 December 1961 where he announced a five-year plan to provide self-government for the coloured people.⁶¹ It was suggested that coloureds could be in control of their own “Parliament” and “Cabinet” within 10 years. “The fuller the co-operation, the quicker would the change-over take place”, said Dr. Verwoerd. The Minister of Coloured Affairs, Mr. P. W. Botha introduced the Prime Minister to the Council. It was meant to be a momentous historical moment.

By 1962, it was conceded that “as a result of the historical development in South Africa, there was a relationship of subordination of the Coloured in comparison with the White”.⁶² It was suggested that previous political representation of the Coloureds had meant very little, had brought no prosperity and had increased “the planes of friction”. “The Whites saw the Coloureds as a threat and looked down with contempt on these “electoral cattle”, who were canvassed only once every five years to obtain their votes”. In justifying “Rights next to each other”, rather than “one man one vote”, it was suggested that “The Coloured must ask whether he would progress quickly in a mixed society where competition was equal on every plane, without protection or would a few rise and the largest portion of the people remain behind?”.⁶³

Mr. Babs Essop, Labour Party Coloured Representative Council member for Strandfontein, declared that the Cape Peninsula had become the most violent area in the country by 1975, and the coloured community was the most violent community in the Peninsula; he questioned placing all the blame on the political situation, especially *apartheid*. While his collaborating political affiliation certainly called into question the motivation

⁶⁰ Africana E Pam 35 WHY The Planning Committee of the South African Coloured National Convention, Why a “Coloured” National Convention, p. 11.

⁶¹ Africana E Pam 6 FUT, A Future for the Coloured People, Fact Paper No. 101, March 1962. This is a fact paper supplement to the Digest of South African Affairs. Printed in RSA.

⁶² Africana E Pam 6 FUT, A Future for the Coloured People, Fact Paper No. 101, March 1962, p. 4.

⁶³ *Ibid.*, p. 6.

behind this statement, his remarks are worth some consideration given the gradual distinctions between coloureds made by their political elites. He attributed much of the blame upon the middle-class coloureds “because as soon as they reach a certain social and economic or educational standard, they tend to regard themselves as a separate community”. He asserted that it was not solely the fault of the political system but was rather an internal problem. “They do not involve themselves in the social problems of their community and have turned their residential areas into middle-class group areas where they practise an Apartheid of their own based on education, skin colour, economic condition and hair texture”. He found it particularly scandalous that most welfare organisations were run by white people who showed more empathy for the less fortunate than the “so-called ‘better-class’ coloureds”.⁶⁴

There is much scholarly debate about coloured political involvement and class. Contemporary theorists on coloured identity argue that the thrust of coloured ‘being’ was a product not of any biological mixture, but rather the result of the politics of the 20th century.⁶⁵ This entailed not only *apartheid* category-making but also vigorous identity building on the part of coloured political actors. Self-definitions and the role of the individual in identity formation are by no means neglected.⁶⁶ One of the key historians on coloured identity, Mohamed Adhikari, suggests that there were four enduring characteristics that regulated ‘colouredness’ as a social identity under white domination, arguing that it remained remarkably stable between 1910 and 1994 and reinforced the idea of being coloured.

Firstly, an assimilationist tendency, with the goal of acceptance into the dominant society – there was entrenched a superiority of the white culture which seeped into that of the coloured communities. Assimilating meant being a full citizen based on core white values and on individual merit, core principles of 19th century Cape liberalism. This called for an

⁶⁴ H. Lawrence, “[Title is illegible]”, *The Cape Argus*, 17 April 1975.

⁶⁵ For a detailed account of the history of coloured people, see for example R. van der Ross, *The Rise and Decline of Apartheid: A study of Political Movements Among the Coloured People of South Africa, 1880-1985* (Cape Town: Tafelberg, 1986); G. Lewis, *Between the Wire and the Wall: A History of South African ‘Coloured’ Politics* (Cape Town: David Philip, 1987); I. Goldin, *Making Race: The Politics and Economics of Coloured Identity in South Africa* (Cape Town: Maskew Miller Longman, 1987).

⁶⁶ See for example Z. Erasmus, *Coloured by History* (Cape Town: Kwela Books, 2001), p. 13.

alignment of culture and civilisation with the hegemonic group and was most predominant amongst the petty bourgeoisie and the coloured political leadership.

Secondly, the intermediate status of coloureds in the racial hierarchy, which raised fears that they might "lose their position of relative privilege and be relegated to the status of Africans" after failing to reach full assimilationist status. It was here that common cultural links such as the shared Afrikaans language provided an opportunity to bend towards the white hegemony rather than to any outright resistance to the political status quo. Belief in some semblance of civilisation rather than the portrayal of the "barbaric" and "lascivious kaffir" meant that they could enjoy the official position of being better than the "hot-blooded native" and could share in some relative economic and political protection.

Thirdly, the shame associated with "mixed" origins, being neither white nor "African" meant limited economic and political influence. As the "leftovers", a category that included all those who did not fit into other definable racial categories, it meant that there was some resistance by some coloureds to being labelled as such. After all, they did not all share the derogatory characteristics applied to this group such as being immoral, sexually promiscuous, illegitimate half-castes, impure, untrustworthy, having a high propensity for criminal behaviour, gangsterism, dependence on drugs and alcohol, and generally vulgarity. Those who were lighter skinned could celebrate their white descent rather than any African heritage in the hope of some social betterment.

Lastly, there was a general sense of political marginalisation, "which caused them a great deal of frustration" as it limited social and political action. J. S. Marais in the 1930s had already suggested that coloureds were a reminder of the lapses in morality in the past by whites and as such, their existence served as a constant reminder of the great periods of miscegenation. Generally, the features accepted as coloured were accorded low status and this made positive traits to enhance a sense of pride limited. There was no proactive

embracing of ethnicity but rather a reaction to white and upper class coloured racism and domination. This, Adhikari argues, mobilised coloureds.⁶⁷

Within the coloured groups, class distinctions and differentiations closely aligned to political and social betterment also contributed to a relaxed surveillance of sexual violence from within the various communities. One early example of the distinctive class differentiations from within these communities was that of The Teachers' League of South Africa.⁶⁸ The coloured elite, as conceived by Adhikari above, distinguished between several classes of coloured people in a bid to dismantle a simple racially-based hierarchy suggesting, using Richard Sklar's term,⁶⁹ a fusion of elites in which civilised coloureds and whites could share power over the uncivilised and uneducated lower classes whilst providing role models for those in between. Dan Samson, in his presidential address to the league in 1916 distinguished between the "sunken class", considered "an accumulation of filth, vice, dissipation and crime [...] past social redemption", the "sinking class" that was neither openly vicious nor the hardened criminal but one that was indifferent to its own advancement and with its faculties susceptible to corruption, and the "uprising class" that was concerned about "their advancement in life, zealously watch[ing] over the moral and intellectual training of their offspring". His comments were but an extreme form of class bias but show some consistency in thinking amongst the elite over time when, in 1923, the newly elected president, Philip Scholtz, had to warn the profession with a thought-provoking statement: "We blame the European for making distinctions; and we do the same, in some cases with more severity".⁷⁰

Both the details of this case as well as the acclamation mentioned above by Dan Samson in 1916 about three specific classes of coloureds - the worst being past redemption - suggests a deep cleavage between coloureds in which some groups were seen as being so

⁶⁷ M. Adhikari, "Hope, Fear, Shame, Frustration: Continuity and Change in the Expression of Coloured Identity in White Supremacist South Africa, 1910-1994", *Journal of Southern African Studies* 32 (3), 2006, pp. 467-487.

⁶⁸ Established in Cape Town in 1913 in opposition to the School Board Act of 1905 in which the Cape Government legislated segregation of education.

⁶⁹ R. L. Sklar, "The Nature of Class Domination in Africa", *The Journal of Modern African Studies*, 17 (4), 1979, pp. 537-538, 550.

⁷⁰ M. Adhikari, "A Drink-sodden race of bestial degenerates: perceptions of race and class in the *Educational Journal*, 1915-1940", *Studies in the History of Cape Town*, 7, 1994, pp. 109-129.

beyond redemption that little could be done for them. This implied that little could also be done for their offspring and by extension, that they were destined to continue leading a life of “an accumulation of filth, vice, dissipation and crime [...] past social redemption”. Membership to this group, it could be argued, would therefore be passed on to future generations because even those who should have been more concerned for their well-being had simply given up. They were thus destined for a life of vice and crime, and little could be done to save them.

