Righting Sexual Wrongs: Personhood, Sex and Intent in a Former South African Bantustan

by

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DEDICATION

To those who have been wronged and those who have done wrong, and to the recognition that these people are often one and the same.

To Max, whose unflagging counsel, humor, and love made it possible to complete this project. And to Otis: gentle, be gentle.

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ABSTRACT

Righting Sexual Wrongs examines how survivors of sexual violence seek assistance under a racialized system of legal pluralism in the town of Thohoyandou in northeastern South Africa. Over 22 months of ethnographic fieldwork, I charted itineraries of justice through a variety of sites: a criminal court, trauma clinics, family gatherings, the homes of "traditional healers," churches, social media and others. I also participated in the daily rhythms of a beauty salon where conversations about sex, love and crime were common. This dissertation argues that sexual harm inhabits survivors in numerous ways, a multiplicity that cannot be reduced to the criminal definition of rape. Survivors did not necessarily talk about injury in terms of force, coercion or consent – ways of reckoning sexual harm invested in liberal ideals of autonomy and freedom-as-separation. Instead, the harm of sexual wrongdoing was spoken of in terms of economic precarity, infidelity, pathological exposure, and the disembodied violence of witchcraft. These understandings of sexual harm were shaped by practices of remedy and restitution, but in ways that challenge spatialized theories of legal pluralism.

The larger context of this study is a post-apartheid South Africa simultaneously grappling with a "rape crisis" and the legal legacy of settler colonialism. Under British indirect rule and then apartheid, ethnic bantustans ("homelands") held captive Africans subject to a reified form of "customary law." The policing and prosecution of rape was only ever partial for non-white populations. Today, human rights advocates and policymakers worry that the legacy of this history is popular misrecognition of the problem of sexual violence. This misrecognition is understood to happen at the institutional level, where complaints go unregistered by service providers, but also at the level of individuals, who understand sex as an entitlement owed to men. The result has been a turn to criminal justice materialized in legal, psycho-social, and medical procedures that unevenly affect survivors, accused persons and their respective loved ones. Complicating these efforts at criminalization is the post-apartheid persistence of legal pluralism, as new forms of insecurity have given way to privatized policing and parliamentarians work to legislatively reinstitute the judicial authority of chiefs and kings.

Righting Sexual Wrongs contributes to pressing debates about justice and inequality, debates with a global scope. Ours is a moment when disparate political movements are coalescing around punitive legal reforms in the name of women's rights. At the same time, demands for criminal justice reform and even prison abolition have become increasingly urgent. Sexual offences are uniquely resistant to such reforms, in part because of how rape is universalized as "a fate worse than death." The programmatic insistence on the crime of rape as the only way to experience sexual harm justifies state violence that manifests in policing, prosecution and punishment, but also in medical care and counseling for victims. This state violence strikes along existing lines of inequality. In South Africa, it targets ethnic subjects, HIV-positive black men, and poor and working class people. By highlighting the multiple forms sexual wrongdoing takes, this dissertation endorses a structural framing of gender-based violence. In so doing, it rejects a path to justice through personal accountability and punishment, proposing a course to a world without sexual violence through shared responsibility, mutuality and obligation.

CHAPTER 1 – Introduction

It was a Sunday in the town of Thohoyandou, South Africa. The radio host asked for listeners to call in to testify to the miracles wrought by God in their lives. "Good afternoon?" he addressed the woman on the line. She told her story, "Yes. My daughter is 8 years old. She began to experience problems urinating. I took her to hospital to be examined. The doctor said that someone had slept with her. I asked her about it, and she admitted that the man was my brother. I then took her to hospital, but after receiving their medicine, she was still failing to control herself. I had to put diapers on her for 24 hours a day. I then took her to a prophet so that he could pray for her. He gave me honey with some medicine to feed to my daughter. After that, she was able to control her urinating." The radio host agreed that it was a miracle and thanked her for her call.

Activists, scholars and politicians often describe South Africa as the "rape capital of the world," a framing lent urgency by the fact that so few acts of sexual wrongdoing are registered by the criminal justice system as rape. Epidemiologists, feminist scholars and human rights activists deploy the proverbial iceberg to distinguish the rare victim who reports to police from the submerged and silent multitude. The metaphor is a powerful one. Icebergs are dangerous for their unknown depths. At rallies and marches, this trope of silence is taken up by activists, who raise placards that enjoin victims to "break the silence!" Protesters wear black electrical tape over their mouths to demonstrate solidarity with victims of sexual violence, imagined as not just silent but silenced. Governmental and non-governmental service providers condemn this silence, arguing that it creates space for the impunity of rapists.

And yet, the above caller's radio testimonial gestures to what is a fluorescence of speech about sexual wrongdoing. The caller was hardly silent. She just didn't take her concerns about her daughter to the police. *Righting Sexual Wrongs* empirically explores how those who experience sexual harm seek assistance under conditions of legal pluralism. In so doing, it reveals that the easy equivalence between opting out of criminal justice and silence obscures narratives of sexual harm not readily legible as help-seeking, narratives like the one described above.

The above radio call-in show was hosted by *Phalaphala FM*, a primarily Tshivenda-language radio station that broadcasts to the town of Thohoyandou and the former bantustan (sometimes referred to as "native reserves" or "homelands") of Venda. The story of the "miracle" is suggestive of post-apartheid legal pluralism, but it also reveals that those who have been sexually wronged do not always describe their experiences as rape. It is hard to imagine anything more deplorable than an uncle sexually violating his pre-pubescent niece.[1] What adds to the jarring quality of this story is what appears to be the mother's callous characterization of the problem and its solution, which in the context of the radio program is cast as a "miracle."

When the mother set off to find help for her daughter, she did not know that her brother had forced himself on her daughter. She understood her daughter's problem as a practical problem of urinary incontinence, a problem likely located in the body that might therefore be solved with the assistance of a medical doctor. In attempting to remedy this problem, doctors at Thohoyandou's public hospital, an overburdened and understaffed facility which routinely runs out of supplies and medications, carried out unspecified biomedical interventions that did not resolve the problem of incontinence. As part of these efforts, a medical examination of the girl's vagina found lacerations suggestive of penetration.

When the mother asked her daughter who had "slept with her," what she learned shifted her understanding of the problem and her interpretation of the inefficacy of the hospital treatment. Her brother's sexual violence threatened her daughter and the family in numerous ways. Reliant on state public services like hospital care, we might imagine that, like many economically vulnerable South Africans, this family makes ends meet by sharing everyday burdens. A direct confrontation with her brother, upon whom her household might rely for money or labor, might introduce new problems.[2] More to the point, resorting to adversarial modes of redress could not remedy the more fundamental problem of incest. Incest of the kind committed by her brother would produce pollution that could have far-reaching spiritual consequences. In other words, her daughter's incurable incontinence was not strictly a

[1] Using crime datasets, Joseph Fischel (2019, Chapter 2) shows how defendants of rape and sexual assault cases are often mother's boyfriends. He uses this finding to argue for tailored legal interventions that target vertical relationships of care.

[2] For example, Ellison, L. (2002). Prosecuting Domestic Violence without Victim Participation. *The Modern Law Review*, *65*(6), 834–858; Trinch, S. (2011). Forging Violence Against Women: Documents, Regimes of Family and Intimate-Partner Abuse. *Law, Culture and the Humanities*, *7*(3), 394–412.

biomedical symptom. The nature of this sort of sexual harm demanded the intervention of a prophet, someone who could mobilize forces beyond the material plane through prayer and substances imbued with occult efficacy. The "miracle," then, was not just about her daughter's urinary function. It was in averting what might have escalated into cosmological calamity, potentially causing inestimable devastation across generations.

This story complicates "rape capital" as an imaginary of crisis. At different moments in this story, the daughter's condition was a problem that might have been understood as practical, biomedical, familial, criminal or spiritual. The nature of harm was emergent, an unfolding between uncle, victim, urinary disorder, mother, doctors, medical exams and treatments, prophet, aggrieved ancestors, and miracle cure. There is self-evidence to "rape capital," but "rape" might refer to a legal concept, a social one, or a lived experience – categories that are themselves multitudinous as well as co-constituted. The caller's story reveals fissures between these different ways of understanding "rape," fissures that undermine the effective criminalization of non-consensual sex.

As an object of knowledge, sexual wrongdoing has eluded scholarly skepticism toward universal categories and essential natures, a skepticism that otherwise animates contemporary anthropology and post-modern feminism. As a result, "Rape has become academia's undertheorized and apparently untheorizable issue" (Mardorossian, 2002, p. 743). *Righting Sexual Wrongs* interrogates the nature of sexual wrongdoing. In so doing, it does not presume a definition of "sexual wrongs." Rather, it attempts to inductively chart the shifting terms through which sexual transgression comes to be understood and experienced. I treat sexual wrongdoing capaciously as an umbrella term that includes but cannot be reduced to the crime of rape.

Set in post-apartheid South Africa, *Righting Sexual Wrongs* documents the effects of a national drive to universalize criminal understandings of sexual wrongdoing. These efforts are undertaken in a variegated landscape of legal pluralism. I show how legal and extra-legal activities that prescribe an ontology of rape target black women living in the country's former bantustans, who are seen as externally determined cultural subjects and faulty citizens. And yet sexual harm inhabits these and other survivors in a multiplicity of ways that cannot be reduced to consent, coercion or power. In reckoning sexual wrongs, the matter of power so pivotal to criminal law is sometimes secondary to embodied experiences of pollution and pathology, infidelity, intergenerational legacies of economic precarity, and disembodied forms of occult

menace. These diverse experiences of harm are in part predicated by the practical pursuit of remedy.

A note on terminology before I proceed: the words used to describe someone who has experienced sexual wrongdoing attracts a lot of controversy.[3] Having come to this topic from earlier experiences in activism and advocacy, my impulse is to use "survivor," an expression that is preferable to "victim" for the way it connotes resilience over vulnerability. But "survivor" has been criticized for prejudging what a fair process of redress is meant to adjudicate. It also imposes a teleology on the aftermath of sexual violence. "Survivor" acts as a token of congratulations or praise for taking the first steps along the path of criminal justice; it tends not to be used for someone who does not report through official channels. In this manuscript, I default to the local categories of my interlocutors. Along with "survivor," this includes "victim" and "complainant," which are preferred in legal arenas. I also use "client," a term of art used by service providers to refer to those with whom they work. On occasion, I use "accuser." For the most part, these words are interchangeable with differences in subjectification otherwise indicated.

Criminalizing Sexual Wrongs

South Africa is often said to be in the midst of a "rape crisis." Widely circulated statistics paint a grim picture. A World Health Organization report ranked South Africa fourth out of 183 countries for femicide (the gender-based murder of girls or women).[4] In 2018, the state research agency Statistics South Africa released a report entitled *Crime Against Women in South Africa*. Bringing together survey data and police statistics, the report suggests that in the 2016/17 fiscal year, 138 out of 100,000 women were raped. The government report makes the stark admission, "This figure is among the highest in the world. For this reason, some have labelled (sic) South Africa as the 'rape capital of the world'" (Statistics SA, 2018, p. 8). The 2018-19 fiscal year statistics produced by the South African Police Service found a 4.6% increase in sexual offences

[3] For a review of this literature, see Hockett, J. M., & Saucier, D. A. (2015). A systematic literature review of "rape victims" versus "rape survivors": Implications for theory, research, and practice. *Aggression and Violent Behavior*, *25*, 1–14.

[4] This report was cited in newspaper coverage of a series of high-profile rape and murder cases in 2019. See for example, Lyster, R. (2019, September 12). *The Death of Uyinene Mrwetyana and the Rise of South Africa's #AmINext Movement*.

from the prior year.[5] Meanwhile, epidemiologists caution that police statistics represent a small fraction of rape prevalence (Jewkes & Abrahams, 2002). In surveys, between 20.9% and 29.6% of South African men self-disclose having forced another person to have sex (Jewkes et al., 2006, 2011a, 2015, 2016).

After the 1994 democratic transition, the newly elected African National Congress (ANC) was eager to depart from the violent militarism of apartheid-era law enforcement. But this moment also saw a rise in popular concerns with criminality, of which "rape crisis" was the most spectacular (Nuttall, 2004; Posel, 2005b). The crisis framing, with its emphasis on immediacy and disjuncture, makes a claim about a more sanguine past while demanding dramatic action to ensure a happier future (Roitman, 2013). The new attention to sexual violence was refracted through the politics of the day. Sexual violence was politicized in ways that substantiated white fears about the morality of newly enfranchised non-white South Africans (Posel, 2005a, 2005b). The "rape crisis" was a test of political legitimacy, and the ANC-led government's response was to enact a new punitivism, wherein tough-on-crime policies were moralized as ways of rehabilitating notably poor, black citizens (Alexander, 2016; Gillespie, 2008; Super, 2013). In this, the South African government is no different than so many others that have adopted punitive measures in order to address fears about the vulnerability of women (Bernstein, 2007b; Gruber, 2020; Halley et al., 2018).

There is a robust scholarship on how discourses of crisis pave the way for new and often illiberal politics (Klein, 2008; Redfield, 2013; Roitman, 2013). While not necessarily the object of their analysis, students of crisis implicitly or explicitly weigh in on the truth-value of the "crisis" they are scrutinizing. Consider, for example, Jean and John Comaroff's *The Truth about Crime*. In making sense of the politics of crisis, the Comaroffs sound a skeptical note about the everyday acts of theft, assault and rape that lead to prison overcrowding. For them, claims of crisis are at best exaggerations instrumentalized in order to justify neoliberal encroachments into the space of social welfare. For them, collective sentiments of insecurity express the anguish of life lived under racial capitalism; they are not really about experiences of interpersonal injury.[6]

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[5] SAPS. (2020). *Crime Statistics: 2018-19*. South African Police Services. https://www.saps.gov.za/services/crimestats.php

[6] This approach fits within larger academic tendencies to treat sexual violence as metaphor. For a critique, see Stoler, A. L. (1991). Carnal Knowledge and Imperial Power: Gender, Race, and Morality in Colonial Asia. In M. Di

To be sure, crisis gets its traction from a form of presentism that obscures more than it reveals. In South Africa's case, the apartheid regime's indifference to criminal violence among the country's majority non-white population makes it hard to discern whether recent anxieties about crime are stoked by an actual increase in incidence. Under apartheid, criminal policing in the country's non-white townships was only ever partial and centralized crime statistics were not collected from bantustans.[7]

But South Africans in general and women in particular are scared. "Stop killing us!", "Fed up with being afraid!", and "According to stats, I should be dead!"[8] Organizing around hashtags like #MenAreTrash, #RapeMustFall and #AmINext, college students, activists and scholars have taken to the streets and to social media, circulating images of female victims alongside slogans of protest that at once highlight and condemn the inevitability of violence against women in South Africa. Activists frequently proclaim the country to be wracked by a "war on women's bodies."[9] These fears are neither unwarranted, nor simply a metaphor for economic precarity, even as South Africa's political economy powerfully shapes physical and sexual vulnerabilities.

How to make sense of the politics of crisis alongside the lived imminence of intimate wrongdoing? Perhaps, the motivation to reject the truth-value of crisis lies in the unexamined presumption that "the punishment should fit the crime." By rejecting as false assertions that

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Leonardo (Ed.), *Gender at the Crossroads of Knowledge: Feminist Anthropology in the Postmodern Era* (pp. 51–101). Berkeley: University of California Press.

[7] Citing impressions by employees of human rights organizations, Sue Armstrong (1994, p. 35) suggests that the incidence of rape had been increasing for some time during the apartheid years.

[8] For reporting on these protests, see Germanos, A. (2019, September 13). *At #SandtonShutdown, South African Women Disrupt Business as Usual as Fury Over Gender-Based Violence Boils Over*. Common Dreams. https://www.commondreams.org/news/2019/09/13/sandtonshutdown-south-african-women-disrupt-business-usual-fury-over-gender-based; Moreotsene, L. K. (2019, September 13). *'It cannot be business as usual'—#Sandtonshutdown takes over*. SowetanLIVE. https://www.sowetanlive.co.za/news/south-africa/2019-09-13-watch-it-cannot-be-business-as-usual-sandtonshutdown-takes-over/; WEF. (2019, September 5). *South African women's fury at gender-based attacks spills onto the streets*. World Economic Forum. https://www.weforum.org/agenda/2019/09/gender-based-violence-in-africa/

[9] Masemola, M. (2016, August 22). "We believe you," says Silent Protest. *Wits Vuvuzela*. http://witsvuvuzela.com/2016/08/22/we-believe-you-says-silent-protest/; Merten, M. (2019, September 4). Official statistics prove War on Women is real – and pretty words are mere lip service. *Daily Maverick*. https://www.dailymaverick.co.za/article/2019-09-04-official-statistics-prove-war-on-women-is-real-and-pretty-words-are-mere-lip-service/; BBC. (n.d.). *South Africa violence and looting enters second day* (9/3/2019).

crime is a serious problem, it is possible to condemn policies of mass incarceration as inappropriate to the state of the world, without having to engage in thornier questions of whether punitive forms of justice are defensible in the first place. Such questions are largely sidestepped by those who condemn the injustice of criminal law by dwelling on status crimes, drug offences and other non-violent crimes (Gruber, 2020; Pfaff, 2017). *Righting Sexual Wrongs* poses normative and analytical challenges to both "the punishment should fit the crime" and punitive justice.

In any case, for those who see themselves living in a "rape capital," there is consensus that the cause lies in insufficient criminalization of sexual coercion. By criminalization, I refer to a process by which a grievance comes to be treated as criminal. Criminalization here concerns the nature of wrongdoing and is not strictly about what happens to the wrongdoer. Under South African criminal law, non-consensual sex is illegal and is subject to prosecution as the crime of rape, but complaints of sexual wrongdoing do not always make it to the criminal justice system. This is at once an institutional question of jurisdictional authority, but also an ideological question of how a problem is socially categorized and experienced. As we will see, institution and ideology do not always align in obvious ways. Focusing on criminalization as a process highlights how the transgressive quality of crimes is historical, political, and ultimately contested, rather than grounded in transcendental moral principles. Criminalization is a continuously incomplete process, insofar as alternatives to criminal ways of reckoning injury always exist (Griffiths, 1986). In South Africa, where a colonial history of racialized legal pluralism persists into the post-apartheid present, customary law continues to offer alternatives to the criminal justice system.

In South Africa, the crime of rape is primarily worried over as something that heterosexual cisgender men do to heterosexual cisgender women and girls. Of course, this does not mean that this is the only way sexual violence happens in South Africa. Between 2010 and 2015, there was a great deal of media attention on so-called "corrective" rape targeting lesbian women in order to "cure" them of or punish them for their sexual orientation (Morrissey, 2013). There is also increasing awareness of sexual violence within prisons, especially between incarcerated men. But these sorts of crimes do not get much attention from law enforcement or

the judiciary. Everyday activities of criminalization cast rape as sex weaponized by men against women and girls.[10]

Support for criminalization efforts has come from numerous quarters. Below, I discuss the legislative framework for sexual offences, which was devised primarily by feminist activist-attorneys and children's rights advocates (Artz & Smythe, 2008a, n. 13). Calls for criminal justice, in the form of longer sentences and harsher punishments, come from non-profit organizations, politicians and student-activists. The non-profit Sonke Gender Justice, for example, has a social media campaign called "Stop Gender Violence," through which it posts news stories of criminal prosecutions of rape along with comments like "We welcome the verdict and hope the sentence will be as a harsh as the crime committed" and "This is great news one less predator out in the loose the better their world (sic)."[11] In the wake of high-profile news reports of sexual crimes against women and children, politicians in the ANC Women's League also demand tougher punishments for those convicted of sexual offences, including "chemical castration or any form of castration of convicted rapists" (Davis, 2018).

Criminalization happens at different scales and through a variety of practical activities. Supranational human rights conventions inspire judicial and legislative responses that expand what counts as a sexual offence. Nationally, personnel training and procedural reform are meant to make sites of criminal justice more appealing to potential complainants. Locally, sensitization campaigns proselytize criminal conceptions of sexual wrongdoing. Between individuals, one person recommends that another report to the police. *Righting Sexual Wrongs* examines these measures and others, but here, I would briefly like to draw attention to two sets of overlapping activities that provide a larger context for what follows: a new legislative framework and specialized services for survivors.

[10] Recent legislative movement on "corrective rape" has not been about more effectively treating this form of sexual wrongdoing as the crime of rape. Instead, it has been trying to ensure that such violence is specifically registered as a "hate crime" (Koraan & Geduld, 2015; Mwambene & Wheal, 2015).

[11] This campaign can be found on Facebook and Twitter on the page Stop Gender Violence: A National Campaign and @NSPGBVCampaign. These comments came from an October 11, 2019 post and a September 25, 2019 post respectively.

New Legislative Framework

In the last two decades, legal reforms have changed the statutory architecture for dealing with rape in South Africa.[12] Laws were passed that expanded the legal definition of rape and changed the rules of evidence in rape trials.[13] These included procedural reforms meant to improve reporting by making the court a more hospitable place for survivors of sexual violence.[14] Arguably the most important of these legislative changes was the Criminal Law (Sexual Offences and Related Matters) Amendment Act (hereafter, the Sexual Offences Act), passed in 2007, which gathered together disparate common law sexual offences into a single, coherent act. The Sexual Offences Act defines rape as, "Any person ('A') who unlawfully and intentionally commits an act of sexual penetration with a complainant ('B'), without the consent of B, is guilty of the offence of rape."[15]

The Sexual Offences Act expanded the earlier common law crime of rape in several ways. The statutory definition is gender neutral. It includes anal and oral forms of "penetration" – as opposed to "intercourse" – as well as the insertion of foreign objects into the body. As a

[12] In jurisdictions around the world, the 1980s and 1990s were a period of great legal reform in the area of violence against women. To name a few of the popular reforms passed: rape was made a gender-neutral offence; "rape shield laws," which preclude questioning complainants about their sexual history, were passed; rape trials were exempted from the "cautionary rule," which requires that witness testimony be corroborated; marital rape loopholes were closed; complainants were no longer required to present material evidence of resistance; procedures were passed to ensure complainants' privacy and to limit in-person engagement through the routinization of *in camera* testimony. This sea change was in part marked by international accords like the 1993 U.N. Declaration on the Elimination of Violence against Women and the 1995 Beijing Platform for Action, which committed signatories to improving judicial responses to violence against women. South Africa is no exception to these changes.

[13] There were other earlier changes. In 1987, the common law presumption that a boy could not commit rape was removed by statute as was the marital rape exemption in 1993 (J. Burchell, 2016, p. 613). In 1989, an amendment to Section 227 of the Criminal Procedure Act is a "rape shield" provision that introduces legal tests to adducing sexual history evidence.

[14] Rape shield laws are meant to protect complainants from the humiliation and trauma of a bullying form of cross-examination that can reproduce the experience of rape (Matoesian, 1993). In practice, however, rape shield laws in general and Section 227 of South Africa's Criminal Procedure Act in particular do not necessarily make the court a more inviting place for complainants of rape. On the one hand, well-trained defense lawyers are adept at inserting insinuations of sexual excess without running afoul of the interdict against explicit questioning around sexual history (Conley & O'Barr, 2005, pp. 15–38). Concerning Section 227(2), South African trial courts do not seem to *enforce* section 227, allowing sexual history evidence to be led without the mandatory application. Even so, parliamentary hearings over the language of Section 227 make clear that it was the ambition of legislators to craft a provision that would "assist complaints to come forward" by "avoid[ing] secondary victimization" (*Criminal Law (Sexual Offences) Amendment Bill: Deliberations*, 2006).

[15] Section 3, Act 32 of 2007.

result of these important changes, non-consensual sex between two people of the same sex achieved legal recognition as rape and women were recognized as potential offenders. What's more, the Act redefines non-consent through the lens of a broad interpretation of coercion.[16] In addition to "'consent' meaning voluntary or uncoerced agreement,"[17] the Act enumerates a non-exhaustive list of coercive circumstances under which a person might "agree" to sex: use of force, threat of force, or intimidation; abuse of power or authority; false pretenses or fraudulent means; and incapacity to appreciate the nature of the act of penetration.[18] Such sex is criminal within the new statutory framework.

Beyond legal reforms aimed at redefining the crime of rape, legislators have restricted access to bail, limited parole, promoted the construction of private prisons, mandated lengthy minimum sentences and put in place a national sex offender registry. These changes were reactions to popular characterizations of the post-apartheid government as soft on crime, a reputation owed at least in part to the first ruling of the new Constitutional Court, which struck down the death penalty.[19] It was an unpopular decision given widespread anxieties over crime. Foremost among the punitive legal reforms to follow was the 1997 Criminal Law Amendment (Sentencing) Act, which established a strict minimum sentencing regime.[20] The sentencing law was enacted as a temporary measure, envisioned by legislators as an especially severe response to exigent circumstances (Hoffman-Wanderer, 2008). Nevertheless, the law has been continuously extended since. The result has been a bulge in the prison population. In 2018, the Department of Correctional Services reported that prisons were at 135% capacity (DCS, 2018). Between 1995 and 2014, the number of offenders sentenced to life imprisonment increased by

[16] It does this through an expansive definition of "consent," rather than exclusively adopting the language of "coercion." For legal scholars who participated in the deliberations of the South African Law Reform Commissions, this was a setback. The Sexual Offences Bill proposed by the Commission removed the language of consent altogether and exclusively used "coercive circumstances." The concern with the final language of the Act was with its ambivalence. Maintaining the language of consent, even though non-consent is defined to include "coercive circumstances," might mean presiding officers hold prosecutors to demonstrating the non-consent of complainants in order to make their cases, rather than proving accused persons had created coercive circumstances.

[17] Section 1(2), Act 32 of 2007.

[18] Section 1(3)(a)-(d), Act 32 of 2007.

[19] S v Makwanyane and Another, CCT/3/94 (Constitutional Court June 6, 1995).

[20] Act 105 of 1997.

3000% (Jacobson et al., 2017, p. 7). The post-apartheid period has seen a total incarcerated population that rivals that of the worst apartheid years (Gillespie, 2008).

Lengthy sentences for sexual offences are an important driver of post-apartheid increases to incarceration rates.[21] The minimum sentences put in place for rape range from 10 years[22] to life imprisonment,[23] depending on the presence of aggravating circumstances. South Africa's regional courts carry out the lion's share of sentencing and rarely deviate from these prescribed minimums. The predictable result has been a sharp increase in the length of prison sentences for sexual offences and an increase in the number of incarcerated people in prison for sexual offences (Giffard & Muntingh, 2006; O'Donovan & Redpath, 2006). Between 1995 and 2005, the number of people incarcerated for a sexual offence increased roughly twofold. This may be explained in part by more vigorous policing of such crimes, but longer sentences account for

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[21] See O'Donovan, M., & Redpath, J. (2006). *The Impact of Minimum Sentencing in South Africa*. Open Society Foundation for South Africa. South Africa's Department of Correctional Services does not publish statistics on the composition of its prisons by charge. To my knowledge, there are no publically available statistics more recent than these, but in the interim, no changes to the sentencing of sexual offences have been enacted.

[22] Section 51(1), read with Schedule 2, Part III of the Criminal Law Amendment (Sentencing) Act, Act 105 of 1997, established minimum sentences of ten, fifteen and twenty years for first, second and third (or subsequent) offenders, respectively. Presiding officers may *increase* these sentences by up to five years in cases where they identify aggravating circumstances.

[23] Section 51(1), read with Schedule 2, Part I of the Criminal Law Amendment (Sentencing) Act, Act 105 of 1997, established life imprisonment as a minimum sentence for "Rape –

(a) when committed:
  (i) in circumstances where the victim was raped more than once whether by the accused or by any co-perpetrator or accomplice; or
(ii) by more than one person. where such persons acted in the execution or furtherance of a common purpose or conspiracy; or
(iii) by a person who has been convicted of two or more offences of rape, but has not yet been sentenced in respect of such convictions; or
(iv) by a person, knowing that he has the acquired immune deficiency syndrome or the human immunodeficiency virus; or
(b) where the victim:
  (i) is a girl under the age of 16 years; or
  (ii) is a physically disabled woman who, due to her physical disability, is rendered particularly vulnerable; or
  (iii) is a mentally ill woman as contemplated in section 1 of the Mental Health Act, 1973 (Act No. 18 of 1973); or
(c) involving the infliction of grievous bodily harm"

It is worth noting that in practice, those sentenced to life are eligible for parole and few serve their full term. Under Section 73(6)(b)(v) of the Correctional Services Act (Act 111 of 1998), an incarcerated person is eligible for parole after serving four-fifths of their sentence, or twenty-five years, whichever is shorter. The legal practitioners with whom I worked assumed "life imprisonment" would amount to no more than twenty-give years. In response to prison overcrowding, it does seem to be the case that most (95%) incarcerated people are released after their first parole date (O'Donovan & Redpath, 2006, p. 62).

much of the increase. Between 1995 and 2005, the number of people serving sentences of 15 to 20 years increased from 100 to 1800. Prior to the new sentencing law, there were virtually no sex offenders serving life terms; in 2005, that number had increased to almost 1400.

Specialized Support Services

The passing of laws does not conclude the process of criminalization. For wrongs to be treated as criminal, citizens must step forward as crime victims to claim state protection and care. But sites of criminal justice – police stations, doctor's offices and courtrooms – have a well-earned reputation for being hostile, humiliating or indifferent to victims of sexual violence (Christofides et al., 2005; Rumney & van der Bijl, 2010). Victims are more often than not female, and their accounts are subjected to sexist ideas about respectable sexuality. These concerns are compounded by the bureaucratic nature of criminal investigations and prosecutions, which punctuates the pursuit of criminal justice with delays and referrals. Prosecutors find sexual offences difficult to prosecute. There are often no eyewitnesses other than the complainant. The material evidence of sex crimes – DNA, especially – must be precisely collected, processed and analyzed. But in under-resourced areas, laboratory work is improvised (Livingston, 2012) in ways that are seen as invalidating in court. Many would-be complainants opt-out of criminal justice or withdraw their complaints out of fear that police cannot or will not keep them safe from the accused. In response, in the last twenty years, South African law enforcement has undergone continual restructuring in order to better assist survivors of sexual wrongs. Specialized services, based on specialized training and multidisciplinary care teams, have been at the heart of these efforts.

The South African Police Service (SAPS) is often blamed for failing potential complainants of sexual offences.[24] Police officers have been accused of sexism, corruption and

[24] Complaints about police are widespread. A 2008 study of Gauteng police dockets found that arrests were made in only half of rape cases reported to the police (Vetten et al., 2008, p. 52). Desultory policing practices help to explain a low conviction rate (Smythe, 2016). Only 6.2% of the rape cases reported to the police result in conviction (Vetten et al., 2008, p. 53). Police officers frequently fail to open cases against friends, family members, fellow officers or perpetrators who pay them to look the other way (Jewkes & Abrahams, 2002). As a result, reports of unopened dockets plague the South African Police Service. There have also been institutional disincentives for police to file complaints. Beginning in 2010, in a bid to rationalize crime prevention, police were tasked with reducing violent crime by 4 to 7% annually, a goal measured by the number of dockets opened. Sure enough, detectives tasked with dealing with issues of domestic and sexual violence report that Commanding Officers pressured them to reduce statistics by losing dockets or failing to register them (Vetten et al., 2010). That year, sexual offences in South Africa declined by 6.7%.

ineptitude in carrying out investigations of sexual wrongdoing. In response to these criticisms, police leadership has experimented with dedicated units to address such crimes. In the late 1980s, a specialized detective unit for the investigation of crimes related to children was established. In 1995, it was expanded to include services to adult victims of domestic and sexual violence under the newly formed Family Violence, Child Protection and Sexual Offences (FCS) Unit of the police. The ranks of FCS were filled with specially trained detectives who had to apply to work in the unit, but in 2006, FCS became a casualty of restructuring that was happening across SAPS (Frank & Waterhouse, 2009). While FCS detectives are still assigned to investigate sexual offences, FCS has lost much of its independence. FCS Units no longer carry out their own recruitment, training, budgeting and planning, and FCS personnel are very rarely the first police officers to encounter victims, relying instead on referrals from uniformed officers.

Another national initiative to improve reporting through the criminal justice system is the Thuthuzela Care Centre model, a "one-stop shop" where survivors report for medical, legal and psychosocial care. For consolidating services in one site, the Thuthuzela model is envisioned to reduce the secondary traumatization that survivors can experience when they repeat their stories of sexual violence to numerous disparate and impersonal service providers. First rolled out in 2000 in Cape Town,[25] as of 2019, there were 55 operational Thuthuzela Care Centres, located in areas identified as having high rates of sexual violence.[26] These activities are carried out by the National Prosecuting Authority, a governmental body, with the larger objective of reducing the time it takes to finalize a criminal case and improving the conviction rate (Mafani, 2013). According to the Department of Justice and Constitution Development, cases reported through the Thuthuzelas have a slightly higher conviction rate.[27]

One of the trauma centres where I carried out observations and interviews for this study was a Thuthuzela. How it came to be so is a lesson in how national criminalization efforts crowd

[25] Barberton, C., & Grieve, A. (2004). *An investigation into the cost, management and ways of improving the Thuthuzela System*. Retrieved from Cornerstone Economic Research website: http://www.cornerstonesa.net/reports/2004%20Thuthuzela%20Final%20Report.pdf

[26] DCS. (2018). *Department of Correctional Services Annual Report 2017/18* (Annual Report RP410/2018). Department of Correctional Services: p. 86.

[27] 37% (2549 out of 6878) of sexual offences that reached a verdict in the 2017-18 reporting period were originally reported through the TCCs. Of those cases that reached a verdict, 74.5% of those reported through TCCs were finalized with a conviction. This compares with a 71.2% conviction rate (3105 out of 4329) for those case not originally reported through the TCCs (DCS, 2018).

out alternative ways of seeking redress. Formerly operated by a non-profit organization called the Thohoyandou Victim Empowerment Programme (TVEP), the Thohoyandou-based Thuthuzela now falls under the auspices of the National Prosecuting Authority. While the NGO continues to manage and pay the 24/7 first-response counselors who staff the Thuthuzela, the National Prosecuting Authority employs on-site managers and administrators who connect the first-response work of the trauma centre to local courtrooms. TVEP experienced this arrangement as something of a hostile takeover, and it continued to be a point of contention for TVEP management. In this mode, state specialization involves the cooptation of non-state institutions in order to further criminal prosecution.

The Thuthuzelas are a project of the Sexual Offences and Community Affairs Unit, a department of the National Prosecuting Authority that is itself a specialized response to sexual wrongdoing. Formed in 1999 in order to address gender-based violence, the department was tasked with managing and expanding availability to specialized Sexual Offences Courts with the goal of improving the conviction rate of sex crimes. First rolled out in 1993, the Sexual Offences Courts have seen periods of expansion and hiatus. In 2005, then-Minister of Justice and Constitutional Development, Brigitte Mabandla issued a moratorium on the development of additional Sexual Offences Courts. In 2013, the moratorium was lifted and the SOCA Unit was tasked with rapidly expanding the number of such courts. As of September 2019, there were 92 Sexual Offences Courts around the country (Mamokgere, 2019).

In practice, the activities of these courts are executed with more or less fidelity to the "best practice" guidelines (which have themselves been revised over the years), but what distinguishes these courts from other magistrate's courts is that they serve the needs of "the victim," as distinct from "the complainant." The preference for this nomenclature suggests an institutional commitment to "believing the victim" that sits uncomfortably alongside the "innocent until proven guilty" orientation of adversarial courts of law. All personnel in Sexual Offences Courts receive specialized training, not just in the statutory nuances of prosecuting sexual offences, but also in how to provide care to survivors of sexual violence. Adjustments to space and procedure are meant to isolate the complainant from both the accused and the wider public on the grounds that any such encounters might be traumatizing or stigmatizing. Sexual Offences Courts are typically spatially distinct from other magistrate's courts with separate waiting rooms for complainants. They are staffed by a multidisciplinary team that includes social

workers available for on-site counseling and courtroom intermediaries to sensitively relay questions to minor complainants in ways that they will understand. Courtrooms are outfitted with CCTV systems so that survivors can testify without being physically present in the courtroom. Ideally, such courts are linked to a Thuthuzela Care Centre in order to provide seamless care from first reporting through conviction.