The 1937 *Commission* clearly concluded that a considerable section of the Cape coloured population were a socially submerged population because of both hereditary and environmental factors.⁷¹ The better classes provided both a stable home environment for their children and encouraged them to obtain the best education possible. Mothers were considered pivotal, but it was suggested, in the usual racial discourse of the time, that only those in close contact with white households managed this effectively. Extreme poverty, poor housing, overcrowded and squalid conditions and malnutrition were deemed inextricably linked to anti-social behaviour.⁷² Alcohol and sexual promiscuity were largely considered detrimental to the lower classes of coloureds. It was estimated that 30 to 40% of coloured children were illegitimate. Juvenile delinquents, it was added were largely products of these homes. Between 1928 and 1935, 1 980 males and 638 females classified as Cape coloured had been incarcerated throughout the Union.⁷³ Punishment, rehabilitation but more importantly, adequate recreational facilities to remove children from “demoralising influences of the streets”, were deemed the most appropriate solution.⁷⁴ Interestingly, the class cleavages between coloureds was also considered a mitigating factor:

In addition, the sharp class cleavages which are met with among the Cape Coloured themselves tend to prevent the different sections from fraternising in sport. The Cape Coloured, especially the upper classes among them, should make fuller use of the opportunity of Coloured leadership, which offers itself here, by organising common efforts among their people to procure suitable sites for sporting activities, and to create numerically and financially stronger Coloured sporting organisations. While difficulties in the way should not be belittled, there can be no doubt that there is considerable scope for improvement, not only by means of assistance from Europeans, but also

⁷¹ RP 54/1937, *Report of the Commission of Inquiry Regarding the Cape Coloured Population of the Union*, p. 18.

⁷² *Ibid.*, p. 19.

⁷³ *Ibid.*, p. 20.

⁷⁴ *Ibid.*, p. 21.

by the efforts of the Cape Coloured people themselves, and that in this way beneficial results could be achieved in the reduction of vice, street gambling, intemperance, dagga smoking and delinquency in general.⁷⁵

While it is argued that coloureds themselves were showing signs of class cleavages, given the rather deplorable conditions described in the Commission, one would pose the question as to whether any so-called better classes of person would want to socialise with those deemed immoral let alone subject their children to the degraded moral influences said to have led to the delinquency increase in the first place.

Alcohol consumption also dictated how these class cleavages were perceived by the State. Better classes abstained. This also referred to Muslims, as well as “the better artisan class”. It was argued that it was common knowledge throughout the Union that alcoholism was rampant amongst the unskilled labouring class. Scarce finances were spent on alcohol and alcoholism was leading to criminality.⁷⁶ The Commission, however, recognised that this was a common method of escapism, “a temporary means of escape from the monotony, drudgery and poverty of their lives”. While acknowledging the damaging effect of the “tot” system, the Commission argued that improving the standard of living of coloured labourers would combat intemperance.⁷⁷ While not as common as alcoholism, dagga convictions were high amongst the Cape coloureds between 1924 and 1935, 2.55% of all convictions of coloureds.⁷⁸

Between 1933 and 1935, high levels of recidivism were noticed amongst the coloured race. The 1937 *Commission* argued, “the better classes among the Cape Coloured attach a stigma to imprisonment, but this does not apply to a large submerged section of the Coloured, so that there is often no social condemnation to deter members of this class. As described to the Commission, there is a section which looks on imprisonment with hard labour as “free board and lodgings””.⁷⁹ This was considered a mitigating factor in arguing for solitary

⁷⁵ RP 54/1937, *Report of the Commission of Inquiry Regarding the Cape Coloured Population of the Union*, p. 22.

⁷⁶ *Ibid.*, pp. 22-23.

⁷⁷ *Ibid.*, pp. 22-27.

⁷⁸ *Ibid.*, p. 27.

⁷⁹ *Ibid.*, p. 29.

confinement, limited rations and the extension of corporal punishment to other crimes amongst the population. Prisons were therefore described as a source of recidivism but the larger problem of poverty clearly needed to be eradicated. Class cleavages were also held partially responsible for the levels of recidivism.

The 1976 *Commission of Inquiry into Matters Relating to the Coloured Population Group*, shows that many of these conditions continued to exist through to the 1970s.⁸⁰ Between 1969 and 1970, the coloured population accounted for nearly twice as many convictions in proportion to their population. Coloured offenders were also proportionately higher than white offenders. Most cases were for liquor and drug offences. Between 1971 and 1972, 72% of shoplifters were coloured, 57.41% were minors. Coloured juveniles were responsible for the growing levels of convictions for all crimes. Socio-economic conditions were largely to blame as well as the forced removals where they suffered from community disintegration and a lack of adequate facilities. Older men took to drinking while the youth formed gangs. Policing by the State was also inadequate and fragmented, especially in newly established coloured townships. The effects of dislocation closely resemble the arguments made about potential black rapists during the migration to urban mining centres during the 19th century.

By 1976, three strata of coloureds were identified by the 1976 *Commission*: upper, middle and lower. The upper consisted of 20% of the coloureds who had “a life style and an outlook on life that correspond[ed] closely with those of the White middle class”. The lower 40% consisted of rural agricultural workers and the poorer urban population.⁸¹

The increasing levels of crime in coloured townships from the 1960s and the continued climate under which rapists and potential rapists were being shaped can clearly be attributed to socio-economic conditions as well as to class distinctions being made from within coloured communities. Coloured rapists, therefore, were not only a product of their

⁸⁰ RP 38/1976, *Report of the Commission of Inquiry into Matters Relating to the Coloured Population Group*, pp. 261-265.

⁸¹ *Ibid.*, pp. 469-470.

environment but there was an increasing possibility that the “cycles of violence” as quoted by many rape theorists may even suggest that impoverished coloured families living with deep socio-political problems may even have been reproducing pre-destined rapists in which the “die had been cast”, so to speak.

Class to Caste?

South African-born British anthropologist Max Gluckman pioneered the study of African legal systems and the dynamics of local conflict and conflict resolution in Zululand. He posits that blacks and whites were two categories not expected to mix, much like caste systems in India.⁸² French anthropologist Louis Dumont asserted that racial theory derives from the institution of castes from the encounter between invaders who seek to preserve the purity of blood by closing membership to other groups and this corresponds with the notion of caste. This, he argued, is similar to the conditions and conflicts between whites and blacks in the United States and South Africa.⁸³

An Indian sociologist acclaimed for his research on the caste systems of India, André Béteille, suggests that matters pertaining to sex, procreation and gender in South African history resembles a caste system rather than a class system heavily influenced by race. He argued that race and caste are two forms of inequality and both are illuminated by gender inequality according to the class of the woman concerned. In substance, lower-ranked women are abused by men in the highest who in turn are relentless in maintaining the purity of women at the top. This can be seen in historical studies in, amongst others, the United States and South Africa during the 1930s and 1940s.⁸⁴ It is worth noting that Dumont subsequently criticised studies comparing Indian race and caste systems with Western civilisations because he argued that they were radically different.⁸⁵ He cited caste as “normal” in India and race as

⁸² M. Gluckman, “Analysis of a Social Situation in Modern Zululand”, *Bantu Studies*, 14 (1), 1940, pp. 1-30.

⁸³ L. Dumont, *Homo Hierarchicus: The Caste System and its Implications* (Chicago: Chicago University Press, 1970), pp. 28, 214, 353.

⁸⁴ A. Béteille, “Race, Caste and Gender”, *Man*, New Series 25 (3), 1990, pp. 489-504.

⁸⁵ L. Dumont, *La civilisation indienne et nous* (Paris : Armand Colin, 1964), p. 1966.

“pathological” in the U.S.A.⁸⁶ However, Bêteille established that these considerations should be contextually investigated before any broad conclusions could be drawn. It is also worth noting that Lucy Graham points out that George Webb Hardy had to concede that racial boundaries could be overcome if an upper class person of colour managed to effectively woo the affections of a white woman, but could not tolerate the idea that a “kaffir” could outdo the highest of the racial and caste-based hierarchy.⁸⁷

Observations made in the 1930s drew a correlation with caste theory. Commenting on the economic factors and the future of the coloureds in the 1930s, Professor W. H. Hutt assessed the chief causes of poverty amongst the urban coloured population. He pointed out, however, that even in a group of people differentiated on grounds of colour, there was no fundamental social or economic homogeneity. Among coloureds in the Cape, he found a few who could be described as “well-to-do”, a larger number described as “comfortably off”, even more called poor but not poverty-stricken, and finally, and principally, those who lived under conditions which whites would describe as poverty. However, he added that there were a considerable number of coloured people who were “cultured in the fullest sense”. Some may be referred to as well-educated but the largest portion have had educational opportunities denied to them. Economically, there were some employers, professional men, skilled workers, unskilled labourers and “unemployables” – the latter two classes being the majority. Heterogeneity was stressed because he pointed out there were “large divergences of interest among the Coloured people themselves”, “we must not make the mistake of supposing that ideal harmony reigns among them”. He argued that colour and race were important because they were used as excuses for policies. He pointed out that Europeans brought with them Western civilization to South Africa and that white peoples have been the dominant and ruling class, subjugating the Native races. This became destabilised when the “primitives” absorbed the heritage of civilisation and become competitive capitalists. “A sort of caste system founded on colour had grown up spontaneously on the basis of antipathy between widely different cultures; but when contact caused the margin separating the cultures to narrow, the caste relation tended to become more of an economic constitution”.⁸⁸

⁸⁶ Quoted in A. Bêteille, “Race, Caste and Gender”, *Man*, New Series 25 (3), 1990, pp. 489-504.

⁸⁷ L. Graham, *State of Peril: Race and Rape in South African Literature*, pp. 56-58.

⁸⁸ Africana E NAT, W. Hutt, “Economic Factors Bearing on the Future of the Coloured People”, First National Coloured-European Conference: report of Proceedings, 26-28 June 1933, Cape Town, p. 35.

While certain types of coloured rapists would certainly fit the profile of a “caste” rapist, a unique being framed by a turbulent history in the Cape, political, social and economic hardships as well as being abandoned by better classes of coloureds, it may be more realistic to suggest that the Cape produced a coloured rapist, cast into the role by a variety of circumstances, which might straddle the nature/nurture divide.

Conclusions

The term ‘coloured’ has been defined by political systems throughout colonies not only in South Africa but abroad. It has meant different things at different times. For example, one can see the use of the all-encompassing term “coloured” to refer to all people who are not white. In America and in Britain, for example, these have a different meaning, in the former, it means black. The Cape coloured terminology may have been imposed by the State at various moments to further entrench the racial hierarchy, especially after the 1950s. This served a particular political, social and economic purpose. The people who self-identified as coloured, embraced their heritage, specific history and perceived “culture”, although they too recognised that they were not homogenous. They wanted the State to distinguish them from other non-white groups in order to benefit from extended facilities and opportunities not granted to the black population.⁸⁹ This meant that both State and communities, insisted on distinguishing between coloureds and other non-white groups. Further distinctions were made along class lines by both politicians and members of the so-called coloured group and this transcended both racial and geographic frontiers. The complex and changing nature of being coloured or labelled as coloured had a long history and had both advantages and disadvantages. This is not unusual, nor specific to this racial group.

By the 1960s, there was an increase in the number of both juvenile delinquents and gangsters in the Cape Peninsula. The one was clearly feeding the other. These groups engaged in many criminal activities, including rape. Concern was shown by the State, the judiciary and the communities involved and further distinctions had to be made between coloureds in order

⁸⁹ There was much resistance to other non-white groups being classified with the Cape coloureds. This can be seen in RP 54/1937, *Report of the Commission of Inquiry Regarding the Cape Coloured Population of the Union*, pp. 13-18.

to distance themselves from all coloured people being labelled miscreants. Class allegiances were the only solution during this racially charged period. Three classes of coloureds were identified by coloured elites and white politicians and remained intact during the 20th century. The lowest, the “coloured underclass”, was considered irredeemable and had to be almost discarded by the other two coloured classes in a process of self-preservation and survival during an unstable political environment. Unfortunately, this class of coloured person, while historically visible from the colonial era, grew in number and proportion during the 20th century.⁹⁰ It might be ventured that this coloured “underclass” was the “caste” of “bestial degenerates” referred to by the coloured elite, and the gangs on the Cape Flats were only too willing to accept these lost and rejected beings.

During the process of forced relocations, non-formal regulatory mechanisms broke down. Discarded by the State, condemned by the judiciary and rejected by other coloured classes of people, these ‘outcasts’ were relegated to the margins of society in which they were cast into a role of criminality, which often encompassed a rape culture. Lost youth were increasingly compelled to find membership and they took refuge in gangs. The gangs multiplied. These were also spaces in which men, who felt emasculated for a variety of reasons, could meet, act as a group and vent their frustration by sexually assaulting women.

Gang structures also dictated a commitment for life. Part of the gang culture was rape and as such, these rapists now formed a caste of rejected and un-rehabilitative individuals. Regaining membership into “acceptable” society was now almost impossible. They were kept in by gang members and kept out by other classes of people. During the period and location under investigation, this would include other coloured people. This is not to suggest that this was particular to the Cape nor to the coloured. In fact, juvenile delinquency, gang membership and rape were prevalent throughout the Union/Republic. However, segregation and *apartheid* ironically regulated blacks and whites, negatively and positively.

⁹⁰ Post-*apartheid* studies continue to paint a rather bleak picture. See for example, D. Roodt & L. Retief, *Tax, Lies and Red Tape* (South Africa: Zebra Press, 2013).

Black communities were placed under surveillance by the segregation and *apartheid* States. Where it failed, community intervention strategies intervened. Black rapists were, to an extent, regulated by the courts, traditional structures (although these are highly problematic for a variety of other reasons not covered in this dissertation) and the township justice system. White rapists too were scrutinised by the politicians and the jurists. To some extent, the belief that non-pathologised white men could not rape, proved detrimental to the victims of white rapists. It is likely that only a few would actually report the rapes for fear of not being believed.

Lower status coloured intra-racial rape was the most common of cases heard in the Cape courts. Just as their “buffer” status played out in the country’s political, social and economic past, these coloured rapists were considered a product of both nature and their environment but little was done to actually curb their proliferation, as suggested by the post-*apartheid* surveys. Past inattention to coloured rapists at a variety of levels, and a continued lack of academic investigation into the coloured rapist, would suggest that this type of rapist is particular to the Cape because of the conditions which have moulded him and her. They are also increasing in numbers as they had done during previous political dispensations.

State legislation and the Cape courts attempted to curb rape and punish all rapists, regardless of race. This also required a multi-faceted intervention strategy eventually involving welfare and probation officers and rehabilitation of incarceration facilities. It is this total offensive against a brutal, abundant and inadequately punished coloured rapist, which has been historically relaxed in the Cape. This is most likely because of the obscure status of coloureds in the history of the country as well as a result of poor strategies from within the coloured communities at a time when a both coloured victims and rapists could have largely benefitted from a universal and persistent strategy.

Conclusion

The title of this historical study indicates that the nature/nurture debate about rapists would be investigated in the context of the Cape and that these findings would be related to the existing literature. Three questions were asked: who were they, why did they rape and how different are they to those rapists already identified in the secondary literature both globally and locally. Context is therefore pivotal.

It is difficult to locate specific types of rapists in a particular timeframe as these categories transcend both classification as well as spatial and temporal boxes. However, the reasons why they rape and the conditions under which they were born and raised – the environmental factors – did change with political dispensations which usher in changing legislation on sex and sexual violence as well as social norms within their own surroundings. It is through the judiciary, charged with enforcing legislation and conformity to these political and social norms that alleged and convicted rapist testimony is found.

The categories of hidden and potential rapists may share certain characteristics, but they are, by legal definition, not rapists because their acts have not been brought before the Courts or they are deemed a potential rapist not because of their behaviour but rather because of where they are situated on the political or social hierarchy. This is not to suggest that the former groups' behaviour does not constitute rape according to social scripts. Their victims would also argue differently. There are a variety of methodological issues with using State sanctioned sources, such as court proceedings, but they support what the State, statistics and the judiciary define as rape, determine who is a rapist and furthermore explain why they raped. They may also differ from what admitters and deniers may actually say. These officially change over time but not necessarily amongst those committing acts of sexual violence. For comparative reasons, the broad periods of colonial, segregation, *apartheid* and post-*apartheid* eras have been used because each ushered in new ways of defining rape, race and class – three of the most important factors considered in this dissertation.

Chapter 1 provided a literature review of the contested notions of consensual and non-consensual sexual violence and the theories and myths that permeated globally. Local studies, rape trends, explanations, myths and scares drew from these wider debates. Only two points of consensus arose from the literature: the majority of reported rapists are men and their victims are women. And secondly, there is a highly contested debate about rape statistics, rapist motivations, rape theories and who can be defined a rapist. There was, and is, on-going debate on whether rapists are born or shaped by their circumstances. The jury has decided that both are important, but not necessarily to the same degree over time. In colonised settings, for example, rape/race rhetoric largely defined as well as categorised rapists. Four types of rapists are discussed: potential, hidden, alleged and convicted rapists.