The National Prosecuting Authority tends to promote its Sexual Offences Courts less than the Thuthuzela Care Centres. For example, the 2018-19 annual report touts the conviction rates of sexual offences first reported through the Thuthuzelas, not those that were prosecuted in the Sexual Offences Courts. In fact, the report only mentions the specialized courts twice. I suspect this is because there is not much of a difference, in execution or outcome, between specialized Sexual Offences Courts and their counterparts. On the one hand, not all Sexual Offences Courts have implemented the aforementioned measures. On the other, many regional magistrate's courts not officially tagged as Sexual Offences Courts have put these measures into place. The Khuḓani Regional Court where I carried out observations has at different points bore the designation of Sexual Offences Court.[28] Between 2014 and 2018, when I was carrying out fieldwork, it was technically not a Sexual Offences Court, but there was talk that the designation would soon be restored. Most of those working in the court had little idea about when the new designation would take effect and how it would change the course of their work. Subsequently, the court received a visit from a prominent Justice and Correctional Services official, who "opened the new sexual offences court" to great fanfare.

Demystification

Disparately managed by the Ministry of Justice and Correctional Services, the above efforts – legal reforms and specialized care – promote the criminalization of non-consensual sex by making criminal prosecutions more likely to result in conviction, which should in turn induce survivors to report. But feminist scholars and activists argue that the prevalence of "rape myths,"[29] informed by distorted ideas about respectable gender and sexuality, undermine these

[28] Khuḓani Regional Court is a pseudonym.

[29] The consensus on "rape myths" (e.g. Parratt & Pina, 2017; Singleton et al., 2018) is not without criticism (Conaghan & Russell, 2014; Lonsway & Fitzgerald, 1994). Feminists who rely on "rape myths" and those who seek to discredit "myths about myths" both deploy an idea of the uncanny double (Gurnham, 2016).

efforts in two ways. First, individual service providers have discretion in the ways they assess the credibility of complaints. Service providers who subscribe to erroneous beliefs about rape actively obstruct or passively discourage criminal prosecution. Second, victims themselves internalize such myths and trivialize their experiences as common, everyday, and fundamentally non-criminal. "They don't know they have been raped" was repeated to me throughout the course of my research, especially by those working in or in partnership with the criminal justice system, and summarizes this view. National efforts to criminalize non-consensual sex attempt to surface victims by rectifying rape myths.

Across the country, workshops and public sensitization campaigns aim to dispel rape myths in service of criminal justice. These efforts are decentralized, carried out by disparate private and state actors using different media. The prominent Cape Town-based non-profit organization, Rape Crisis, does a great deal of work in this space. On the organization's Training and Development Project web page, it lists common myths that it corrects with ontological propositions about what counts as rape, who victims are and who perpetrates rape.[30] Some examples should illustrate this sort of work. By clicking on the myth, "Women who wear revealing clothing or stay out late at bars are inviting rape," content drops down that states, "Appearance and clothing have nothing to do with who gets raped and many rapes happen in the home. Women are raped no matter what they wear." Or the myth, "A woman can prevent rape if she tries hard enough" is corrected with "Most men are stronger than most women. But force is often not necessary, as men can use emotional manipulation, weapons or threats on the victim's life to get a woman to comply." Or another myth, "Men rape because they want sex," with the correction, "Rape is not only about relieving sexual desire. It is about gaining power and control over another person. A rapist gets satisfaction by humiliating and controlling his victim and uses sex as the tool to do this." This material is presented with instructions for how to report to a clinic and the police.

This sort of content is presented to schoolchildren in life skills curricula, to uniformed police officers as part of professionalization, to traditional leaders, church congregations, lawyers and presiding officers, hospital staff, and women's groups. It is the subject of focused trainings or appears as brief agenda items; it is circulated at information stalls, on wall posters or in

[30] For the full list of "rape myths," see Rape Crisis Cape Town Trust. (n.d.). Making Change. *Rape Crisis*. Retrieved June 19, 2020, from https://rapecrisis.org.za/programmes/making-change/.

pamphlets; it is on the radio and television during internationally observed events like Women's Day or 16 Days of Activism against Gender-Based Violence. Dispelling myths in this fashion is meant to deter those who might commit rape were it not for this training; to ensure service providers provide protection and care to survivors in accordance with established protocols; and to surface survivors by instilling in them a "rights consciousness" (Merry, 2006, Chapter 6).

As should be clear from the above examples, demystification is not just about rejecting erroneous propositions; it also involves making ontological claims about what sex is and what it means to be a woman. In these sensitization campaigns, there is no place for power in legal sex, which should be about mutuality and connection. A woman is defined by her vulnerability to rape. In such campaigns, rape is a moral injury rooted in liberal notions of personhood: its harm is the violation of the sexual sovereignty of the bounded, self-determining individual. Its trauma lies in breaching the distance between self and others, a breach that is fundamentally negating. Assertions about the "true" or "real" harm of rape are rooted in emancipatory impulses.[31] Around the world, in police stations, emergency rooms and courthouses, complaints of rape are treated with suspicion as a matter of course. Claims to state care are systematically neglected or denied on grounds of race, class and gender. For these very good reasons, feminists and human rights activists insist on treat the ontological status of rape as sacrosanct.[32]

Rape is an experience and a concept. Though demystification campaigns are putatively leveled at the latter, such work is carried out to surface survivors and as such is meant to trigger experiential change. Why sensitization efforts should be efficacious, what it implies for surfaced victims, is not deeply theorized by the planners of these campaigns. This is possible because the content of these trainings is understood abstractly as human rights awareness, and knowing one's rights is treated as an unqualified good (Englund, 2006). But for demystification to increase reporting, those who have been sensitized must come to feel themselves to be rape victims.

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[31] Theorists of sexual violence frequently refer to the reality or truth of rape, in the singular (Artz & Combrinck, 2003, p. 88; Lacey, 1998, pp. 113, 118; MacKinnon, 2016, p. 450). In an example of case law in South Africa: "sexual offences may differ in form, but the psychological harm they all produce may be similar" (*Levenstein and Others v Estate of the Late Sidney Lewis Frankel and Others*, 2018, para. 59). Susan Estrich's *Real Rape* (1987) is canonical in this genre.

[32] There are a few ethnographic exceptions that attempt to trouble the notion of rape as universal, see Helliwell, C. (2000). "It's Only a Penis": Rape, Feminism, and Difference. *Signs*, *25*(3), 789–816; Porter, H. (2016). *After Rape: Violence, Justice, and Social Harmony in Uganda*. Cambridge University Press; Sanday, P. R. (1981). The Socio-Cultural Context of Rape: A Cross-Cultural Study. *Journal of Social Issues*, *37*(4), 5–27.

It might be said that these interventions have learned the lessons of Joan Wallach Scott's (1991) "Evidence of Experience" well. In this important essay, Scott challenges the impulse among historians to recuperate lost voices through appeals to authentic experience. It was a tendency she found to be especially marked in feminist histories of women. In the works she critiques, "experience" is something people have, the implication being that the one experiencing is a stable self, unchanged by their encounters with others. She argues that even personal and sensuously felt experiences are produced by historical processes. Claiming otherwise obscures the ways concept and experience, that which is social and that which individual, are both, "discursive productions of knowledge of the self, not reflections either of external or internal truth" (1991, p. 795).

By design, practices of criminalization are meant to produce experiences of rape. Holly Porter, an ethnographer who carried out research on sexual violence among the Acholi in northern Uganda, puts the stakes of such educational interventions starkly. She notes that, "An Acholi woman experiences being forced to have sex in certain contexts differently than a woman in a setting where 'rape' signifies a crime tantamount to death" (2016, p. 225). Given this, Porter notes that it might be argued that "problematizing sexual violence in new ways might do more harm than good for the women involved" (2016, p. 225), but she quickly dismisses this conclusion. Porter put the issue to an Acholi friend who said that, "in the immediate term, she thought things might worsen for women, but that unless these things were challenged many women would continue to endure forced sex and suffer silently" (2016, pp. 225–226). This is the typically unexamined rationale that undergirds sensitization campaigns to surface survivors. In the context of criminalization, this rationale itself glosses over a number of necessary conditions being met. If individual victims come to experience sexual harm as the crime of rape, they will appear before courts. If they appear before courts, those who commit rape will be punished. If those who commit rape are punished, they and others will be deterred from committing rape in the future. Victims are sometimes enjoined to "turn your scars into stars," an imperative that asks individuals to make their trauma productive on behalf of anonymous others and an uncertain future. This is the journey from being a "victim" to being a "survivor."

Harm and the Liberal Subject

Most criminal jurisdictions define rape in terms of consent, where the quality of harm is understood in terms of sexual autonomy. This notion of rape emerges from the late 19th century, when courts came to understand sex as part of an individual's right to self-ownership (Haag, 1999; for South Africa, see Thornberry, 2019).[33] The legacy of this history is a legal definition of rape rooted in an abstract disagreement between two parties in which sexual access is contracted under certain terms. In this way, rape law is an inheritor of liberal understandings of the person as autonomous, bounded and self-determining.

The term "liberalism" gets applied to a variety of historical and contemporary worldviews that have differing orientations toward capitalism, state-funded welfare and the rule of law. For this reason, it is more accurate to refer to "liberalisms" than to a single coherent theory of liberalism. Nevertheless, the subject at the center of these theories shares certain characteristics, namely, "the individual is, by natural right or by something tantamount to it, sovereign over himself, his talents and his property" (Ryan, 2014, p. 34). *Righting Sexual Wrongs* is primarily concerned with this liberal subject. Charles Taylor (2007, p. 27) has referred to this notion of personhood as the "buffered self" of secular modernity. Saba Mahmood (2005) has discussed how secular-liberal feminists have taken up this subject to reduce agency to acts of resistance. It is worth highlighting here that sex, race and class are often treated as morally irrelevant in liberal theories of subjectivity because they do not have an intrinsic relationship with important human characteristics like rationality or autonomy (Laden, 2003), a point I return to below. Here, I am especially interested in how modern liberal theories of the individual's right to what Isaiah Berlin termed "negative freedoms," that is, freedom from the obstruction of others, shape a certain phenomenology of rape.

Among theorists of rape, it is generally agreed that a legal definition of rape, one based strictly on consent, fails to capture the "true quality" of its harm. As feminist legal scholar Nicola Lacey (1998, p. 112) notes, "the idea of harm communicated by the legal definition of rape is…a peculiarly mentalist, incorporeal one. Its essence lies in the violation of sexual autonomy understood as the right to determine sexual access to one's body. Thus it might be inferred that

[33] This understanding of rape came to subordinate other forms of sexual transgression – such as seduction – more interested in the social repercussions of a given act of sex. Elizabeth Thornberry's (2019) excellent history documents the legal journey of the consent principle to South Africa.

rape amounts to something between expropriation of a commodity and violation of will." In its most limited sense, the law imagines the harm of rape as procedural, a choice that goes unheeded.

This (now dated) legal idea does not exhaust the phenomenology of rape. For Lacey, the harm of rape is both corporeal and affective, a bodily breach that amounts to psychic incursion. The liberal subject is central to this conceptualism of the harm of rape. Lacey draws from Drucilla Cornell's concept of "the imaginary domain" to suggest rape threatens the integrity of a space of separation, both physical and mental, where self is bounded off from other.[34] Moral philosopher Jay Bernstein contends that after rape, it becomes impossible not to recognize one's radical dependence on the world, a dependence that rape reveals for what it really is: "existential helplessness" and vulnerability (2015, p. 13). In this way, rape is reckoned to fundamentally shatter one's relationship with the world. For this reason too, friends and family struggle to acknowledge the suffering of rape survivors, because to do so is to confront the fact that the preserve between self and other can be violently breached (Brison, 2003, p. 9). For these reasons, rape, as a violation of autonomy, amounts to an annihilation of self.

Still the question remains why forced sex, specifically – and not forced conversation, or a punch to the face, say – results in such an annihilation of the self. Enlightenment philosophy offers one answer to the question of why forced sex is so self-negating. Not just autonomous, the liberal person is also rational. Indeed, reason is the basis of human dignity. And engaging the reason of others honors that dignity. But the sex act is not about reason (so the argument goes). It is about pleasure. As such, sex is always (potentially) debasing. In his *Lectures on Ethics*, Immanuel Kant elaborates this position:

> Sexual love makes of the loved person an Object of appetite; as soon as that appetite has been stilled, the person is cast aside as one casts away a lemon which has been sucked dry. Sexual love can, of course, be combined with human love and so carry with in the characteristics of the latter, but taken by itself and for itself, it is nothing more than appetite. Taken by itself it is a degradation of human nature; for as soon as a person becomes an Object of appetite for another, all motives of moral relationship cease to

[34] For others who find rape is a dissolution of the integrity of the self, see: Bourke, J. (2012). Sexual violence, bodily pain, and trauma: A history. *Theory, Culture & Society*, *29*(3), 25–51: p. 46; Brison, S. J. (2003). *Aftermath: Violence and the Remaking of a Self*. Princeton University Press; Campbell, K. (2003). Rape as a 'crime against humanity': Trauma, law and justice in the ICTY. *Journal of Human Rights*, *2*(4), 507–515; Das, V. (1996). Sexual Violence, Discursive Formations and the State. *Economic and Political Weekly*, *31*(35/37), 2411–2423: p. 2412.

> function, because as an Object of appetite for another a person becomes a thing and can be treated and used as such by every one." (Kant, 1930, p. 163)

Setting aside the peculiar lemon simile, for Kant, all sex is morally dubious because sex necessarily involves treating one's partner as a means to satisfy one's own desires, a breach of the humanity formulation of his categorical imperative. Sexual love and human love, he argued, could only be united in the institution of marriage, a political institution that he understood to preserve the equal juridical standing of those who enter it. In this way, Kant arrived at a conventional Christian conclusion about sex being sanctified by marriage, but routed it through liberal values of self-mastery and independence.

Feminist philosophers rightly abhor Kant for his views on gender and racial difference.[35] And yet there are striking congruencies between Kant's take on sex and contemporary feminist theories of sexual objectification (Herman, 1993; Papadaki, 2010). Philosopher Barbara Herman, a scholar of Kantian ethics, notes that legal feminists Andrea Dworkin and Catharine MacKinnon share Kant's concern that "Sexuality involves the moral loss of self, not in terms of boundaries, but as being persons to and for one another" (1993, p. 61).[36] For Dworkin and MacKinnon, it is not just forced sex that is potentially self-negating, but all sex is presumed debasing until it is established otherwise. Or as Gayle Rubin famously put it (1984, p. 150), "[s]ex is presumed guilty until proven innocent." Dworkin and MacKinnon argue that extant conditions of gender inequality mean that it is the woman who is necessarily treated as a means in heterosexual encounters, regardless of whether she consents. For MacKinnon, this sexual objectification is in fact constitutive of social categories of gender.[37]

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[35] A few examples suffice. Kant excluded women from his ideal of citizenship, citing only "natural" reasons. He understood non-European peoples as inferior to Europeans, claiming biological differences. For these reasons, Barbara Herman describes Kant as "the modern moral philosopher feminists find most objectionable" (1993, p. 54).

[36] In a footnote, Herman describes how she first became aware of these connections, "A year and a half ago I was teaching Kant's political philosophy and participating in a study group that was reading Andrea Dworkin and Catharine MacKinnon. In the midst of a class discussion I found that I could paraphrase Kant's views of sexuality using Dworkin and MacKinnon's analysis. It seemed at once a perverse and right thing to do. I'm not sure I yet know which. This essay was supposed to help me figure that out" (Herman, 1993, p. 71).

[37] This is true even when those who carry out sexual violence are cisgender females and when those who experience sexual violation are cisgender males. MacKinnon argues that rape necessarily produces the rapist as man and the victim as woman, regardless of their biological sex and even their claimed gender beyond the act of violation (MacKinnon, 2007, p. 174, 2016, p. 440). Dworkin, by contrast, makes an essentialist claim about biological differences between men and women that make the latter fundamentally vulnerable to the former.

It is doubtful either Dworkin or MacKinnon would call themselves Kantian. Nonetheless, their views of sexual objectification conform to a Kantian vision that equates sexual use with sexual abuse. What's more, even as these theorists claim a feminist vision of liberation, they tacitly endorse a puritanical sexual moralism that takes women's disinterest in sex as its starting place. There is an important slippage between integrity and chastity that animates the politics of feminist factions who see "sexual liberalization [as] a mere extension of male privilege" (Rubin, 1984, p. 165). This elision makes its way into the space of courts. Consider a much-cited South African court case that describes the harm of rape:

> A rapist does not murder his victim – he murders her self-respect and destroys her feeling of physical and mental integrity and security. His monstrous deeds thereafter after haunts his victim and subjects her to mental torment for the rest of her life – *a fate often worse than loss of life*."[38]

The "fate worse than death" language, borrowed from Victorian-era legal formulations (Rayburn, 2004), should alert us to the resonances between the harm of violated integrity and the harm of violated chastity (see also Miller, 2004, p. 39).

A second answer to the question of why forced sex is widely seen as self-negating lies in the modern relationship between sexuality and truth. In a dialogue on the subject of psychiatry and incarceration, Foucault drew a comparison between rape and other forms of violence:

> when one punishes rape one should be punishing physical violence and nothing but that…there is no difference, in principle, between sticking one's fist into someone's face or one's penis into their sex… (1988, p. 200)

He goes on to account for the difference:

> sexuality as such, in the body, has a preponderant place, the sexual organ isn't like a hand, hair, or a nose. It therefore has to be protected, surrounded, invested in any case with legislation that isn't pertaining to the rest of the body. (1988, p. 202)

What Foucault is saying is that the gravity of rape comes from the meaning invested in sexuality as a source of interior truth. He leaps from this historical observation to the normative argument that rape *shouldn't* be punished any differently than other forms of violence because it isn't *really* different. This ontological refusal of rape is in some ways un-Foucauldian (Henderson, 2007). As Foucault himself would admit, just because something is a social construction doesn't

[38] Emphasis mine. This passage is from a 1996 case called S v C. It is cited frequently in rape trials. See for example, S v Dladla and Another, ZAGPJHC 233 (South Gauteng High Court, Johannesburg November 30, 2011).

mean it is not real (Hacking, 2000). Of course, highlighting the possibility of a historical juncture when things could have been otherwise is a political move, and for Foucault, it takes him to an anti-carceral place.