In Chapter 2, attention was drawn to South Africa with a particular focus on factors which defined the rapist at the turn of the 20th century. Imperial notions of sex and sexuality as well as the Black Peril scares shaped much of the discussion in which race – genetics - determined potential rapists. Local studies conducted in other provinces clearly defined the rapists and offer reasons as to why they raped. Changing political, social and economic factors largely affected both definition and explanation as well as blurring the boundaries between potential, hidden, and reported rapists. But studies specifically locating rapists as central are limited and the testimony from the rapist himself remains questionable. Attention, though, is not paid to this scholarly lacuna and is instead located on contested rape statistics and surveys which conflate potential and hidden rapists with alleged and convicted rapists.

The statistics were presented and critically evaluated and analysed in Chapter 3 by evaluating changing rape legislation and assessing if this had an impact upon reported rapes or conviction rates. It considers the idea that those previously considered potential or hidden rapists may have contributed to the recorded numbers of convicted or alleged rapists, not necessarily because their numbers increased, but because they were “uncovered” by changing rape legislation or by a more efficient policing generated by general panic. The effects of the *apartheid* State implementing legislation regulating sex, sexuality and people also led to some previous categories of rapists to go unnoticed in cases of rape but prosecutable for immoral offences. A call is made to rather document numbers of rapists as well as rape because of the high numbers of visible serial rapists.

However, it is concluded that despite changing State legislation during the different political eras, it cannot be said with certainty that the individual cases brought before the Cape courts, and which survived in the archives, were influenced by the broader racial rhetoric. The courts were arguably patriarchal, misogynistic and racialised spaces but the judicial system in rape cases acted according to the sometimes questionable evidence presented, and, for the most part, outside of the historically entrenched racial norms shown to exist in the Cape. This is discussed in Chapter 4. Convicted rapists were to be punished and their punishment was to serve as a warning to potential rapists. This could be through passing the death sentence, incarceration or/and corporal punishment. What is apparent is a shift from simply considering the rapist as a pathologised or racially defined rapist to one that is shaped by his context. This made an impact on sentencing trends and strategies on how to rehabilitate rapists, if deemed rehabilitative.

No specific racial bias was noticeable within the Cape Supreme Court records, rather class concerns were more prevalent. While the courts were bound by State legislation, there was no unification of the judicial system and judges relied on personal inclinations, evidence and experience to conduct the proceedings. They also had to negotiate State legislation regulating sexual behaviour which often distorted cases of non-consensual sexual violence. It cannot be said with any certainty that laws regulating sexual behaviour negatively affected these cases. However, the court procedure itself was deemed questionable, and was not a conducive space for the poorer classes accused of rape - the vast majority of those charged with rape during the period under investigation. The system also inadvertently provided a safe space for certain types of rapists by reinforcing global and local stereotypes of who could be raped and in what instances rape was questionable. The victim was normally unnecessarily scrutinised and certain behaviour, such as being inebriated or on drugs, could lead to reduced sentences for perpetrators. This provided a reason for why rapists rape as well as a means to deny rape charges. However, the general public closely scrutinised rape cases and attempts were made to sway the judiciary, especially in moments of rape panics. There is also a distinct shift in attitudes towards rape and crime in general in the Cape during the 1960s which correlates with the forced removals era and the rise of vigilante groups as a parallel monitoring system to the official policing system. This is further probed in the penultimate chapter.

The unenviable task of plotting rapist types and rapist motivations identified in the Cape court proceedings on an historical trajectory is attempted in Chapter 5. Because of the political history of the country which largely dictated a black/white dichotomy (almost neglecting coloureds) through which rapists were historically classified and explained, distinguishable groups by race then type are presented. These include serial rapists, those straddling the divide between incest and statutory rape, statutory rapists, juvenile rapists, baby rapists and gang rapists. It is shown that the increase in juvenile rapists led to much debate about the state of crime, the conditions in which most coloureds lived and the expected increase in criminal activity if no strategies were to be implemented. Baby rapists were shown to exist long before the HIV scares and virgin cleansing rituals, pretexts used to justify baby rape. These children were victims of circumstance – easy prey for rapists. Both boys and girls were victims of rape and theories on ‘cycles of violence’, breeding rapists from a young age, as well as theories of masculinities in crisis, regarding the socialisation of young boys, becomes pertinent. These theories are also relevant when exploring gangs. Gang culture in the present literature is linked to moments of crisis on the mines and on the Cape Flats, but gang culture and gang rape in particular, is shown to pre-date that which is suggested in the literature.

Generally, if categories of rapists overlapped, so too did explanations for why they raped. Clearly, much debate evolved around the effects of *apartheid* and the forced removals in Cape Town during the 1960s as well as the rising gang menace and general increase in crime at the Cape. Explanations of why they raped oscillated between what the rapists claimed to be their motivation for the attack and what the court concluded. Comparing theory to practice and the idea that “all black men are rapists”, tends to decrease exponentially over the segregation and *apartheid* era. Psychiatric evaluations and explanations did progress in tandem with the discipline in South Africa. Masculinities in crisis tended to fluctuate according to political and economic trends but there is a general increase over time, especially in the post- *apartheid* era and the concerted movement towards gender equality. This is most visible in the Cape from the 1960s as gangs were competing not just against each other but also against hardening oppressive State legislation. They vented their anger against those close to them.

The most under investigated yet most prevalent rapist in the Cape courts during this period were coloureds. A few observations about coloured rapists have already been mentioned in the existing literature. There is a long history of coloured intra-racial rape in the Cape and most refer to coloured rapists raping coloured women and children. While much responsibility for regulating rape was left to the courts, it is clear that no racial profiling affected coloured rapists or their victims. Court procedure also contributed to poor rehabilitation of offenders, often resulting in serial rapists, and provided viable excuses for denying that they had raped. It is also not clear whether the court procedure did not, in effect, only punish poorer offenders, leaving many others unscathed. They did, however, place emphasis on the deportment of both rapist and victim, and this dictated sentencing trends. Class was not simply defined in economic terms but according to the deportment of victim and rapist. Coloureds, it is shown, were economically vulnerable over time and when their condition improved, their priorities were not always conducive to improving it. Their precarious position within the political and social hierarchy undoubtedly shaped coloured rapists. Other racially-defined rapists suffered similar conditions yet community intervention strategies or even State intervention managed to somehow regulate them. Coloured political activity, and very often inactivity, and internal intervention strategies were short-sighted and short-lived leaving a definable 'outcast' of coloureds, seemingly beyond redemption. The caste debate has its origins outside of South Africa but may be pertinent to coloured rapists given the context in which they were born and raised. It cannot, however, be stated that they were "caste" in the role for life, even if one contemplates the theories on cycles of violence. They were cast in the role but there was room for movement under certain conditions. Those who can be defined as caste rapists were in fact the growing numbers of gang rapists who, on entering their new adopted familial groups, could very rarely leave the circle. Entrenched in gang culture is rape and as such, they were "caste" into the role. This may not have been endemic to the Cape but certainly formed a growing number of rapists located and acting out in the Cape.

The 1960s appears to have been a turning point in the history of rapists in the Cape. Why were they so much more **visible**, not necessarily in number, during the 1960s? This can be explained in terms of growing anti- *apartheid* sentiment after the forced removals and with the rise of welfare systems and social activists. This was also in a context of a growing rape panic. But how particular was this to the Cape? Similar conditions have been observed in

other locations. What becomes particular is the rise of juvenile “delinquents” due to the social dislocations and growing economic deprivation, poor housing and facilities and, much like their black counterparts during migration from the colonial era, a lack of internal or communal policing. These findings, however, would be greatly supported by further related studies of the three other provinces of the Union. Similarly, a detailed study of the very complicated and complex changing terminology and definition of class and caste would further enhance the idea of a cast(e) rapist.

It would be unwise not to conclude by reminding the reader that the cases discussed throughout this dissertation were individual experiences of both victim and rapist in the Cape. Trends may be gleamed, extrapolations may be made, but essentially, these rapists, while being shaped by both nature and their environments, had a choice - to rape, or not to rape. Many more did not, or were simply not caught. Personal agency cannot be overlooked, even under gang-rape conditions. Exceptions can be understood in cases of severe psychiatric instability of the rapist. Despite some theories and systems suggesting otherwise, the victim was, and is, always the victim. This dissertation, nonetheless, has attempted to delineate rape in the Cape from the turn of the 20th century and in so doing, it becomes apparent just how difficult it is to completely neglect the rather compelling environmental factors that have shaped visible Cape rapists over time.

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Appendix

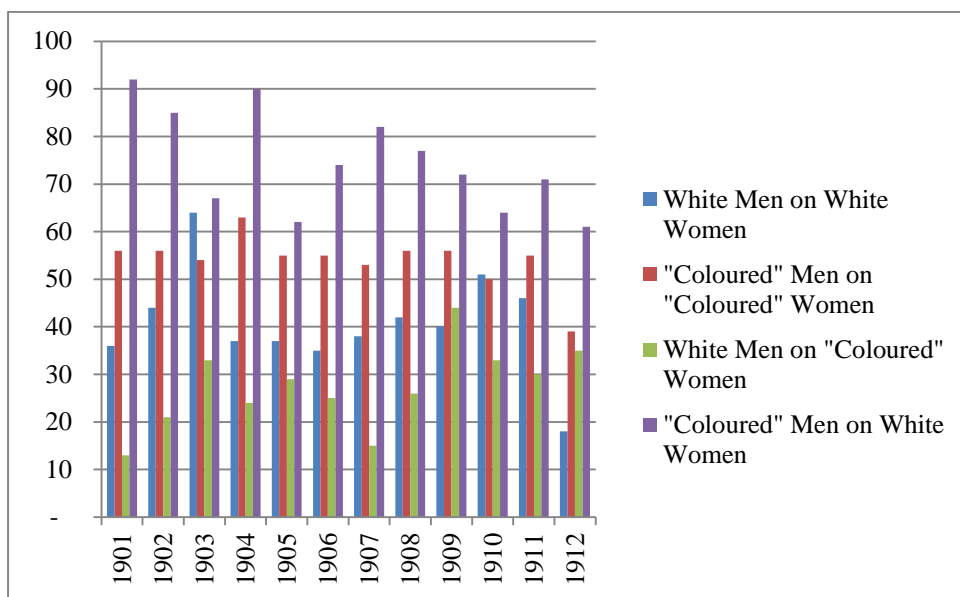


Figure 1: Percentage of Convictions for Rape, Attempted Rape and Indecent Assault in the Union, 1901-1912¹

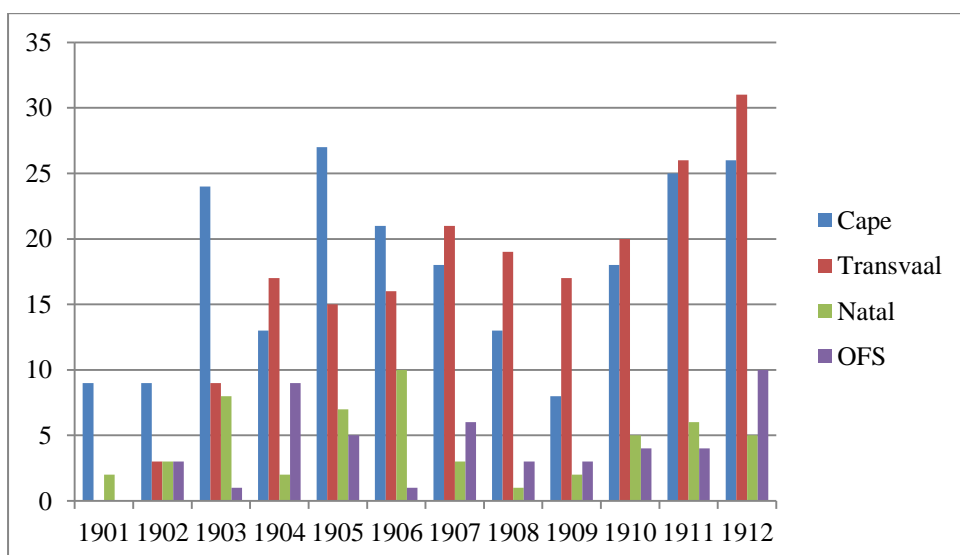


Figure 2: Total Number of Reported Rapes, Attempted Rapes and Indecent Assaults (Upon Women) By Province: White Men on White Women, 1901-1912

¹ Statistics tabulated from the Report of the Commission Appointed to Enquire into Assaults on Women, U. G. 39-13, Cape Town, 1913.

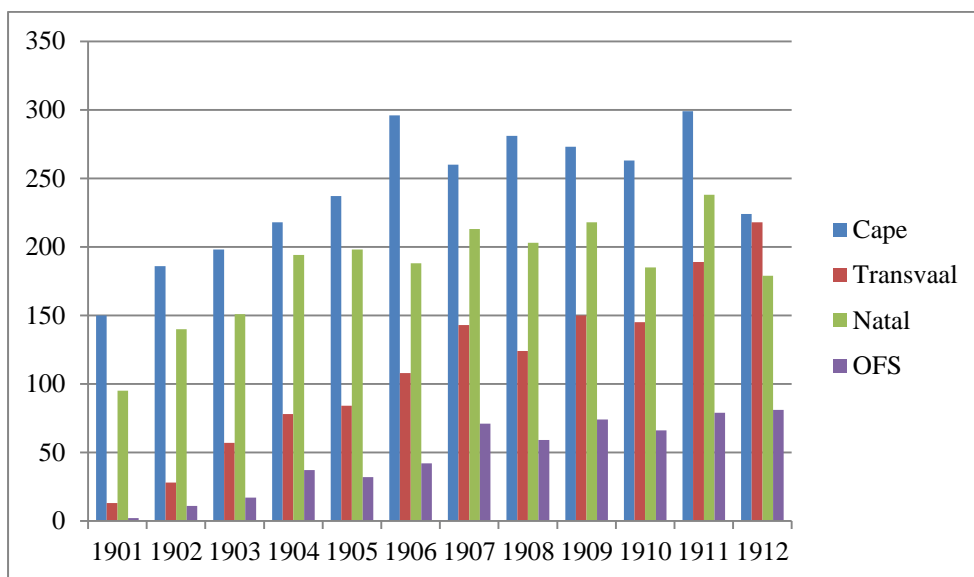


Figure 3: Total Number of Reported Rapes, Attempted Rapes and Indecent Assaults (Upon Women) By Province: "Coloured" Men on "Coloured" Women, 1901-1912

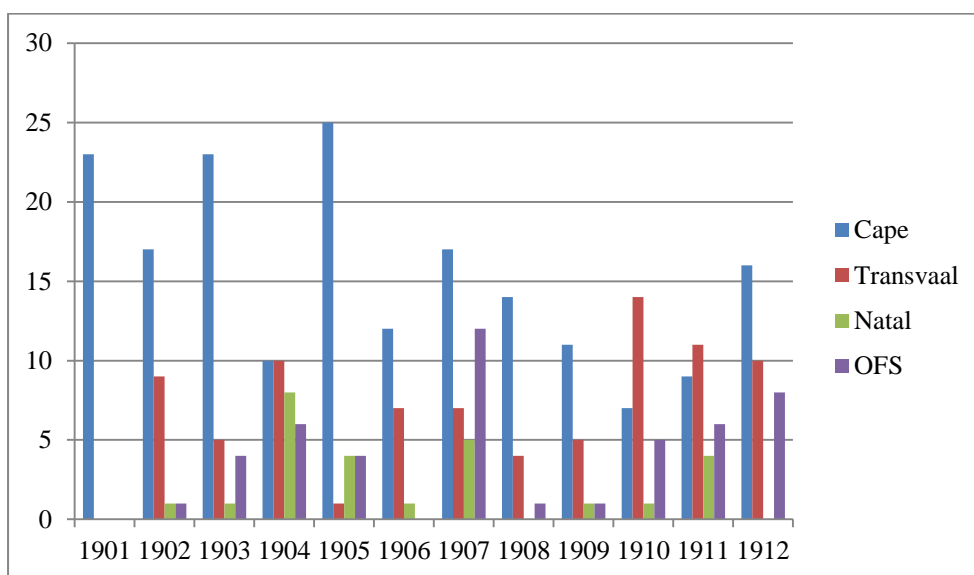


Figure 4: Total Number of Reported Rapes, Attempted Rapes and Indecent Assaults (Upon Women) By Province: White Men on "Coloured" Women, 1901-1912