For others, though, the political move lies in tying the harm of rape to gender oppression and specifically the domination of heterosexual, cisgender women. MacKinnon has led the charge in demanding a redefinition of the crime of rape, one that encompasses all sex experienced as violative.[39] For MacKinnon, the observation that "Rape is a crime of gender inequality" (2016, p. 431) is programmatic. That is, she sees a greater role for the law in criminalizing sex across differences of power, and because heterosexual sex happens across gender difference, it is generally suspect. MacKinnon rejects a narrow, legal understanding of consent as a "pathetic standard" (2016, p. 465), instead advocating for a more expansive understanding of force:

> In this area of law [criminal], forms of force typically correlated with male sex and gender – such as the economic dominion of employers, dominance in the patriarchal family, authority of teachers and religious leaders, state office of policemen and prison guards, and the credibility any man has (some have much more than others based on race and class and age), not to mention the clout of male approval and the masculine ability to affirm and confirm feminine identity – are not regarded as forms of force at all. But they are. Whether or not men occupy these roles, these forms of power are socially male in that they are not equally available for women to assert over men. (MacKinnon, 2005, p. 244).

For criminal law to adopt an equality standard, as she advocates, the hurdle for legal sex would be "Mutual, wanted, joyous, enthusiastic sexual interaction[] of intimate connection" (2016, p. 441). This is more than an "affirmative consent" standard. For MacKinnon, gender inequality has been so deeply internalized by women themselves that even when a woman says, "yes," there is no way to know whether that "yes" is a free and authentic expression of her will. For MacKinnon, this makes, "rape [] indigenous, not exceptional, to women's social condition" (1989, 172; see also Brownmiller, 1975).

In any case, MacKinnon is overstating her case in the passage above when she suggests these "forms of force… are not regarded as forms of force at all." She was neither the first social

[39] As MacKinnon has put it, "Politically, I call it rape whenever a woman has sex and feels violated" (1987, p. 82).

theorist nor the first feminist to conceptualize the diverse forms power takes.[40] One way in which MacKinnon's take on power is notable is the underlying suggestion of an authentic subject that exists outside of relations of power. Given the subtle workings of power she herself recognizes, it is hard to imagine any world in which power does not operate along some new or existing axis. More to the point, dismissing as brainwashed all those who find great meaning in occupying gender roles is its own act of power (Hodzic, 2016; Mahmood, 2005). Another objection concerns how she has trained her analysis on sex in particular, as opposed to work, family, art, education or other areas of social life that contribute to gender domination. Rubin (1984) points out that this narrow focus justifies a puritanical approach to sexuality that inevitably leads to the policing of sexual minorities.

It is worth noting that MacKinnon has a complicated relationship with liberalism (Schaeffer, 2001). She does not count herself as a liberal feminist (MacKinnon, 1989, 1990). She derides those she labels "liberal" as failing to think critically about power and gender.[41] MacKinnon rightly points out that, in the context of gender inequality, laws that take the liberal subject as their object discriminate without having to mention gender. This is because the liberal subject of Enlightenment epistemology tends to be an abstraction without sex, race or class. The subject with whom MacKinnon is concerned is gendered through violative sex (along with other experiences of domination) and in this gendering is excluded from the freedoms of liberal subjectivity. MacKinnon does not presuppose liberal subjectivity, especially for those who are oppressed, but her political project aspires to a world in which all might live and flourish as liberal subjects:

> If male power makes the world as it 'is,' theorizing this reality requires capturing it in order to subject it to critique, hence change. Feminists say women are not individuals. To retort that we 'are' will not make it so; it will obscure the need *to make change so that it can be so*. (emphasis in original, MacKinnon, 1987, p. 59)

In using quotation marks around the words "is" and "are," MacKinnon is making a claim about the constructed quality of our reality. Her feminism draws attention to how patriarchy distorts the

[40] Marx, Freud, and W.E.B. Du Bois are some obvious examples. Simone de Beauvoir's *Second Sex* is an earlier feminist example.

[41] MacKinnon assigns "liberal" to feminists who disagree with her about criminalizing sex work and pornography, but these feminists neither identify as liberal nor espouse especially liberal positions. Feminists like Gayle Rubin and Carole Vance understand force in similar terms, but are suspicious of an analysis that foregrounds sex – as opposed to employment, for example – as a primary locus of exploitation.

capacity for women to live as free, self-determining individuals in order to bring about a world in which they can. In this aspirational world, relations between individuals are vacated of power so that every choice is authentically made.[42] In our patriarchal world, by contrast, heterosexual sex especially is the terrain upon which women experience the harm of being excluded from liberal subjectivity.[43]

MacKinnon's position has been embraced by liberal legal theorists, who have reframed her notion of objectification into a criminal matter requiring punishment.[44] In spite of her rejection of liberal feminism, this is a development she applauds (MacKinnon, 2017). The impulse to protect women from sex is not limited to rape law. It has been the impetus behind efforts to criminalize pornography and most recently a wave of legislation that targets commercial sex workers as victims of "sex trafficking" (Bernstein, 2018a; Chapkis, 2003; Vance, 2012). Under the banner of "new abolitionism," a disparate coalition of secular feminists, evangelical Christians, left and right-leaning politicians, human rights organizations, state humanitarian agencies and celebrities have combined forces to reclassify sex work as slavery, prosecute those deemed responsible and rescue victims.[45] What unifies this coalition is the presumption that no one and no woman especially would willingly choose to participate in sex work. This is not strictly about the coercive nature of labor under late capitalism. Some new

[42] Or, more cautiously, power does not imbricate relationships in systematic ways along social classes.

[43] Dworkin described this as women being alienated from the desire for freedom.

[44] In a thought-provoking essay, Lorna Norman Bracewell (2016) reveals how the politics of radical antipornography feminists like MacKinnon were transmogrified by liberal legal scholars. Antipornography feminists contended that forms of speech like pornography perpetuate gender discrimination by producing gender, a harmful construct that necessarily subordinates women. This was a legal battle they lost on freedom of speech grounds. Liberal judges rejected the idea that they were being asked to regulate the ostensibly "private" realm of individual thought. In the hands of liberal feminist lawyers, antipornography arguments did not concern speech or nebulously defined gender ideology. Instead, these lawyers, among whose ranks Elena Kagan can be counted, focused on preventing illegal *conduct*. In this view, pornography was no longer harmful because it led to the social subordination of all women; it was harmful because it entailed sexual coercion against those who participated in it. While antipornography feminists like MacKinnon had been arguing for civil remedy, Bracewell persuasively suggests that the liberal appropriation of antipornography arguments provoked a move to criminalize forms of sex-related gender discrimination and the related carceral turn in feminist activism.

[45] In this, the movement closely resembles its predecessor, the progressive-era movement to end "white slavery." This led to the 1910 Mann Act, a piece of legislation that made it a felony to transport a woman or girl for the purpose of prostitution or "any other immoral purpose." Still in effect, the Mann Act and its "immoral purpose" proviso have been used to police the consensual sexual behavior of women as well as to punish interracial and homosexual sex (Pliley, 2014).

abolitionist groups forcibly deliver the women they rescue into more mundane, but perhaps less lucrative forms of exploitative labor.[46] Likewise, the same multi-national corporations that take up sex trafficking as an issue of corporate social responsibility outsource their labor to countries that have few protections for workers (Bernstein, 2018b). Critically, in practice, sex trafficking legislation does less to protect victims of non-consensual sex than it does to police gender, race, sexuality and migration (Bernstein, 2018a; Chapkis, 2003; Pliley, 2014; G. S. Rubin, 2011; Vance, 2011a, 2011b).[47]

The position touted by MacKinnon and the new abolitionists on sex, gender and power has been criticized for promoting a feminist politics of vulnerability; denying the (sexual) agency of women and other social others; reinforcing binary notions of gender; subordinating race, class and age to gender inequalities; policing sexual morality in favor of puritanical notions of the erotic; demanding an outsized role for the law; and stoking a sex panic that criminalizes poor people of color. Debates between feminists about sex, gender and power have raised important questions about what constitutes sexual assault and what role the law should play in adjudicating sexual disputes.

Of course, there are many ways to experience the harm of rape, ranging from physical pain, fear of sexually transmitted infection to feelings of shame or helplessness. But the insistence that there is an underlying truth to rape – an integrity breach that leads to a dissolution

[46] New York Times columnist Nicholas Kristof has gained renown for his journalism on "sex trafficking," going so far as "buying the freedom" of two teenaged Cambodian sex workers. Written in the melodramatic style common to the sex trafficking genre (Vance, 2012), one of the articles chronicling these purchases ends on the cliffhanger, "will they, like some other girls rescued from sexual servitude, find freedom so unsettling that they slink back to slavery in the brothels?" (Kristof, 2004). In this moment, Kristof casts the choice to return to sex work not as a reasoned instance of agency, but as evidence that such women have so internalized their servility that they no longer value freedom. They are, in short, failed liberal subjects. He is disappointed to learn that one of the young women does in fact return to the brothel. It is in keeping with the "sexual politics of new abolitionism," as Elizabeth Bernstein (2007) puts it, that Kristof (2009) wholeheartedly endorses the exploitation of sweatshop labor as a means to escape poverty. For more on "running from the rescuers," see Soderlund, G. (2005). Running from the Rescuers: New U.S. Crusades against Sex Trafficking and the Rhetoric of Abolition. *NWSA Journal*, *17*(3), 64–87.

[47] The recent FOSTA-SESTA legislative package (Fight Online Sex Trafficking Act and Stop Enabling Sex Trafficking Act) demonstrates that sex trafficking can be used as a cudgel against political enemies. The law strips away the protections of Section 230 of the 1996 Communications Decency Act, leaving online platforms that moderate content criminally liable for sexual commerce (consensual or not) that happens on their sites. Rather than engage in heavier moderation of their content, online platforms are instead electing to shut down segments of their sites or stop moderating content altogether in order to avoid liability. As such, FOSTA-SESTA will likely result in the *under*policing of online speech by the platforms that host it. It is perhaps no coincidence that some conservative legislators who support FOSTA-SESTA have made it their goal to stop platforms like Facebook, Twitter and Youtube from removing content that stokes hatred or includes factually inaccurate political statements (Romano, 2018).

of self – has achieved the status of feminist platitude. This insistence is itself a corrective of earlier legal definitions that narrowly construed rape as sex accomplished by means of physical force and in spite of physical resistance. Susan Estrich's *Real Rape* looms large in this body of literature. Originally published in 1987, Estrich offered a persuasive critique of police and jurists for narrowly applying "rape" to injurious acts committed between strangers. What were then the prevailing, force-based accounts of rape in the law were decried as "male realities" imposed on women.[48] In rejecting earlier legal formulations of rape based on force and resistance, feminists often made their own ontological claims about the harm of rape. Foregrounding the "real" harm of rape as violated sexual sovereignty was a political move that helped gain support for redefining rape in terms of consent.[49]

The shifting legal boundaries of the crime of rape can be charted in changes to how consent is popularly understood. Already a capacious category (Westen, 2004), consent has been asked to bear considerably more weight in the last decade. Indeed, consent has become the preeminent metonym for good sex. For this reason, feminist legal scholar Joseph Fischel (2016) has dubbed ours the "Age of Consent" while historian Greta LaFleur (2019) has remarked on the ascent of a "consent paradigm" in thinking about sex. What both scholars point out is that consent has become untethered from the intersubjective practice defined by the law.[50] It instead is a sexual ideology freighted with a host of normative expectations about pleasure, relationships, and power.

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[48] This is a point MacKinnon herself makes. In South Africa, legal scholar Colleen Hall (1988) takes her up to make a similar point in advocating for a legal redefinition of rape.

[49] Feminist legal theorist Robin West (1988) makes a similar point. In "Jurisprudence and Gender," she describes how feminist efforts to criminalize marital rape, "simple rape," and date rape have struggled to conceptualize the harm of rape outside of liberal (and, she argues masculinist) fears of violated autonomy. For scholars and lawyers who promote criminal law reform by invoking an underlying truth of rape, see the following: Lacey (1998) who sees the law as failing to recognize "the real wrong of rape" (p. 114) and "the real damage of rape" (p. 119); MacKinnon (1989, p. 174) notes that, "the reality of women's violation, is recognized by rape survivors…"; Kaitlynn Mendes (2015, p. 113) on "the reality of rape." In South Africa, Lillian Artz and Helene Combrinck (2003, p. 88) insist on "the true nature and experience of sexual violence." In an example of case law in South Africa: "sexual offences may differ in form, but the psychological harm they all produce may be similar" (*Levenstein and Others v Estate of the Late Sidney Lewis Frankel and Others*, 2018, para. 59). It is worth noting the use of the definitive article in such texts.

[50] It is worth noting that the legal notion of consent is broader than simple agreement. Rather the legal requirement for consent includes knowledge, competence and freedom (Westen, 2004). It is through this last factor that courts have been able to expand what counts as non-consent absent legislation.

A few examples to illustrate the point. The expanding penumbra of consent is evident in the ways the 2017 #MeToo movement simultaneously evokes complaints of gender discrimination in the workplace as well as the crime of rape. #MeToo was originally deployed by Tarana Burke in 2006 to draw attention to the problem of sexual violence committed against women of color. Since then, #MeToo has taken on a more capacious role. Consider the tweet that made #MeToo a household reference. Eliding sexual harassment and sexual assault, actress Alyssa Milano prompted her twitter followers, "If you've been sexually harassed or assaulted write 'me too' as a reply to this tweet." Beyond #MeToo, slogans like "consensual sex is hot" or "consensual sex is safer sex" appear on posters in coffee shops and scrawled in chalk on college campuses. In an article published in *The Conversation* by University of Michigan Assistant Professor of Psychiatry and Public Health Shervin Assari, the sub-headline reads: "Consensual sex is key to happiness and good health, science says." The sub-headline makes no reference to the actual argument of the piece, which concerns the *frequency* of consensual sex. In these ways, "consent" draws closer to the "Mutual, wanted, joyous, enthusiastic sexual interaction[] of intimate connection" (2016, p. 441) that MacKinnon asks the law to adjudicate.

In legal spaces, too, consent is being asked to carry more than it has since it supplanted force as an evidentiary requirement for legally establishing rape. This has been hailed as a feminist victory: "As 'rape' acquires a broader scope of meaning, there is a concomitant truncation of male authority to control the sexual domain" (Reitan, 2001, p. 43). Putting aside the vexed question of whether women's sexual autonomy can be achieved through a politics of vulnerability, the expanding definition of rape has important consequences. Feminist calls for greater state protection against coercive sex have led to an expansion of the criminal justice system (Bumiller, 2008; Gruber, 2020).[51] What's more, the category "rape" is increasingly treated as the only effective standard for condemning gendered violence and otherwise objectionable forms of sex (Fischel 2016; Fischel 2019).

I reference Euro-American feminist, legal and philosophical practices because righting sexual wrongs in South Africa cannot be understood without them, but also because South Africa tells us something about righting sexual wrongs elsewhere. MacKinnon's scholarship has been influential in feminist jurisprudence in South Africa, where she is cited in case law and legal

[51] Elizabeth Bernstein (2007b) has referred to this tendency in feminist politics as "carceral feminism."

scholarship on pornography, obscenity, human trafficking, and sex work. Her thinking has shaped how rape has been redefined in South Africa's Sexual Offences Act.[52] The new Act adopts an expansive coercion standard that makes consensual sex under conditions of inequality legally suspect (Naylor, 2008, p. 27). Non-consent appears in this law, but is expanded by a non-exhaustive understanding of coercion that includes as coercion an undefined abuse of power and authority. Even as the new law moves away from framing rape as a necessarily gendered crime, magistrates and judges foreground the gendered vulnerability of women in their judgments and sentences.

Consider, for example, *Tshabalala v State; Ntuli v State* (2019), in which the South African Constitutional Court deliberated on whether an individual who assists another to commit rape, but does not commit an act of forced penetration themselves, should be considered an accomplice or a co-conspirator.[53] While the former is held responsible for assisting in the commission of an offence in the moment, the latter implies greater liability for involving pre-meditation. In answering this question, about whether the doctrine of common purpose can be applied in rape cases, the Court first considered a prior question about the very nature of rape: is rape an instrumentality offence, in which guilt is assigned to the one who employs the instrument of penetration? The Court's framing of what instrumentality would look like in rape cases foregrounded the idea of "a man inserting his genitalia into a female's genitalia without her consent."[54] In its finding, which effectively expanded the definition of rape well beyond what is stated in the Sexual Offences Act, the Court rejected the instrumentality argument:

> The instrumentality argument has no place in our modern society founded upon the Bill of Rights. It is obsolete and must be discarded because its foundation is embedded in a system of patriarchy where women are treated as mere chattels. It ignores the fact

[52] Much of her impact on South African case law comes through references to U.S. American and Canadian precedent, where she has been influential. For example, in these judgments: Case and Another v Minister of Safety and Security and Others, Curtis v Minister of Safety and Security and Others, CCT20/95, CCT21/95 (Constitutional Court May 9, 1996): FN 76; Kylie v Commission for Conciliation Mediation and Arbitration and Others, CA10/08 (Labour Appeal Court of South Africa May 26, 2010): http://www.saflii.org/za/cases/ZALAC/2010/8.pdf. And in these essays on rape law reform: Artz, L., & Smythe, D. (2008). *Should We Consent?: Rape Law Reform in South Africa*. Juta and Company Ltd.: pp. 14, 19, 20, 27, 51; du Toit, L. (2012). From Consent to Coercive Circumstances: Rape Law Reform on Trial. *South African Journal on Human Rights*, *28*(3), 380–404; Hall, C. (1988). Rape: The Politics of Definition. *South African Law Journal*, *105*, 67–82.

[53] Tshabalala v S; Ntuli v S (, CCT323/18;CCT69/19 (Constitutional Court December 11, 2019).

[54] Tshabalala v S; Ntuli v S (, CCT323/18;CCT69/19 (Constitutional Court December 11, 2019): para 51.

> that rape can be committed by more than one person for as long as the others have the intention of exerting power and dominance over the women, just by their presence in the room. The perpetrators overpowered their victims by intimidation and assault. The manner in which the applicants and the other co–accused moved from one household to the other indicates meticulous prior planning and preparation. They made sure that any attempt to escape would not be possible.[55]

Here, in a move that MacKinnon would surely applaud, the Constitutional Court equated rape with the "intention to exert power and dominance over [] women."

Waging war with patriarchy in the legal arena means eradicating gender inequality by holding individuals accountable: those who are victimized must report, those who offend must be punished (Alcoff, 2018; Menon, 2004). As we will see, inside and outside courtrooms, the equality standard, and the possibility of false consciousness that it implies, converges with concerns about repugnant culture that continue to haunt post-colonial, liberal multiculturalism. This idea of rape increasingly inflects everyday activities of criminalization, in which individual women, marked as ethnic others, are tasked with acquiring liberal subjectivity through personal acts of empowerment.

Custom and Legal Pluralism

In South Africa today, custom continues to organize remedial action taken in the aftermath of sexual wrongdoing. The territory has a long history of legal pluralism structured around state-regulated racial and ethnic affiliation. This is a legacy of indirect rule under British colonialism. Concerns that patriarchal culture causes the misrecognition of rape cluster around customary forums of law. Technically, such jurisdictions may only adjudicate "customary" matters, which would exclude the crime of rape. In practice, however, sexual wrongs have a way of exceeding the distinction between customary and criminal.

Under apartheid, putatively autonomous bantustans confined black South Africans on the grounds of ethnic affiliation. On these overcrowded and unarable parcels of lands, residents answered to two different legal regimes. First, as ethnic subjects, they were to take "customary matters" to their local headman, chief or king. Among the European architects of the bantustan system, "civil" was a shorthand for the sorts of disputes considered "customary," but in practice, there was variability in what grievances were taken to customary authorities. It was often the

[55] Tshabalala v S; Ntuli v S (, CCT323/18;CCT69/19 (Constitutional Court December 11, 2019): para 54.

case that disputes about reproduction, marriage and sex as well as petty forms of crime were negotiated between families or fell to local headmen and chiefs to resolve. For matters that were criminal under Roman-Dutch common law, residents of bantustans were to lay charges with the police, which would eventually be tried in courts of law.

Forced sex was and is criminalized throughout South Africa under a hybrid system of Roman-Dutch and Anglo criminal law.[56] Nevertheless, complaints of sexual wrongdoing that might have been tried as rape under criminal law were sometimes sorted out between families or raised with headmen and chiefs as customary matters (Thornberry, 2019). In these alternative forums, such problems were commonly approached as violations of kinship reckoning, subject to principles of gender and generational hierarchy. Historians of South Africa draw the fault line for customary matters of sex between control over fertility, which resided with patriarchs, and control over sexuality, which was more diffusely regulated (Guy, 1990, p. 46).

Ukuthwala exemplifies the tension between customary and legal categories of sexual wrongdoing.[57] The practice involves marriage by abduction: a man abducts an unwilling woman from her natal home and then sends his family to negotiate bridewealth. The maneuver is meant to compel the woman's parents to agree to the union. In customary forums, negotiations between families or mediation by traditional leaders, the victim of *ukuthwala* is not the young woman who has been forcibly abducted. Her consent is irrelevant.[58] The wronged party is rather her father, whose control over his daughter's reproductive powers is imperiled by the abduction.

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[56] Note that the definition of "rape" has changed over time. In-text, I have described the 2007 codification of the common law and how it expanded the crime of rape to include more sex acts as rape. Prior understandings of "rape" did not mention consent, instead mentioning "the use of force, or at least opposition to the will - of the female whenever actual violence is not used" (Anders & Ellson, 1915, p. 196).

[57] In literature on the subject, *ukuthwala* is described as an Nguni practice. *Ukuthwala* literally means to "carry off" in Nguni languages. I discuss *ukuthwala* here because there is considerable scholarship on the practice and what it means for customary law in a context of liberal multiculturalism. Venda traditional leaders suggested to me that there was once a similar practice, *uhwala* in Tshivenda, that has not been revitalized in Venda the way it was elsewhere. There is no mention of such a practice in N.J. van Warmelo's 1948 compendium of Venda law. Instead, there is mention of "*Makhulu* connives at seduction of bride," where *makhulu* is the father of the woman. As described by van Warmelo, a suitor gets consent from *makhulu* but not his daughter and the two work together so the former can force her to have sex with him with the goal being that "she is now ashamed to remain at her parents' place any longer" (van Warmelo & Phophi, 1948, para. 476). *Makhulu*'s complicity is unknown to his daughter. For her part, the daughter considers it what was then described as the crime of seduction.

[58] In Jezile v S and Others (2014), the defense made this claim in the original trial court (para. 52). See Jezile v S and Others, ZAWCHC 31 (Western Cape High Court March 23, 2015).

Critics of the practice say it gives customary sanction to very real experiences of abduction, assault and rape.[59] Those who defend *ukuthwala* counter that, when it is carried out according to established custom, sex shouldn't happen until bridewealth has been negotiated.[60] Parents of the woman are sometimes aware of the abduction and participate in its orchestration (Hunter, 1964, p. 188). Women sometimes conspire in their own abductions, performing resistance and refusal. In this way, *ukuthwala* can offer young women greater control over whom and how they marry.[61] But women are also sometimes taken by force (Rice, 2014; 2018), an act that is criminalized under the law. Either way, willing or unwilling, the woman resists the abduction. The question of whether it is genuine or feigned resistance suggests the messiness of parsing "customary" and "criminal."

Under extant provisions of the 1927 Black Administration Act and former bantustan laws,[62] traditional leaders continue to be vested with the authority to adjudicate customary matters (like *ukuthwala*) and make determinations about land use in the nation's former bantustans. Where traditional leaders are concerned, South Africa's 1996 Constitution advises, "National legislation may provide for a role for traditional leadership as an institution at local level on matters affecting local communities."[63] In the intervening years, this non-committal statement that parliament *may* consider *a role* has been interpreted as a legislative imperative to vest traditional leaders with specific powers vis-à-vis those living on communal lands. Since

[59] Post-apartheid, there have been increasing reports of *ukuthwala* being used to give cover to gender-based violence (Kathleen Rice, 2018), especially in the Eastern Cape. For a high-profile court case, see: Jezile v S and Others, ZAWCHC 31 (Western Cape High Court March 23, 2015).

[60] This is the difference between what was "seduction," which involved sex and did not necessarily imply a commitment to marriage, and *ukuthwala*. A seduction might shade into *ukuthwala*, if the prospective bride-groom had sex with the woman he abducted and her father accepted bridewealth and the payment of additional damages.

[61] For discussions of *ukuthwala*, see: Bennett, T. W. (2010). The Cultural Defence and the Custom of Thwala in South African Law. *University of Botswana Law Journal*, *10*, 3–26; Rice, K. (2014). Ukuthwala in Rural South Africa: Abduction Marriage as a Site of Negotiation about Gender, Rights and Generational Authority Among the Xhosa. *Journal of Southern African Studies*, *40*(2), 381–399; Rice, K. (2018). Understanding ukuthwala: Bride abduction in the rural Eastern Cape, South Africa. *African Studies*, *77*(3), 394–411; Smit, W. J. (Jaco), & Notermans, C. (2015). Surviving Change by Changing Violently: Ukuthwala in South Africa's Eastern Cape province. *Anthropology Southern Africa*, *38*(1/2), 29–46; Wood, K. (2005). Contextualizing group rape in post-apartheid South Africa. *Culture, Health & Sexuality*, *7*(4), 303–317.

[62] Sections 12 and 20 of the Black Administration Act, Act 38 of 1927.

[63] Chapter 12 of the Constitution of the Republic of South Africa, Act 108 of 1996.

2008, South Africa's parliament has debated different versions of a Traditional Courts Bill, meant to replace the colonial-era legislative framework. Recent amendments to the bill removed language concerning the protection of women and other marginalized groups and would prevent members of "traditional communities" from opting out of traditional court rulings. In the most recent iteration of the Traditional Courts Bill, *ukuthwala* is enumerated as a customary matter over which traditional leaders have authority.[64]

Ukuthwala offers an entry into contemporary debates about the nature of customary law, legal pluralism and liberal multiculturalism in South Africa. South Africa's democratic transition coincided with the end of the cold war and an ideological vacuum that came to be filled by human rights doctrine. It was a hopeful moment when transnational activists and lawyers imagined ways to commensurate economic, social and cultural rights with civil and political rights. The notion of liberty was understood to encompass practices tagged as cultural. Part of this moment was a celebration of cultural difference and optimism about the possibility of decentralized multicultural democracy. But a practice like *ukuthwala* tests the limits of liberal tolerance (Povinelli, 2002). In a state-sanctioned system of legal pluralism such as South Africa's, what to do with such pressing conflicts between custom and law?

In law and society scholarship, "custom" denotes popularly observed social rules and norms while "customary law" denotes a (usually colonial) codification of the former. It's a difference that is moralized in politics of liberal multiculturalism. There are those who reject customary law on the grounds that it is an imperial fabrication, maintained by post-apartheid governors to satisfy royal interest groups. Codified by colonialists and elder male royals and executed by newly created courts, customary law is an "invention of tradition" (Ranger, 1983; see also Chanock, 1985). A KwaZulu-Natal politician's critical response to *ukuthwala* is suggestive: "Criminals are abusing the traditional practice of ukuthwala to deprive these women of their constitutional rights to education."[65] Those arguing in this vein assert that contemporary legal articulations, state-anointed authorities and unscrupulous individuals depart from the true spirit of custom, which is not based on coercion – either by a centralized executive authority or a

[64] Schedule 2(g)(i) of the Traditional Courts Bill [B1-2017], published in Government Gazette No. 40487 of 9 December 2016 and available at: https://www.justice.gov.za/legislation/bills/2017-TraditionalCourtsBill.pdf .

[65] Motha, S. (2018, August 20). *"Blessers diluting Aids fight."* SowetanLIVE. https://www.sowetanlive.co.za/news/south-africa/2018-08-20-blessers--diluting-aids-fight/

would-be patriarch – but is built on compromise and consensus (Mnisi Weeks, 2017; Oomen, 2005).[66]

There are still others who contend that nothing remains of the custom that once legitimated customary law. The effects of settler colonialism and late capitalist modernity have been too great (Povinelli, 2002). Transnational human rights doctrine has come to inform what and how people make claims. In this view, a history of contact with external influences has left nothing of the custom that once inspired customary law, and as such, there is hardly any authentic difference left for the state to recognize. World-historical forces of change have not just corrupted custom; they have undermined the systems of kinship and community upon which custom is possible. In this spirit, commentators see post-apartheid *ukuthwala* as irrevocably transfigured (Smit & Notermans, 2015; Smut, 2012). In its new form, men exploit the idea of cultural rights in order to violate the rights of women and girls. In particular, they target young virgins, with whom sex purportedly will cure them of HIV.[67] In the context of South Africa's HIV epidemic, this "virgin cleansing myth" has been important in politicizing sexual violence, a point I return to in greater detail in Chapter 4. Here, it suffices to say, that this way of thinking about custom and customary law rejects the possibility that *ukuthwala* could carry customary merit.

Pragmatic approaches to reconciling conflicts between common law and customary law recommend procedural interventions. "Repugnance" was originally a morally-neutral legal term of art for a conflict between legal doctrines (Demian, 2014, pp. 509–510). Its pejorative connotation surfaced in the context of settler colonialism, when repugnancy clauses were used to limit practices categorized as local custom. Underlying the legal instrument of repugnancy lies the natural law presumption of a universal morality. Like many post-colonial states, South Africa abandoned its repugnancy clause after apartheid, but many of the same customary practices

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[66] For a critique of this discourse of authentic culture, see Smit, W. J. (Jaco), & Notermans, C. (2015). Surviving Change by Changing Violently: Ukuthwala in South Africa's Eastern Cape province. *Anthropology Southern Africa*, *38*(1/2), 29–46.

[67] For news coverage to this effect, see: Daily Mail Reporter. (2012, May 28). *Young girls kidnapped and forced to marry HIV-positive men... Because sufferers believe virigns are a cure for AIDs*. Mail Online. https://www.dailymail.co.uk/news/article-2150967/Virginal-young-girls-South-Africa-kidnapped-forced-marry-older-HIV-positive-men-cure-disease.html; Dlamini, B. (2016, February 2). *Forced virginity-testing is unlawful and offensive, and will not prevent HIV-AIDS*. Daily Maverick. https://www.dailymaverick.co.za/opinionista/2016-02-02-forced-virginity-testing-is-unlawful-and-offensive-and-will-not-prevent-hiv-aids/

deemed repugnant under colonial law continue to be legally disqualified for contravening the new Constitution.[68] *Ukuthwala* is among them. In *Jezile v S and Others* (2015), the Western Cape High Court was asked to rule on appeal an instance of *ukuthwala* in which the abducted woman did not consent. The court discerned from submissions by *amici curiae* two different versions of the practice of *ukuthwala*: one consensual and one indifferent to consent. The court found that:

> it cannot be countenanced that the practices associated with the aberrant form of *ukuthwala* could secure protection under our law. We cannot therefore, even on the rather precarious ground of the assertion by the appellant of a belief in the aberrant form of *ukuthwala* as constituting the "*traditional"* customs of his community, which led to a "*putative customary marriage,"* find that he had neither trafficked the complainant for sexual purposes (as defined) nor committed the rapes without the necessary intention. (2015, para. 95)

Using language that resonates with "repugnancy," the court cited the Constitution to disclaim "the aberrant form of *ukuthwala.*" At present, then, *ukuthwala* only enjoys legal protection when it does not involve coercion. And yet in customary arenas, abduction by force is constitutive of *ukuthwala*.

The "cultural defense" is another practical way the law makes sense of custom in a context of multiculturalism (Good, 2008). For our purposes, I will narrowly focus on the relevance of this defense as it applies to criminal law. In order to successfully press a "cultural defense," one must first claim oneself as a cultural other, and second, present a case that members of this cultural group would condone or expect the conduct otherwise deemed criminal by law. In this way, this legal tool distinguishes between intentions that are cultural and those that are individual and idiosyncratic and therefore imply responsibility (Demian, 2008). In U.S. American criminal courts, the cultural defense is most often used to justify reduced sentencing, not to refute criminal liability altogether.

The cultural defense is not in robust use in South Africa.[69] But there were whiffs of it in the rape trial of then-Deputy President Jacob Zuma (Bennett, 1999; Hassim, 2009; Illsey, 2008;

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[68] Bhe and Others v Khayelitsha Magistrate and Others, CCT 49/03 (Constitutional Court October 15, 2004).

[69] Perhaps, this is *because* of South Africa's history of formal pluralism. Courts in South Africa have a long history of implemented customary law. Post-apartheid, the Constitution explicitly enjoins them to do so. Cultural otherness need be proven in court because it is taken for granted. Rather, the soundness of custom is what needs to be evinced. Melissa Demian (2008) makes a similar observation of the cultural defense with regard to Papua New Guinea.

Robins, 2008). Though a cultural defense was not technically invoked, on the stand, Zuma pointed to Zulu masculinity and sexuality in order to justify his behavior. He asserted that in his culture, neglecting a "ready" woman was itself tantamount to rape. His supporters took to the streets, donning shirts that read "100 percent Zuluboy." Some defended Zuma with the claim that "in our culture, rape is not a crime."[70] Though no evidence was given to speak to Zuma's assertions, cultural defenses typically require expert testimony to manifest a reified form of culture that determines behavior.

Among jurists and legal scholars, responses to the place of culture in the Zuma trial were critical. In this backlash, it is possible to discern an approach to legal pluralism that resonates with contemporary anthropological theory. Drawing from the German legal sociologist Eugen Ehrlich, this approach insists on thinking about custom as "living law."[71] A series of Constitutional Court cases back this proposition with precedent. In *Bhe and Others v Khayelitsha Magistrate and Others*, Justice Langa found that:

> Indigenous law is a dynamic system of law which is continually evolving to meet the changing circumstances of the community in which it operates. It is not a fixed body of classified rules.[72]

Speaking on the "the evolving nature of customary law as practised and experienced by members of communities," Justice O'Regan found in *Kwazulu-Natal and Others v Pillay*:

> Our history must warn us that when approaching culture in our new constitutional order, courts, as outsiders, must seek to avoid imposing a false internal coherence and unity on a particular cultural community."[73]

In these rulings, custom is described as dynamic. The highest court in South Africa explicitly rejects the idea of customary communities as coherent, unified and conforming to essentialized forms of culture. In judgments on the "living" quality of custom, legal "outsiders" notably do not

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[70] This quote was taken from a *New Statesmen* article quoted in Bennett, T. W. (2010). The Cultural Defence and the Custom of Thwala in South African Law. *University of Botswana Law Journal*, *10*, 3–26: p. 23.

[71] The following are examples of cases where the concept of "living law" was applied to custom: Bhe and Others v Khayelitsha Magistrate and Others, CCT 49/03 (Constitutional Court October 15, 2004): para. 154; Kwazulu-Natal and Others v Pillay, CCT 51/06 (Constitutional Court October 5, 2007): para. 153; Shibi v Sithole and Others, CCT 50/03 (Constitutional Court October 15, 2004): para. 154.

[72] Bhe and Others v Khayelitsha Magistrate and Others, CCT 49/03 (Constitutional Court October 15, 2004).