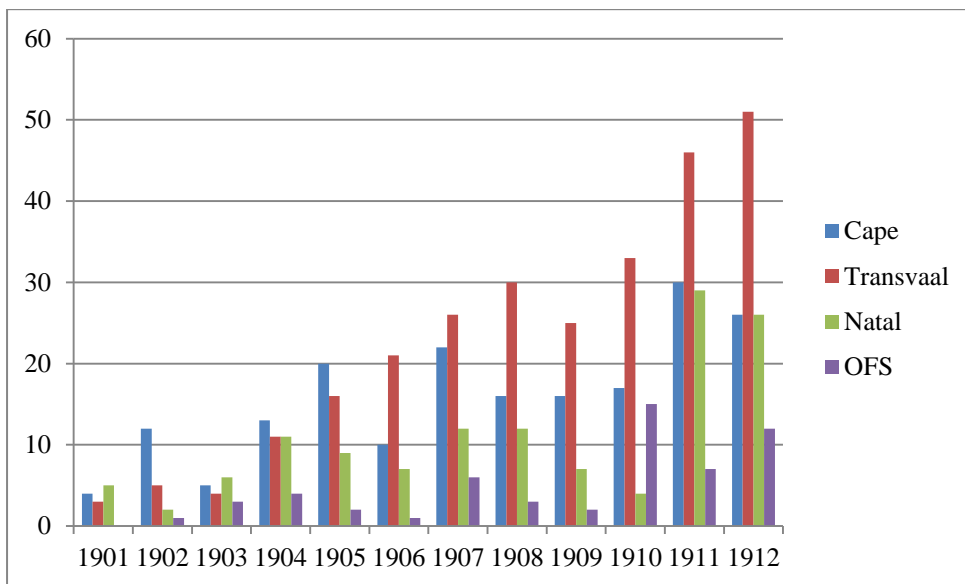


Figure 5: Total Number of Reported Rapes, Attempted Rapes and Indecent Assaults (Upon Women) By Province: "Coloured" Men on White Women, 1901-1912

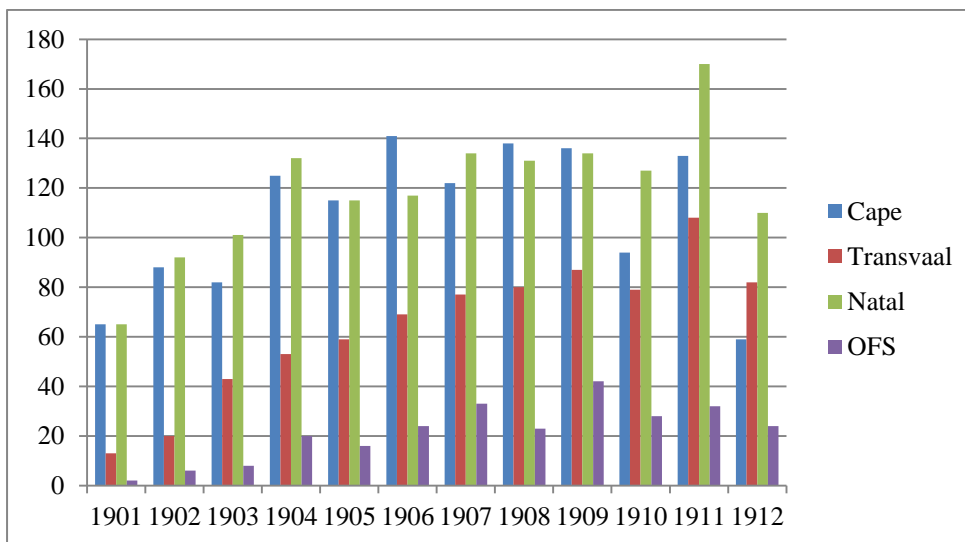


Figure 6: The Number of "Coloured" Men Convicted of Raping "Coloured" Women, 1901-1912

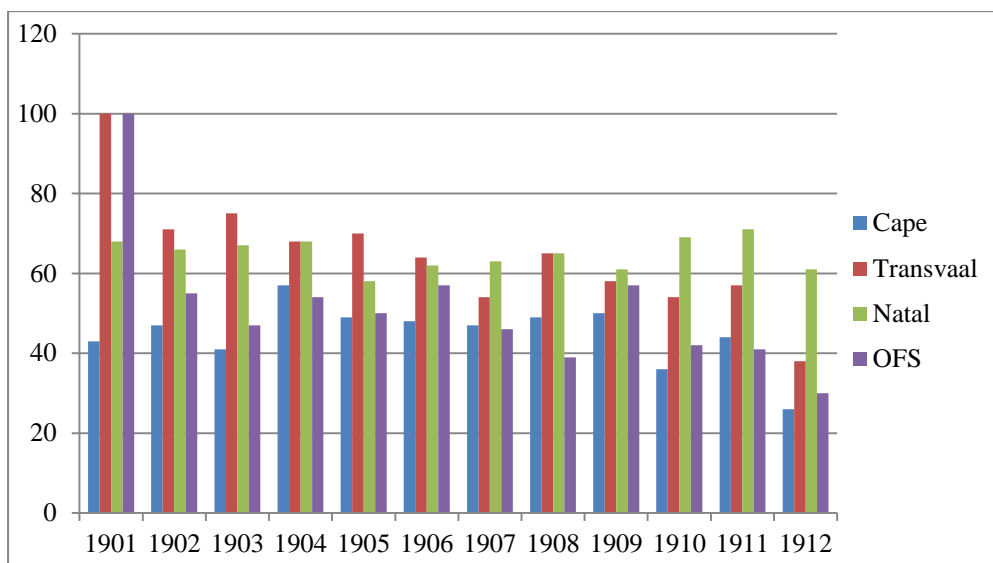


Figure 7: The Conviction Rate for "Coloured" Men Raping "Coloured" Women, 1901-1912

Figure 8: Percentage of Sexual Offences in Relation to Total Criminal Offences in the Union, 1917.²

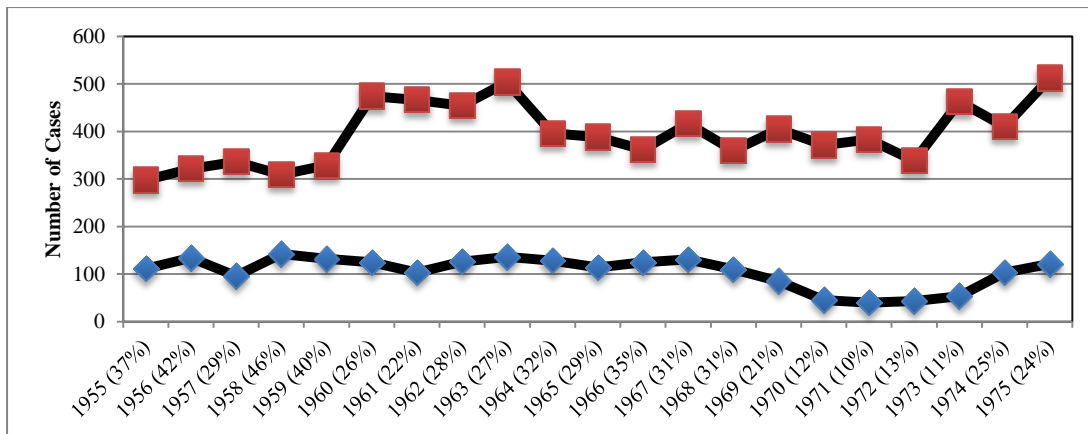
| Criminal Charges for 1917 | Reported | Withdrawn | Convictions | Race | |
|------------------------------------|-------------|-------------|-------------|-------------|-------------|
| | | | | White | Coloured |
| Indecent Assault | 454 | 22 | 300 | 25 | 275 |
| Rape | 472 | 56 | 150 | 7 | 143 |
| Attempted rape | 288 | 27 | 116 | 3 | 113 |
| Sodomy | 51 | 1 | 47 | 0 | 47 |
| Total for Sexual Offences | 1265 | 106 | 613 | 35 | 578 |
| Total Criminal Charges | 55562 | 5941 | 24553 | 1620 | 22933 |
| Percentage of Total Charges | 2,3% | 1,8% | 2,5% | 2,2% | 2,5% |

² Compiled from GPB *Official Yearbook of the Union of South Africa 1910-1917* no. 2, p. 344.

Figure 9: Racial Breakdown of Convicted Sexual Offenders for 1921.³

| Criminal Rates for 1921 | White | Native | Asiatic | Coloured | TOTAL |
|-------------------------|-----------|------------|-----------|------------|------------|
| | | | | | |
| Indecent Assault | 24 | 249 | 7 | 24 | 304 |
| Rape | 8 | 165 | 4 | 16 | 193 |
| Attempted rape | 6 | 71 | 2 | 22 | 101 |
| Sodomy | 1 | 44 | 3 | 14 | 62 |
| Defilement of Girls | 18 | 59 | 7 | 39 | 123 |
| | | | | | |
| TOTAL | 57 | 588 | 23 | 115 | 783 |

Figure 10: The Number Prosecutions for Sexual Offences at the Cape Supreme Court in Relation to Total Prosecutions.⁴



³ Tabulated from GPB *Official Yearbook of the Union of South Africa 1910-1922 no. 5*, p. 380.

⁴ This has been tabulated from the KAB Criminal Indexes CSC 1/1/2/5 to CSC 1/1/2/14.