[73] Kwazulu-Natal and Others v Pillay, CCT 51/06 (Constitutional Court October 5, 2007): para. 153.

reflect on the court as a place with its own dynamic "culture." Earnest refusals to fix custom raise important questions about the legal status of such judicial pronouncements. When judges make verdicts about custom, they produce precedent that becomes authoritative. So long as judges are empowered to rule on custom, they will be in a position to produce customary law (Rautenbach, 2019).

There is a strong line of state-centrism running through these debates. Namely, the law is to be found in the courts and the "legal" quality of custom is to be found in state-sanctioned customary institutions and traditional leaders. This is no doubt because socio-legal theorizing of legal pluralism emerged from colonial contexts of indirect rule (Tamanaha, 2008). As a result, legal pluralism is often reduced to systems of law that enjoy state recognition (for our purposes, these are customary courts and a hybrid Roman-Dutch-Anglo law) (Griffiths, 1986). Such an approach tends to spatialize the law, broadly conceived, into law/society or state/custom binaries.

Righting Sexual Wrongs takes an expansive interpretation of normative fields (Moore 1978) in order to think about the travels of complaints of sexual wrongdoing. In this study, you will ready about the workings of a courtroom, but you will also learn about how sex and sexual transgression are talked about and tested at a beauty salon, in church, by rights organizations, and on social media, to name a few. With a focus on wrongdoing,[74] I conceptualize legal pluralism beyond the courtroom and the "traditional court" to understand the multiple paths of justice and remedy taken by survivors and their loved ones. These alternatives are important not because they are "legal," but because they produce categories of wrongs that come to shape experiences of sexual harm. Approaching legal pluralism in this way reveals how practices and doctrines crosscut putatively bounded sites of law. In post-colonial contexts, "custom" and "customary law" evoke institutionalized forms of law while conjuring an idea of culture that is somehow outside traditions of European common law. In South Africa's case, "customary law" tends to be reduced to the judicial work of chiefs (White, 2015), even as interfamily negotiation often played

[74] In this way, my work contributes to a legal anthropology of disputing. Malinowski's (1951 [1926]) investigation of Trobriand law is an early example of anthropology's attention to dispute processes. His focus on individuals, brought to life by vignettes of altercation, revealed the strategic and situated decision-making inherent in obedience, exploitation or defiance of social norms. Attention to disputes specifically showed the ways people resist and critique norms, rather than adhere to them mechanically. For Malinowski, disputes did not necessarily play out in institutions or through the intervention of office-holders. Indeed, the "legal" strategies he observed included witchcraft and suicide. I see "wrongdoing" as more capacious than the dispute, insofar as the former includes complaints that are not necessarily subjected to the sorts of procedural confrontations implied by studies of disputes (Greenhouse, 1989).

a more significant role in remedying customary matters of a sexual nature (Delius and Glaser, 2002; Thornberry, 2019). For these reasons, I avoid the terms "custom" and "customary," as analytic categories.

The stakes of debates about legal pluralism in South Africa revolve around a basic question: what counts as an act of wrongdoing?[75] This question is at the heart of popular concerns about *ukuthwala.* An important through-line of these different orientations is that injuries have a stable existence in the world. They are compartmentalized events whose realities are compressed into the duration of discrete material encounters. The role of any given "legal" system is to apply its principles of right and wrong to facts intrinsic to the injury-event.

Righting Sexual Wrongs approaches criminalization as a discursive and material process that produces realities, rather than revealing them. In other words, transgression is not necessarily prior to the forums where it is judged. Sometimes, it is the crime that fits the punishment. My analytic and methodological orientation to legal pluralism is influenced by transformation theory, described by law and society scholars William Felstiner, Richard Abel and Austin Sarat (1980) in an important *Law & Society Review* essay. Transformation theory is in turn indebted to social constructivism and pragmatism. In Felstiner, Abel and Sarat's schema, wrongs begin as "unperceived injurious experience" and go through successive stages of naming, blaming and claiming, ultimately "ripening" (p. 636) into full-fledged disputes.[76] These transformations are not inevitable; they are not always linear; they happen in different timeframes; and they are contingent on circumstances both systemic and idiosyncratic. What I want to highlight about the theory here is its refusal to take an injury-event for granted. Indeed, even the attribution of "injury" to an event may accrue or dissipate over time.

To be clear, I am not arguing that the criminal justice system is fabricating rape from otherwise happy experiences of sex. Many survivors travel to the hospital or the police station ready to claim state care and protection and to participate in the prosecution of the person blamed. For those who instantly associate their experience with the crime of rape,

[75] I am using "wrong" to encompass a wide range of ethical orientations premised in, for example, constitutional protections, legal precedent, universal morality, reason, divine will, authoritative proclamation, etc.

[76] The first transformation is from unperceived injurious experience to perceived injurious experience. The second transformation is from perceived injurious experienced to grievance. The third transformation is from grievance to dispute.

"transformation" may not be the most apt way to describe their engagement with how they have been harmed, but this does not mean they have not participated in processes of criminalization. At some point, the category "rape" and what to do about it was learned, whether through television, life skills training or from casual conversation.

Others arrive at "rape" through a longer, intersubjective process that might involve discussions with friends or family, social workers or counselors, police officers or prosecutors. Still others will never understand their experiences of sexual wrongdoing in these terms. My starting point is that those who level accusations of rape experience the sex as harmful or unwanted in the moment. Or to borrow the terminology of transformation theory, my starting point is that sexual wrongdoing begins as perceived injurious experience. Constructs, it is worth remembering, are not strictly discursive, but arise from relations that are material and embodied (Bennett, 2010; Haraway, 1990; Kesselring, 2016; Latour, 2005). For being embodied, sexual transgressions are perhaps uniquely amenable to sensory perception (though as we will see, sexual transgression is sometimes not embodied). What's more, redress does not retrospectively determine experiences of harm in a straightforward way. Grievances are more or less indeterminate. Some are conceptualized as they are lived in real time. The inevitability of legal pluralism, broadly construed, means that an injury will be subject to multiple, competing third parties of determination. Critically, these third parties do not act as coherent entities molding an injury according to a blueprint.

Insofar as "rape" is a criminal category of human making, this proposition may seem straightforward enough. But isn't this just deferring the question of objective reality to consent? What does it mean to say that rape can at some stage be an *unperceived* injurious experience? Is it possible for a partner who says "yes" to sex to earnestly think of what happened as rape? And for others to think of it as rape too? Or is it possible for "Mutual, wanted, joyous, enthusiastic sexual interaction[] of intimate connection" (2016, p. 441) to come to be understood or experienced as rape? Yes. The answer is yes.[77] But that does not necessarily mean that such a claim will receive universal recognition, let alone legal recognition. Indeed, the possibility that

[77] I am quoting MacKinnon's standard here, but she herself allows for this possibility in instances of sex across inequality. Srimati Basu (2011) describes a high profile case in which a celebrity had sex with her fiancé, and after he broke off the engagement, she accused him of rape on the grounds that their sex was conditioned on future marriage. In her book on Title IX proceedings on college campuses, Laura Kipnis (2017) chronicles what she claims are several examples of this.

such events can be seen in different ways is at the heart of controversies around #MeToo and Title IX on U.S. American college campuses.

In South Africa's diverse landscape of legal pluralism, a disparate movement of activists, rights workers and policymakers insist on legal centralism where sexual wrongdoing is concerned. They see this process as one in which survivors, as well as those that would help them, realize the true nature of what has happened: the crime of rape. *Righting Sexual Wrongs* does not take this reality for granted. By focusing on practices undertaken as part of the criminal justice system and its alternatives, it examines how categories of sexual transgression are produced materially and discursively. This process is not as neat as it seems.

Why Venda?

For reasons outlined above, it was not hard convincing scholars that an ethnography of sexual violence should take place in South Africa. But in Thohoyandou, where I carried out the majority of my fieldwork, the location of my proposed research project often received the scandalized response, "But why Venda? There is no rape in Venda! There is no crime in Venda!" It is a striking statement, given the way crime in general and rape in particular is talked about in South Africa. Such incredulity stands in sharp relief not just to a commonsense about crime and how entrenched it is in South Africa,[78] but about local crime statistics in particular. The choropleth below reveals the concentration of sex crimes reported by police precincts located in Limpopo Province in 2019. Darker red areas denote precincts with higher rates of reporting. The pushpin in the upper right hand corner marks the catchment area of the Thohoyandou police precinct.

[78] At the release of the 2016/17 police statistics in Cape Town, then-Police Minister Fikile Mbalula asked rhetorically, "Is criminality a South African citizen itself?" South Africans have a sense that they are living with exceptional violence.

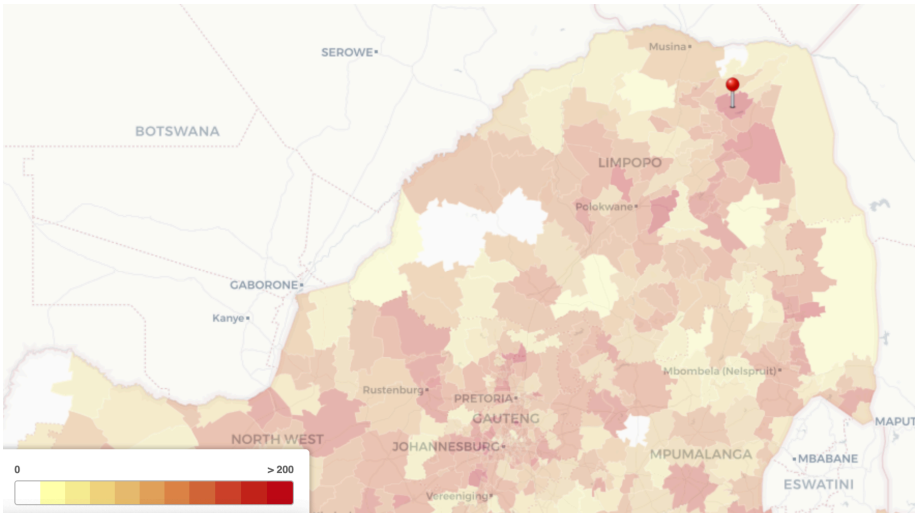

Figure 1.1 Concentration of Sex Crimes, Institute for Security Studies' Crime Hub Map[79]

At 90 sexual offences reported for every 100,000 residents, Thohoyandou outstrips all other policing clusters in Limpopo Province, save the township of Mankweng, located just outside the provincial capital of Polokwane, where 91 cases are reported for every 100,000 residents. The Thohoyandou precinct compares with metropolitan townships farther south that have national reputations for being hubs of criminal violence.[80] These figures make Thohoyandou a nationally recognized "hotspot" for sex crimes, an official designation that enables local law enforcement to draw increased national resources for policing.[81]

Thohoyandou was the capital of the former bantustan of Venda. Those who questioned my choice of field site leveled their skepticism at the idea of crime in Venda specifically. "Venda" is technically anachronistic, referring as it does to the former bantustan, the Republic of Venda, a political entity that no longer exists. Yet the place is still referred to as "Venda" by locals and South Africans.[82] Venda is a quintessentially "remote area" (Ardener, 2012). It

[79] This graphic, which visualizes police statistics, was created using https://issafrica.org/crimehub/our-work/maps.

[80] The Johannesburg township, Alexandra, for example had 65 sexual offences for every 100,000 residents reported in 2019. For the same year, the precinct serving the central Johannesburg neighborhood of Hillbrow reported 104 sexual offences for every 100,000.

[81] This designation was a presidential directive issued as part of the 1996 National Crime Prevention Strategy. In 2017, a Thohoyandou sergeant confirmed that the designation, and the resources it enables, remain in place.

[82] Even while some bemoan it as an apartheid vestige, the term "Venda" continues to be used into the present to evoke the spatial scale of the bantustan (McNeill, 2016). It was not until 2009, when by legislative fiat, the name of the High Court in Thohoyandou was changed from "Venda division" to "Limpopo High Court, Thohoyandou." Today, a popular line of youth apparel prominently displays the word "*Ndaa,*" a male greeting in Tshivenda, above

occupies the northeastern-most reaches of South Africa, a mountainous and verdant area sandwiched between Kruger National Park and Zimbabwe. Figuratively, Venda contains dense and pristine cultural richness. On trips to Johannesburg, it was not uncommon for me to be told of Thohoyandou, "that is the *real* Africa." Consider the following account, offered up in a 2016 New York Times Notable Book:

> When you arrive in Venda, you are made quiet by it; an air of mystery and joy and of a dialogue of spirits hovers over Venda the same way an atmosphere of excitement and bustle and urban decay hands over New York. The first time I visited South Africa, two years ago, Johannesburg [art] dealers had described Venda as the land of the innocents, where an authentic black culture still reigned… (Solomon, 2016, p. 165)

Venda presents two faces in imagined cartographies of criminality. As a former bantustan, it has a reputation for morality grounded in traditionalism. As a discursive object, the bantustan gathers together a host of assumptions about traditional leadership, customary law, rurality, domesticity, gender and ethnicity in contemporary South Africa.[83] As a place of traditional leadership, Venda is thought to benefit from the wise and personal governance of uniquely "moral custodians." As a place of customary law, Venda is thought to enjoy restorative justice and consensus-based conflict resolution. As a rural place, Venda is thought to be peopled by friendly neighbors who look out for one another. As a "homeland," Venda is a land of homes, composed of so many permanent family residences, ancestral homesteads, sites of caregiving and support and havens from threats to safety and well-being that necessarily emanate from without.

This cascade of associations contributes to the idea of the bantustan as uniquely law-abiding and peaceful. A wealth of literature refutes such assumptions and it is not my purpose to hash it out here. Even among those who insist that "there is no crime in Venda," these assumptions are credible only at the level of abstraction. If pressed, residents of Venda are quick to point to corrupt chiefs, ineffectual proclamations by traditional councils, rural villages with a

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smaller text "Made in Venda 94." 94 refers to 1994, the year when Venda was reabsorbed into the greater Republic of South Africa and ceased to exist as a political entity. Here then, "Venda" is being reclaimed as a space of meaningful identity, in spite of its political dissolution.

[83] Mahmood Mamdani (1996) famously described the bifurcation of the Apartheid state as a stack of binaries that follow from the racialized organization of space: white and black, citizen and subject, cities and bantustans, urban and rural, modern and traditional, common law and customary law, representative government and ascribed authority, race and ethnicity, male and female. Though analysts have rightly argued that his account suffers for being too neat, these binaries continue to be deployed.

reputation for violence, and homes marked by domestic violence that undermine the notion of Venda as a place of unique morality, "a land of the innocents."

But talk of crime and immorality reveals the "coexistence of differently ordered and contested modes of orientation to places and their interlinked forms of engagement with the world" (Hickson, 2017, p. 56) – which is to say that not everyone is inclined to see Venda as a monolithic place of ordered tranquility. Notably, white South Africans living in neighboring areas did and do have a different perspective on the former bantustan. In the 1980s, the *Zoutpansberger*, a weekly Afrikaans newspaper headquartered in what was then the neighboring white town of Louis Trichardt,[84] South Africa, only mentioned its neighbor, the Republic of Venda, to report on murder cases that originated and were tried there.[85] Such attitudes persist among white residents of Limpopo Province, who often took it upon themselves to warn me, a white woman from the United States, to be careful in Venda. I was often cautioned about my choice to live in Sibasa, a location abutting the Thohoyandou central business district and encouraged to instead live in white enclaves farther afield, including in Louis Trichardt. Such warnings were less about Venda *per se* than they were about black people, but the slippage is important. As a former bantustan, Venda continues to be seen not just as a place of "deep" ethnically-specific culture, but also as a place of blackness and by extension, a place of criminality.

The former bantustan of Venda is also seen by a wide swath of South Africans (white, black and Venda) as exceptional for its occult violence. As I discuss in greater detail in Chapter 5, it is especially well known for *u via*, the removal of body parts from a living person for occult use. The periodic discovery of corpses which have had limbs, lips, or genitals removed maintains

[84] Like many South African towns, the Afrikaans name of Louis Trichardt was changed to the African (and in this case Tshivenda) name of Makhado after the end of apartheid. And as elsewhere, the name change was deeply political (Thotse, 2010). Louis Trichardt had been a Voorktrekker and among the first white people to attempt to settle in the area in 1836. Makhado was a Venda king who ruled between 1864 until his death in 1895 just north of where the town is today. Referred to as "the lion of the north" by colonists and settlers, Makhado thwarted efforts by Boers to settle in the region until the twentieth century (Nemudzivhadi, 2017). The name change saw successful legal challenges, followed by legislative responses so that in the last twenty years, the name of the town has switched from Louis Trichardt to Makhado multiple times. Whether welcoming the incoming driver to "Makhado" or "Louis Trichardt," signposts marking entry into the town are routinely defaced.

[85] For example, the frontpage headline, "Three sentenced to gruesome murder." See "Drie Gevonnis Na Gru-Moord." *Zoutpansberger*. August 9, 1985, 1, vol. 27. Other than crime, stories about Venda in the *Zoutpansberger* included reports of donations made by local businesses. These files were accessed in the archives kept by the Limpopo Mirror newspaper, owner of the Afrikaans *Zoutpansberger* and the English *Limpopo Mirror*.

the notoriety of Venda as a "witchcraft zone" (Mavhungu, 2000), a place of "occult economies" (Comaroff & Comaroff, 1999), occult expertise and grassroots backlash against witchcraft.[86] It was not uncommon to hear comments like, "Venda – they are humble but their witchcraft is too powerful." This remark was made to me by a Christian Venda man to explain to me a mysterious set of fires that afflicted his natal home for months until the house was consumed completely. He insisted that he himself had observed one of the fires ignite spontaneously and so it could only be explained by witchcraft. Nor was he alone in ascribing the proclivity to engage in witchcraft to Venda people. This proclivity was distinguished from mundane forms of violence arising from self-interest and impugned Venda people as concealing especially sinister intent, as opposed to run-of-the-mill holligans in Johannesburg whose violence could be reduced to epiphenomena of botched mugging, robbery, or hijacking.