Figure 11: Reported Cases for Rape in South Africa, 1960-1980/81.⁵

| Year | Cases | Population | Year | Cases | Population |
|---------|-------|------------|---------|-------|------------|
| 1960 | 6686 | 17 122 000 | 1971/72 | | 23 022 000 |
| 1961 | 6798 | 17 577 000 | 1972/73 | | 23 655 000 |
| 1962 | 6895 | 18 048 000 | 1973/74 | | 24 295 000 |
| 1963 | 3323 | 18 547 000 | 1974/75 | | 25 466 000 |
| 1964 | 7888 | 19 076 000 | 1975/76 | 14815 | 26 097 000 |
| 1965 | 8093 | 19 607 000 | 1976/77 | 15109 | 24 001 000 |
| 1966 | 8562 | 20 162 000 | 1977/78 | 15175 | 23 337 000 |
| 1967/68 | | 20 725 000 | 1978/79 | 15263 | 24 439 000 |
| 1968/69 | | 21 881 000 | 1979/80 | 16149 | 23 771 970 |
| 1969/70 | | 22 465 000 | 1980/81 | 15318 | 25 591 000 |
| 1970/71 | | 22 465 000 | | | |

Figures 12 to 18 are tabulated from the B2 offences for crimes committed by persons over the age of 7.⁶

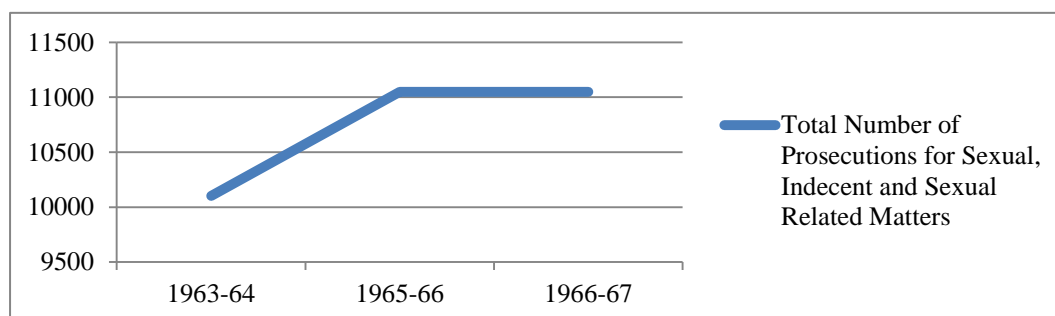


Figure 12: Number of Prosecutions for Sexual, Indecent and Sexual Related Matters from 1963-67.

⁵ P. Schonstein & M. Slabbert, “Rape: Criminology Source Book”, Institute of Criminology, UCT, January 1983, Appendix 1.

⁶ *Statistics of Offences and of Penal Institutions Report released by the Republic of South Africa Bureau of Statistics (1963-64)*, no. 08-01-01; *Statistics of Offences and of Penal Institutions Report released by the Republic of South Africa Department of Statistics (1965-66)*, no. 08-01-02; *Statistics of Offences and of Penal Institutions Reports released by the Republic of South Africa Department of Statistics (1966-67)*, no. 08-01-03; *Statistics of Offences released by the Republic of South Africa Department of Statistics (1968-1969 to 1978-1979)*, no. 08-01-10; *Statistics of Offences released by the Republic of South Africa Department of Statistics (1979-80)*, no. 08-01-11; *Statistics of Offences released by the Republic of South Africa Department of Statistics (1980-81)*, no. 08-01-12; *Statistics of Offences released by the Republic of South Africa Department of Statistics (1984-85)*, no. 08-01-16; *Statistics of Offences released by the Republic of South Africa Department of Statistics (1985-86)*, no. 08-01-17; *Statistics of Offences released by the Republic of South Africa Central Statistical Service (CSS) Reports numbers 00-11-01 for 1986/87, 00-11-01 for 1987/88, 00-11-01 for 1988/89, 00-11-01 for 1989/90, 00-11-01 for 1990/91, 00-11-01 for 1991/92, 00-11-01 for 1992/93, 00-11-01 for 1993/94, 00-11-01 for 1994/95, 00-11-01 for 1995/96.*

Figure 13: The Number of Prosecutions for Sexual, Indecent and Sexual Related Matters from 1977 to 1996.

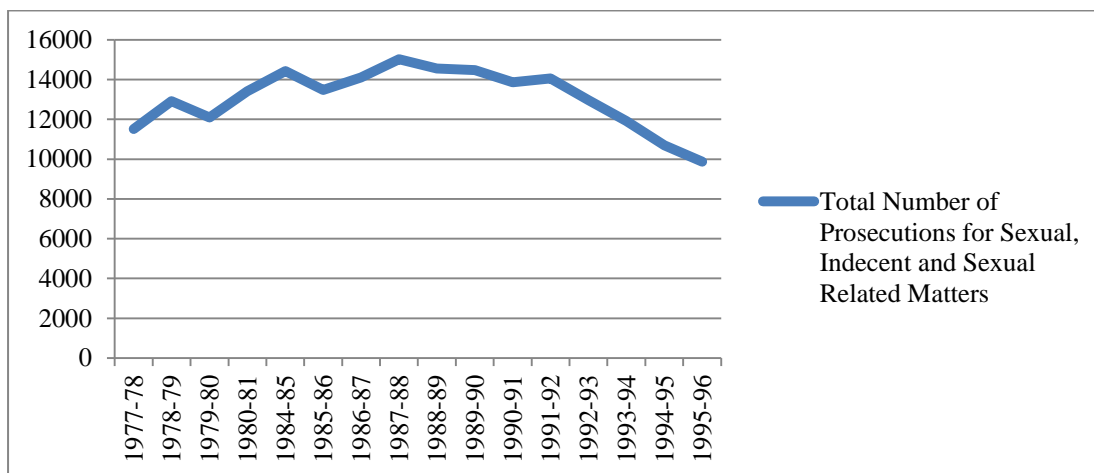


Figure 14: The Number of Convictions for Legally Defined Rape and Attempted Rape from 1963 to 1996.

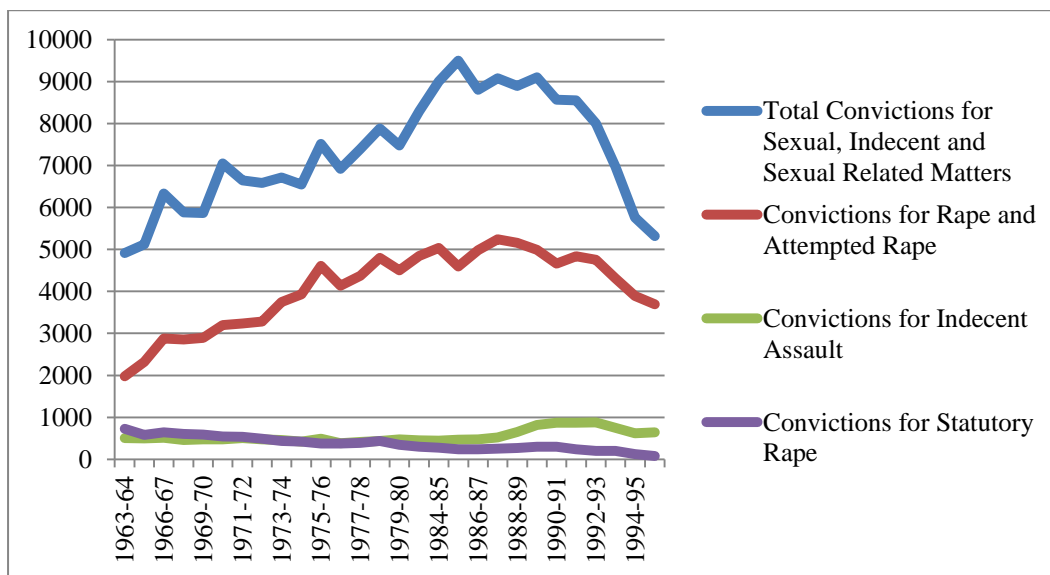


Figure 15: The Conviction Rates for Sexual, Indecent and Sexual Related Matters, Rape and Attempted Rape Cases, Indecent Assault, Statutory Rape, Immorality and Sodomy from 1963-1967.

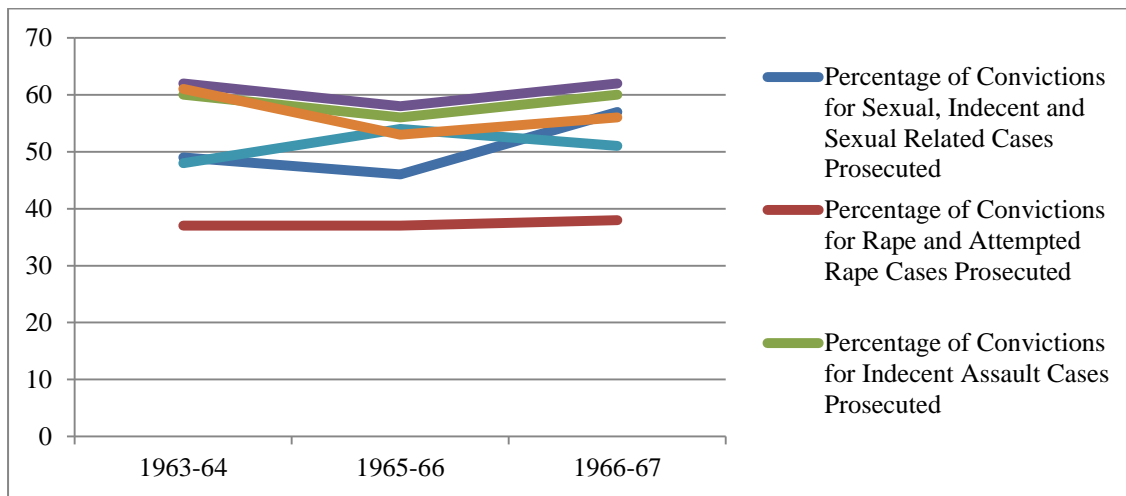


Figure 16: The Conviction Rates for Sexual, Indecent and Sexual Related Matters, Rape and Attempted Rape Cases, Indecent Assault, Statutory Rape, Immorality and Sodomy from 1977-1996.

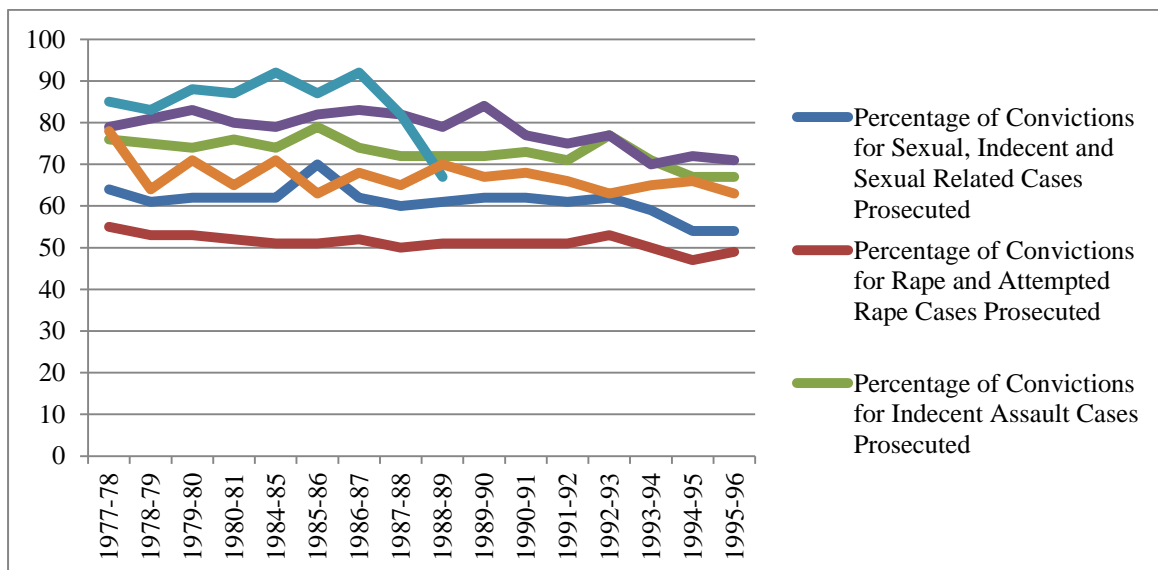


Figure 17: A Racial Breakdown of Conviction Rates for Rape and Attempted Rape from 1963-1967.

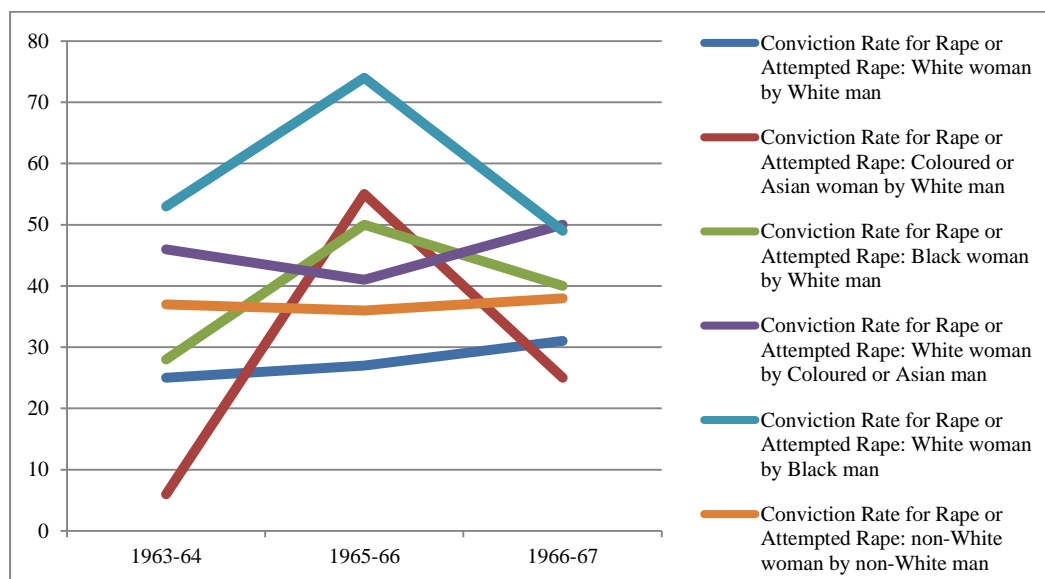


Figure 18: A Racial Breakdown of Conviction Rates for Rape and Attempted Rape from 1977-1996.

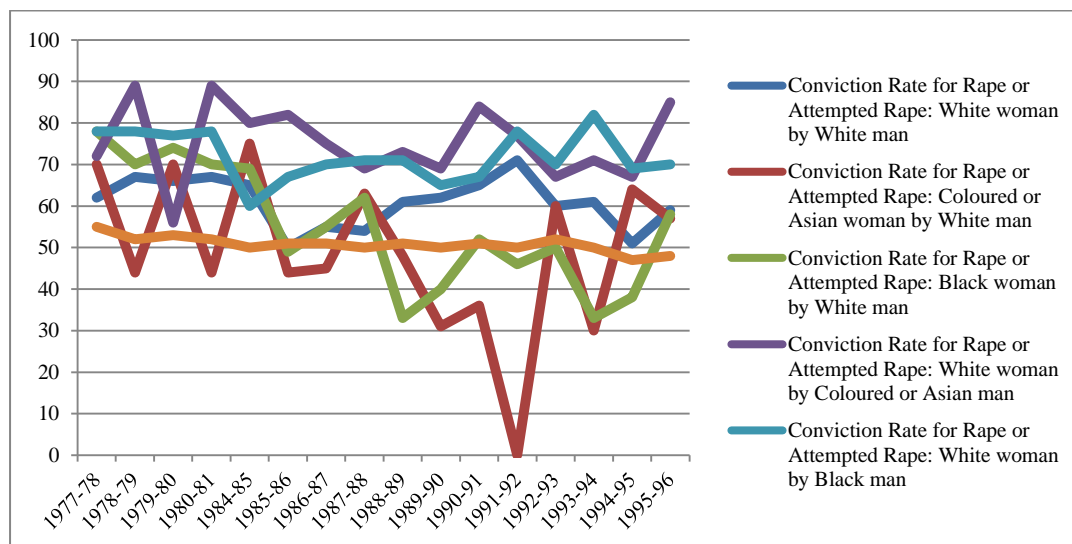


Figure 19: Number of Reported Cases of Rape and Indecent Assault According to Police Dockets from 2001-2007.⁷

| | 2001-2002 | 2002-2003 | 2003-2004 | 2004-2005 | 2005-2006 | 2006-2007 |
|-------------------------|-----------|-----------|-----------|-----------|-----------|-----------|
| Rape | 54293 | 52425 | 52733 | 55114 | 54926 | 52617 |
| Indecent Assault | 7683 | 8815 | 9302 | 10123 | 9805 | 9367 |

⁷ South African Police Service, *Annual Report of the South African Police Service for 2006/2007*, p. 224.