But this doesn't answer the question, "why Venda?" Venda has high rates of crime, but is not especially exceptional when it comes to national experiences of criminality or sexual violence. As a former bantustan, the area hosts a unique constellation of legal jurisdictions and remedial opportunities for survivors, most notably the role of "traditional leaders."[87] Large swaths of land in Venda continue to be maintained by hereditary chiefs and kings. Beyond traditional leaders and criminal courts of law, the landscape of legal pluralism in Venda includes a range of specialists who deal with sexual complaints, including human rights organizations, medical doctors, social workers, pastors, prophets, "traditional healers," civic organizations, university grievance committees – to say nothing of the influential role of family, friends, neighbors and social media. These too are stages for airing grievances. That such sites and specialists constitute a larger landscape of legal pluralism suggests the ubiquity of legal pluralism: "Legal pluralism is the fact. Legal centralism is a myth, an ideal, a claim, an illusion"

[86] I reference the Comaroffs in order to make use of the phrase "occult economies" as an empirical reality (people buying and selling occult substances and services) as opposed to an idiom for expressing frustration about the mysterious ways capitalism and modernity work.

[87] As others have remarked, this terminology is inadequate in a number of ways. "Traditional" evokes a sort of uncontested, primordial authority that belies the often complicated politics of chiefly succession and its intersections with colonial and apartheid interests (J. L. Comaroff & Comaroff, 1997). Referring to "traditional leadership" as though it is one coherent system denies the complexity of the horizontal and vertical political contests that happen between petty headmen, headmen, chiefs, and kings, among whom disputes over rightful succession are rife. Moreover, there are significant regional differences in how such authority is enacted and organized. Nevertheless, I use "traditional leadership" here because the phrase has become the national referent for these structures, used in legislation and water cooler talk alike (John Comaroff & Comaroff, 2004, n. 2).

(Griffiths, 1986, p. 4). While customary law is unique to South Africa's bantustans, legal pluralism is a state of affairs that regulates conduct everywhere. "Legal pluralism" then does not answer the "why Venda?" question.

Money shapes how any given sex act is understood. Money unevenly confers protection from violence. Money enables certain forms of redress. And money is in scarce supply in South Africa's former bantustans. The country continues to be riven by income inequality that is simultaneously racialized and spatialized. Under apartheid, the white minority government divested from the former bantustans on the grounds that they were putatively autonomous. Until the 1970s, bantustans were sustained by the remittances of labor migrants. Since then, rising unemployment has meant that those who migrate out of these rural hinterlands for work are no longer able to secure stable and well-remunerated employment in the nation's industrial and agricultural hubs. Post-apartheid, policies of economic liberalization have limited the extent to which the ANC-led government has undertaken redistribution of the country's wealth. The most important efforts at redistribution have been effected through means-tested social grants, but they have not resulted in meaningful economic uplift for residents of historically disenfranchised, underdeveloped areas like Venda. Instead, residents do their best by attempting a patchwork of strategies that include government social welfare, small-scale subsistence farming, irregular piecework, micro-enterprises and patronage from only slightly better-situated family members or friends. In Thohoyandou and the villages that surround it, people wrestle with privation.

For the area's economic standing, Venda provides a vantage point for understanding the ways power shapes sex and sex shapes power. Sex happens between unequally situated men and women making difficult financial choices about family, food, housing, schooling. Sex gets taken up in moral appraisals of gender, ethnicity and class. Sex paves the way to new social and economic trajectories. And yet, under late capitalism, the affluence of the few, whether in South Africa or the United States, is sustained through the economic exclusion of the many. The sorts of economic precarity and precarious economic dependencies that condition intimacies in South Africa can be found elsewhere. It is hard to imagine an act of sex happening across perfect equals, setting aside the question of the desirability of such sex. As Kant worried, it is hard, too, to imagine an act of sex where all parties are treated as ends in themselves. That Venda hosts a play of sex, money and power is not unique to Venda.

Part of the answer to the question of "why Venda?" is practical. I have a long personal history with the area. In 2005, I first came to South Africa under the auspices of the Peace Corps as part of a "NGO development" assignment. Having participated in feminist organizing and with experience in the field of survivor advocacy, I arrived at the Thohoyandou Victim Empowerment Programme (TVEP), a "one stop" trauma clinic and legal aid society that provides medical and legal services to rape survivors throughout the Venda region. It was at this time that I became aware of the frequency with which survivors pursued redress outside the state's criminal justice system. At this time, I also came to wonder about the claim, "they don't know they have been raped." I returned to the organization in June 2010 for two months to conduct fieldwork as part of my MPH thesis, which considered the impact of new foreign aid policies on social service delivery. At this organization, I befriended activists and advocates, who have since aided my entry into a number of spaces relevant to my investigation. During my time working at this NGO, I achieved linguistic proficiency that enabled me to engage meaningfully with Venda-speaking interlocutors in casual conversation and interviews. TVEP came to serve as an entry into my dissertation fieldwork, offering me institutional support, legal expertise and access to their human rights work and public events. The organization is the subject of Chapter 2.

But the story of this project does not begin in Venda. It begins prior to my time in the Peace Corps, while I was living in New York City and training to become a volunteer lay-counselor for survivors of sexual and domestic violence. During nights and weekends, the volunteer program supplied two hospital emergency rooms with on-call survivor advocates. Volunteers were expected to sign up for at least two shifts a month. To prepare us for this work, the organization required attendance at an initial eighty-hour training session, plus two additional "up-training" sessions.

During these trainings, the role of the volunteer was described in terms of advocacy. The volunteer learns what the survivor wants and help them accomplish it. In a busy emergency room, where medical professionals triage life-threatening injuries and illnesses, survivors of rape do not always receive the attention they need in a timely fashion. A lot of a volunteer's night shift is oriented around waiting: shortening wait time, making waiting comfortable. The volunteer follows up on tests and paperwork, gets the survivor a blanket, a soda from the vending machine, a taxicab ride home. In this role, the volunteer is an extension of the will of the survivor, looking out for their best interests. This was the explicit message of training.

But best interests are a matter of perspective. What if the survivor's immediate demands are not in their best interests, as determined by the volunteer advocate? During training, we were warned of such discrepancies. We were never told to coerce the survivor. We were never told to tell the survivor how they should feel. Quite the contrary, we were admonished not to do these things. But we were also given hypotheticals reinforced by guidance during role-playing that implicitly recommended a different course. We were told stories by experienced volunteers about survivors who had "come around" to take action they had initially been set against.

"It was my fault. I knew he would be home at 6 but I didn't have his dinner ready" – an example of what a woman might say about her abusive partner in the emergency room. In such a case, volunteers were counseled to redirect such a woman's attribution of blame, to help the survivor see that her partner's violence is criminal. We were discouraged from telling the survivor to leave her partner outright. Instead, we were advised to help the survivor see the wrongness of his actions by reminding her of their pattern. This might be accomplished incrementally, through well-posed, sensitively timed questions that reflect back what were taken to be her own unexamined intuitions about what is happening to her. "So it sounds like…" is a helpful tool in the volunteer's arsenal. "So it sounds like," a way to tease out the necessary kernel from her narrative. In the example above, "so it sounds like this has happened before?" Get her talking about these experiences. Then there will be another kernel. Get her to see her environment is unsafe. Get her to see the wisdom of a protection order. Better yet: a criminal charge. The higher-order objective is that by the end of the visit, the survivor will have linked her idiosyncratic experience of harm to a socially sanctioned criminal behavior.

Subtle to be sure, these trainings transformed volunteers into conduits of capillary power. In the emergency room, survivors would come to see themselves as different sorts of subjects, as crime victims. And subjectification was not limited to survivors. During the course of the training, volunteers came to reflect on their own life histories. It dawned on more than one volunteer that they were themselves survivors. During coffee breaks and lunches, volunteers shared with one another, "That bad date – I think it ended in rape." They tested the weight of it, "That childhood spanking – that was domestic violence." And with this vocabulary came a new appreciation of the quality of the harm done.

Worlds apart, New Yorkers and Venda people are being told about rape and domestic violence. One-on-one counseling sessions of this sort are a form of feminist consciousness

raising, a political method that is about sharing stories in order to draw comparisons and even equivalences. But solidarity over gender inequality is not the goal of these exercises in lumping. The goal is to have the survivor connect their injury to a criminal category and to indict the person responsible as a criminal.

The truth is that I am hard-pressed to offer a satisfying answer to the question of "why Venda?" This is not a story of Venda exceptionalism, no less South African exceptionalism. Similar observations about the diverse forms sexual wrongs take can be made of New York. Indeed, these places host their own anxieties about the adequate criminalization of non-consensual sex, anxieties that have inflected the transnational movement of expertise, funding and best practices and come to bear in criminal justice reforms and human rights approaches that affect Venda and beyond.

The best answer I can offer is that Venda is taken as a place of excess: excess sexual violence, excess legal pluralism, excess culture, excess poverty. And for these reasons, it recommends itself to projects of criminalization that attempt to reconfigure legal, social and phenomenological ways of conceptualizing rape. People who worry about rape converge on Venda in order to effect change in the way sexual wrongdoing is socially and intimately understood and experienced. This makes it a useful site for understanding criminalization.

CHAPTER 2 – "Submissive Rape": Gender, Ethnicity, and Citizenship in the Former Bantustan of Venda

I was sometimes asked, "Do you know how to *losha*?" At its most basic, *losha* is a greeting, physically enacted by social juniors to greet and honor social superiors. The question was typically asked after I had introduced myself in Tshivenda. I would respond with a demonstration of *losha*, which might provoke the response, "now you are ready for a Venda husband!" This line of light-hearted banter, a short interracial exchange, was freighted with ideas about how race, but also ethnicity crosscut normative enactments of gender.

Tshivenda is one of the eleven official languages in South Africa, but only a small minority of South Africans speak it as a first language and there are exceedingly few second-language speakers.[88] Venda people complain that other South Africans treat Tshivenda as too marginal to bother learning. Other South Africans insist that Tshivenda, a Kalanga language closer to the Chishona spoken in Zimbabwe than the Nguni languages spoken elsewhere in South Africa, is the hardest South African language to learn. In cities like Johannesburg or Durban, those who are overheard speaking Tshivenda are sometimes called "Makwerekwere," a pejorative term for foreigner (McNeill, 2009, p. 19).

Being asked to *losha*, across racial or ethnic difference, was not just a test of linguistic competence, then, but a bid for recognition. Outside Venda, the *losha* is often regarded as a backward sign of tradition, one of many that mark Venda as a place unique for its fidelity to cultural practice. The female *losha* especially is taken to be a troubling expression of black African women's cultural vulnerability.[89] *Losha* involves a physical lowering of one's body and one's gaze, keeping palms pressed together with united fingers pointing up. For men and boys,

[88] According to the 2011 Census, 2.2% of South Africans self-identify as Tshivenda speakers.

[89] In South Africa, "African" has historically been a term used by the state to classify the race of indigenous peoples for purpose of segregation. It continues to be used by many South Africans in this way. There has been a shift in sociological scholarship in favor of "black" to denote these same people on the grounds that non-indigenous South Africans have a claim to being African too. Because my interlocutors often referred to themselves as African, I use these terms interchangeably.

losha is accomplished by bending the knees and crouching. For women, carrying out full *losha* involves lying on one's side, knees bent, forearms flat on the ground, hands pressed together and pointed upward. These idealized forms of *losha* are adapted to everyday circumstances. During the time of my fieldwork, it was more common for women in everyday situations to make due with modified forms of *losha* – such as pressing hands together while giving a slight bow.

"Knowing how to *losha*" points to *losha* as an embodied competency necessary to enacting idealized forms of Venda personhood. *Losha* instruction is part of an explicit effort at shaping young people into moral persons by providing occasion to rehearse the "body techniques" necessary to fulfill social roles vis-à-vis others (Mauss, 1973). From a young age, children are instructed by caregivers to *losha* in the presence of elders or at the arrival of guests. *Losha* is a subject of formal didactic instruction at initiation schools where adolescents are taught to demonstrate respect to elders, royals and men (Malisha et al., 2008, p. 590; Stayt, 1931, p. 109). It is not uncommon for adults to be reminded to *losha*, for example, when one is unaware of another's royal kinship relations, which are not always obvious. The call to *losha* in such instances provides content to the sort of relation one is expected to have with an otherwise unknown person. As a learned comportment conveyed across generations, *losha* is a source of discord. Elders criticize younger people, and women especially, for failing to adequately observe gendered and generational hierarchies, which *losha* is crucial to performing.[90]

Losha reveals the inextricability of humility and respect. This connection is evident in the etymological link between *ṱhoni* or *luṱhoni*, a noun alternately defined as shame, modesty or humility, and *ṱhonifha*, a verb meaning to pay respect. The addition of the denominative *-fha* to the noun *ṱhoni* suggests that being modest is paying respect. The humility of *losha* facilitates projects of moral personhood, a relational accomplishment, implying entanglement in networks of obligation and reciprocity and arising from institutions of marriage and employment. As a gendered enactment of Venda womanhood, the female *losha* brings together respect and respectability by gesturing to the sorts of dispositions – fidelity, care-giving, temperance – expected of good women and good wives. Hence, "now you are ready for a Venda husband!" Like other forms of greeting, *losha* carries propositional content (Duranti, 2008), often serving as

[90] This was a common trope in South Africa and beyond, where the moral corruption of youth, and the failure of parents to discipline them, was linked with a host of "social ills," from HIV to crime (Diouf, 2003; Hunter, 2010; Morrell et al., 2012; Walker, 2005b).

the physical precursor to a request. In this way, *losha* is a crucial part of both normative gender practices and gendered claim-making.

The *losha* consolidates the place of Venda and especially Venda women in national discourses of culture and ethnicity. In 2013, former President Jacob Zuma made a speech on the topic of respect. He gushed that,

> When I was in Venda recently I was so impressed to see how people there express respect for other people…A woman would clap her hands and even lie down to show respect … I was so impressed. If I was not already married to my wives I would go to Venda to look for a woman.

Zuma is notorious for being prosecuted for rape while serving as deputy president. He was ultimately acquitted, but the trial set in stark relief the gap between official state policies on gender equality and entrenched ideas about sex and gender that reproduce those inequalities (Robins, 2008). Zuma was valorized by his supporters for unapologetically inhabiting what he referred to as "traditional" Zulu masculinity.[91] For men like Zuma, Venda women make ideal wives because they read subservience into the respect implied by *losha*.

It is not a far leap from these remarks about marriage to the sexualization of *losha*. Consider the social media image below, posted by a Sesotho speaker based in Johannesburg. The poster puts these Tshivenda words in the mouths of Venda women: "(feminized greeting) hello, (respectful form) please fuck me."

[91] One of the more famous moments in the trial occurred when Zuma was asked about why he would initiate unprotected sex with a woman he knew to be HIV positive. He replied that "in the Zulu culture, you cannot just leave a woman if she is ready." He likened such an action to rape.

Figure 2.1 Facebook post with meme of Venda woman in *losha*[92]

"No chill," the name of the meme, is a colloquial expression for acting impoliticly, without regard to how you are perceived. In Venda, *losha* is linked with the sorts of projects of personhood that implicate sex, but is not sexualized in this explicit manner.[93]

For many South Africans and international visitors, the humility of *losha* makes it an antiquated and distasteful cultural practice, especially when performed by women.[94] Zuma's

[92] Images from social media are anonymized throughout this text.

[93] If Venda representations of *losha* were sexualized, one might find evidence of it in the works of Rabe Madega, a prolific producer of Venda pornography. In his Venda Ninja Porn and Bush Pie series, Venda actors played out scenes across Venda landscapes. Donkey carts, rondavels, and dusty dirt roads featured, but the female *losha* was not worked into the plots in any meaningful way. I had occasion to ask him what was specifically Venda about his pornographies and he replied: "it's all about Venda. When we talk about America, Germany, Britain, everywhere – when you look at our attire, we call it *ṅwenda*. Yeah, so when we talk about *ṅwenda*, then wherever you are, we talk about tradition. Then my view was to explain to people that even Venda, they are doing sex, everywhere. That is why I call it 'Bush Pie.' We are doing it in the bush. We are having sex in the bush. On that side, you can call it 'porno,' but we are doing sex in the bush. I am approaching a lady in the bush, wearing traditional clothes, I am a traditional man, so we understand each other and then we end up having sex." Madega invoked a politics of representation – a pornography representing Venda places, dress and people – to explain the appeal of Venda pornography as opposed to something inherently erotic about Venda enactments of womanhood.

[94] For part of my research, I lived in the home of a German tour guide who gave "off the beaten track" tours of Venda villages. During the course of his tours, it was not uncommon for white tourists to be on the receiving end of

comments were widely taken as a sexist gaffe. The backlash against him extended to the *losha* itself, which was indicted as a form of self-negation. An employee at an Eastern Cape organization that providers services to survivors of gender-based violence responded,

> If you express respect in such a way that you even lie down it means you are scared of the person you are respecting…Even the practice of women kneeling in front of their husband is not acceptable. This means Zuma is over-expecting respect from women, which is a gesture of undermining their rights.[95]

Similar remarks condemned *losha* as a sign that a woman had been forced to abrogate her rights.

If the female *losha* is associated with Venda in the national imaginary, Venda people and institutions also actively promote the female *losha* as a marker of Venda heritage. In the image below, taken from the Facebook page of a Thohoyandou hotel, the female *losha* served to welcome guests by making use of an especially honorific form of greeting. The Facebook advertisement promised to hail patrons who visited the hotel with the respect reserved for kings. The young male hotel Manager in the center of the photo was himself royal, a son of a local chief. Some of the comments posted in response to the photo reproduced the sentiment of the women in *losha*, greeting the manager with "aaa, *mahosi* (female hello, chief)," words that might accompany such a *losha*. Others remarked on the beauty of the women in their *ṅwenda*, a colorful fabric with lines of black cross-stitching widely identified in travel brochures and heritage events as "traditional" Venda dress.[96] These comments seem to have been written by an audience of Venda Facebook users as well as other black South Africans.[97] In such representations, the female body is simultaneously tasked with manifesting culture (Ortner, 1972) and implicated in the commodification of ethnicity (J. L. Comaroff & Comaroff, 2009).

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losha. While white men often snickered or laughed sheepishly, white women rejected *losha*, insisting that the Venda woman stand or even physically assisting her to do so.

[95] Staff Reporter. (2013, December 20). Zuma "impressed" by Venda women bowing down to him. *The Mail & Guardian*. https://mg.co.za/article/2013-12-20-zuma-impressed-by-venda-women-bowing-down-to-him/

[96] Today, many of these printed fabrics are mass-produced and imported from China (see also Renne, 2018, p. 2; Sylvanus, 2016)

[97] This is a deduction based on names that are popularly associated with different clans and language speakers, but it is worth underscoring that it is impossible to make a definitive claim about ethnicity or language from one's name.

Figure 2.2 Facebook post advertising Heritage Month at a Thohoyandou hotel

This chapter has three goals. First, this chapter provides an introduction to one of the major theoretical themes of *Righting Sexual Wrongs*. In tracing the different configurations of gender, ethnicity and citizenship, this chapter presents two differing notions of personhood that come to bear in how the crime of rape is redressed in Venda. I understood personhood as a moral evaluation of one's being in the world. Anthropologists have long troubled the universality of the liberal notion of the person with alternative personhoods as distributed, alienable, and plural (e.g. Fortes, 2000; Marriott, 1979; Strathern, 1988), ideas well explored in the Southern African context where personhood is achieved and undermined through social relations with humans and non-humans alike (J. L. Comaroff & Comaroff, 2001; Feeley-Harnik, 1982; Ferguson, 2013; Rice, 2017). Liberal and "relational," these are schematic ways of thinking about personhood, and I present them here with the caveat that these ideas emerge in practices, rather than as coherent, monolithic convictions that admit no exception.

Second, this chapter introduces the field site by tracking "Venda" across various scales of a "conceptual geography" of South Africa (Ardener, 2012 [1987], p 521). In this analysis, Venda is a moving target, uneasily occupying the past and the present, the center and the periphery. As we will see, as a former bantustan, Venda occupies a unique place in the imagination of South Africans as a dense site of ethnically inflected, cultural practice, what Edwin Ardener (2012

[1987]) has referred to as a "remote area." This designation of "remoteness" may originate from visitors, but comes to shape how residents of the remote area understand themselves.

Finally, the argument. I started this chapter with *losha* because the image of a young black woman, prone on the ground, mobilized competing understandings of gender, ethnicity and citizenship. These positions correspond loosely with what I am referring to as liberal personhood and Venda enactments of relational personhood. This chapter first argues that these competing understandings manifested in the ways differently situated service providers evaluated rape survivors' claims for remedy. Insofar as certain groups of South African elites and international development donors understand Venda women to be submissive, they make for distinctly problematic victims of rape, a crime legally delineated by the victim's refusal. In this view, culture marked a unique sort of gender inequality that formed the basis of Venda women's vulnerability to rape. Under the sign of "empowerment," human rights workers and feminist activists identified Venda women as a problem: not just faulty agents, in the amount of resistance they offered assailants, but also flawed citizens, in their reluctance to report and halt the criminal careers of perpetrators. These sorts of ideological claims were made by conjuring ethnicity at the scale of the bantustan. Such discourses took meaningful material forms in a trauma centre where Venda survivors of sexual violence sought remedy.

Even so, the frontline work of counseling was in the main performed by Venda women for Venda women. In these exchanges, different ideas about sex and gender were worked into the process of care and support. In the trauma centres, gendered practices like *losha* evinced a form of respectability that enabled those who presented as survivors to more effectively make claims to state care. Where liberal ideas of empowerment linked inequality and vulnerability, trauma centre workers paired evaluations of vulnerability with assessments of respectability that took into consideration age, class and rurality. This chapter finds that the same practices that were deemed cultural and therefore inimical to national citizenship by outsiders were constitutive of citizenship in encounters between Venda survivors and Venda service providers. Historians have shown the importance of rape in constructions of race (Freedman, 2013; Gqola, 2016; Scully, 1995; Thornberry, 2016). Here, I focus on the role of rape in post-apartheid constructions of ethnicity.

A Remote Area

Located geographically in the far northeast of the country, Venda occupies the country's borderlands, abutting Zimbabwe and Kruger National Park where South Africa meets Mozambique. Edwin Ardener (2012 [1987]) has used "remote area" to refer to an ill-defined feeling of otherness that has physical and conceptual coordinates that are hard to pin down. From Johannesburg, the former bantustan of Venda is easily accessed by paved highway within six hours, but Venda was and remains one of the great remote areas of Southern Africa.

Ardener (2012[1987], p. 523) notes that topographical elements like mountains can add to a sense of "remoteness." Venda is perched atop the Soutpansberg Mountain range and is heavily forested and malarial, features that often figure in historical accounts as important barriers to contact (Kirkaldy, 2005; Stayt, 1931). The area's ecology is thought to have isolated it from imperial incursions of the rest of Southern Africa. Permanent, white settlement in this region occurred in the late 19th century, much later than it did elsewhere in South Africa (Braun, 2013), and it wasn't until 1910 that Venda could be accessed by train.

As Ardener explains, "remoteness" is not strictly a matter of physical distance. It is conceptual. In this way, ideas of remoteness loom large in the othering of colonial ideologies. Venda has a long history of being figuratively remote. Not just exotic, it has been claimed as a place of pristine, untouched culture. If in 1937, government ethnologist N.J. Van Warmelo could write that the Venda are "…a timid, secretive people, and it seems that in their secluded retreat they have been the guardians of much that is archaic, both in language and in culture. They were shielded from foreign influences by isolation" (1937, p. 63), contemporary guidebooks and tourist packages describe Venda as "a land of myth and legend" (Bainbridge et al., 2015). From 19th century German missionaries (Kirkaldy, 2005) through 21st century tourist billboards (McNeill, 2009, p. 18), Venda is frequently described as "Africa's Eden," a moniker that implies its inhabitants are not just innocent, but prior to sin.

Under apartheid, the Republic of Venda was declared autonomous and self-governing, one of four bantustans collectively known as the TVBC states. Venda, along with the Transkei, Boputhatswana and the Ciskei, was nominally granted full independence by the apartheid regime. Though its independence was not officially recognized by any nation-state other than South Africa, the Republic of Venda came to occupy a political periphery. Under the Bantu Homelands Citizenship Act, residents of Venda were deprived of the political and civil liberties

granted citizens of South Africa. For many freedom fighters based in South Africa's townships and informal settlements, the putative independence of the TVBC states was grounds for skepticism about their commitment to the struggle to end apartheid.

For Ardener, physical presence in the remote area does nothing to bridge the spatial or figurative distance implied by the "remote" designation. Venda attracts numerous missionaries, aid workers, researchers, volunteers and tourists. As I mentioned in the Introduction, I can be counted among them. Besides Peace Corps Volunteers, Venda is a regular destination for volunteers from the Church of Scotland, for students from the University of Virginia, and for lone travelers looking for exotic places to participate in "voluntourism." Local NGOs in the area are plagued by requests to host volunteers from the United States and Europe. Engaging with culture, imagined to be authentic for being untouched, is much of the point. In the winter months, when the northern hemisphere is on summer holiday, Thohoyandou sees a surge in young white people meandering by hawkers' tables, buying *makunda* (Venda bangles made from tightly wound wire) and photographing grannies dressed in *ṅwenda* as they make calls on the newest iPhone. This is the paradox that lies at the heart of remoteness: "With every improvement of communication over the decades, the more speedily did people appear to pour in uninvited; and yet the more they seemed to be on the last stages of an expedition to some Everest that terminated in the middle of your floor" (Ardener 2012[1987], p. 523).

The Ethnicity of the Gift

A great deal of scholarship tracks the co-constitution of race, gender and rape. Such work reveals the ways African men and women were understood through colonial frameworks of scientific racism, social Darwinism, and teleologies of societal development. White "men of science" argued that black women occupied a lower rung of humanity, closer to animals in terms of sexual appetite (Gilman, 1985). The concept of rape has been an important cipher for understanding race and gender together. Writing about the history of rape law in the United States during the 19th century and early 20th century, Estelle Freedman (2013, p. 21) finds that "the sexual prerogatives of white men – like their rights to citizenship – rested upon the legal disabilities of African American or Native American men and women." Likewise, in colonial and apartheid South Africa, rape laws were primarily deployed to terrorize black men and offered little protection to black women or poor white women (Cornwell, 1996; Thornberry,

2016). As feminist scholar Pumla Dineo Gqola (2016) observes, the conviction that colonized women were failed liberal subjects, incapable of sexual self-determination justified the sexual impunity of white traders, travelers and colonists in South Africa and other former colonies.

Zine Magubane (2001) rightly points out that scholarship on race and gender paints a coherent picture of blackness, eliding ethnic differences that were relevant to thinking about gender for Africans and European colonists. She attributes this elision to an uncritical application of the U.S. American idea of blackness rooted in that country's "one drop" rule. I would add that some of the scholarly hesitation over delving into discourses of ethnicity and gender might be political. That is, analysts worry over reproducing the sorts of ethnological accounts of tribe and ethnic coherence so central to colonial projects of ethnogenesis. In the South African case in particular, post-apartheid commitments to nation-building may give scholars interested in ethnic difference some pause.[98]

Nevertheless, the intersection of ethnicity and gender is a popular source of humor, scrutiny and speculation among South Africans. There is much gossip and joking about the fidelity, respect, sexual prowess and work ethic of men and women of different ethnicities. On Whatsapp, Facebook and Twitter, friends post lists of gendered attributes organized by ethnicity. Magazines publish articles and blog posts with titles like "There is SOMETHING about Xhosa men!"[99] In these discourses, Venda women and men are often described as traditional, respectful, hard-working and family-oriented. While these stereotypes have a neutral to positive valance when applied to Venda men, they tend to connote blind obedience when applied to Venda women.

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[98] There is one notable exception to this trend and that is the scholarly attention paid to Zulu masculinity arising during the course of Jacob Zuma's presidency (Decoteau, 2013a; Hassim, 2009; Morrell et al., 2012; Motsei, 2008; Robins, 2008). Much of this literature followed from his 2006 rape trial, when he argued before court that to leave a woman sexually unsatisfied ran counter to his culture as a Zulu man. During the trial, his supporters faced off with feminist activists while wearing t-shirts with the words "100% Zuluboy" and forms of dress associated with Zulu people. Throughout his presidency, Zuma appealed to Zulu masculinity as a legitimating social fact: Zulu men are martial, virile, decisive. His approach to ethnicity spoke to unemployed, insecure and disaffected Zulu youth (White 2012), conferring recognition and validation offered nowhere else. In Zuma, South Africa found a new model of masculinity, one simultaneously grounded in patriarchy, violence and male sexual license.

[99] For examples, see Azania, Malaika Wa. 2011. "There Is SOMETHING about Xhosa Men." *Pen and Azanian Revolution* (blog). April 2, 2011. http://penandazanianrevolution.blogspot.com/2012/05/there-is-something-about-xhosa-men.html; Mdaka, Yamkela. 2016. "Women's Take on Men of Different Ethnic Groups." *DESTINY Magazine* (blog). November 23, 2016. https://www.destinyconnect.com/2016/11/23/stereotypes-women-men-different-ethnic-groups/.

In June 2014, a government scandal brought the issue of Venda womanhood to national attention. All of South Africa was in an uproar over a young Venda beauty queen who was alleged to have been "gifted" to a visiting South African Broadcasting Corporation (SABC) executive. Hlaudi Motsoeneng, the then-acting Chief Operations Officer, had come to Thohoyandou to meet with traditional leaders about promoting Venda-language programming on the national broadcaster. An organization called Mudzi wa Vhurereli ha Venda (hereafter, Mudzi)[100] hosted the meeting and gave Motsoeneng a calf and a cow to thank him for his visit. During the event, a representative from Mudzi encouraged Motsoeneng to choose from a parade of ten young women, bare-breasted and wearing *masheḓo* (singular *sheḓo*, translated as ritual apron or loin-cloth), purportedly in order to select a wife. Afterward, it was reported Motsoeneng and Agnes Mukoma, his "gift wife," exchanged contact details.[101] Smiling sheepishly, Motsoeneng laughed and told reporters, "they gave me a wife (*ba mphile mofumahadi*)" in Sesotho. The Sowetan, a prominent daily newspaper, first reported the story, but other news outlets quickly picked it up.[102] Though Mukoma did not actually go home with Motsoeneng, for weeks, images of the 50-something executive with his arm around Mukoma, the smiling young "Venda maiden," were splashed across the front pages of newspapers and magazines under the words "gift wife."

The dress of the women involved loomed large in national coverage of the event. Much reporting remarked on Mukoma's "nudity," described alternately as artless and seductive. The elderly women at the event were wearing *ṅwenda*. The young women wore *masheḓo*, made of *ṅwenda*, and *makunda* (the aforementioned metal bangles, typically worn by the dozen on the wrists and ankles). At public celebrations of cultural heritage, young women often wear *masheḓo*, folded over at the waist to cover a woman's front and back.[103] *Losha* also featured in

[100] The name in Tshivenda is Essence of Ancestral Worship of the Venda people.

[101] National media outlets covered this story extensively. I use a pseudonym here as it was clear the young woman I call "Agnes Mukoma" felt this attention had a negative impact on her life.

[102] The Sowetan's original article appeared on June 13, 2014. Following that, most major news outlets covered the story as it unfolded. Some examples include the Daily Maverick (June 23, 2014), the Mail & Guardian (June 22, 2014), DRUM Magazine (July 3, 2014), eNCA (June 18, 2014), and the BBC (June 23, 2014).

[103] Some traditional leaders object to public displays of the *sheḓo*, but it is not uncommon for young women to appear in *masheḓo* at public events marked as cultural. Ritual occasions for *masheḓo* are *vhusha* and *domba*, a girl's second and third initiation, after which she is eligible for marriage. Knowledge of the practices involved in initiation

the news coverage of the event. Journalists wondered over the curious spectacle of women prostrating or bowing.

Across the country, people asked how in 2014, a young woman could be *given away*. In his canonical *Elementary Structures of Kinship*, Anthropologist Claude Lévi-Strauss posits that marriage is just that: the gifting of women from one family to another in order to generate alliances. For Lévi-Strauss, whose notion of the gift borrows from that of Marcel Mauss, gift-giving is always reciprocal. Giving a gift establishes expectations of future generosity that point both ways. Yet the backlash to the "gift wife" leans on a different notion of the gift. As one of the tweets in response to a SABC news story suggests, "gift" was used pejoratively to describe Mukoma, a critique of what was seen as a diminishment of the institution of marriage, which is properly ratified by an exchange of *lobola* (bridewealth).

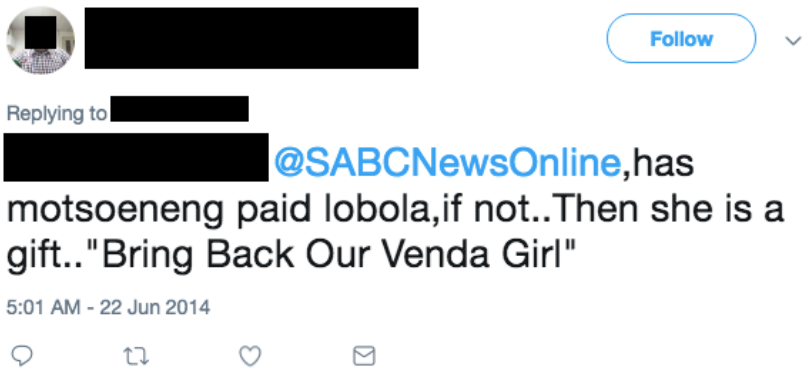

Figure 2.3 Tweet about Motsoeneng and "Gift Wife"

Motsoeneng had not initiated earnest negotiations with Mukoma's family. He had not demonstrated the deference and admiration of the would-be bridegroom. Mukoma was simply offered. It was easier to think of the relation such an offering would establish as corrupt patronage, rather than familial.

The story provoked widespread shock among South Africans. The "gift wife" was a matter of gender justice. On social media, people blasted Motsoeneng for accepting Mukoma as a gift, prompting the hashtag #BringBackOurVendaGirl, an appropriation of a contemporary hashtag circulating on behalf of the kidnapped Chibok girls of Nigeria. Comparisons between Motsoeneng and Boko Haram cast Mukoma as a victim of sexual abduction. Feminist groups

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is limited to initiates. On these grounds, some traditional leaders argue that *mashẹdo* should be kept secret (McNeill, 2009, p. 102).

and human rights activists lodged a formal complaint with the Commission for Gender Equality, a parastatal that advances gender equality in South Africa through research, public education, policy development, legislative initiatives, effective monitoring and litigation.[104] For South African activists working to bridge the gap between constitutional guarantees and political commitments to gender equality, the Venda woman in *losha* was a dangerous specter of abject African womanhood.

The gesture was read, not simply as a gift, but as a form of bribery. The "gift wife" incident happened at a moment when Motsoeneng was already the subject of public scrutiny for corruption. Months earlier, South Africa's Public Protector recommended that the SABC dismiss Motsoeneng on the grounds that he had been dishonest about his educational credentials and inexplicably received a 63% increase in salary over the course of twelve months.[105] In the context of the corruption allegations against Motsoeneng, Mudzi was viewed as an interest group, working on behalf of traditional leaders, that had successfully lobbied Motsoeneng to have the headquarters of Phalaphala FM, the Tshivenda language radio station, moved from Limpopo's provincial capital of Polokwane to Thohoyandou. What was being exchanged in this framing then was not a wife for *lobola*, but a wife for political influence.

Less reflexively remarked upon was the way ethnicity was deployed in the coverage of this story. Consider DRUM Magazine's Editor's Note: "At first we were all taken aback. The last thing any of us wanted was to offend the Venda but something was just not right. How was it possible? To give a bride as a 'gift'?! But alas, there she was, and as they say, the camera doesn't lie" (Zwane-Siguqa, 2014). The DRUM editor's disbelief is grounded in the aforementioned understanding that marriage sutures together families through the transfer of *lobola* negotiated by family elders. But for the average South African, the status of Venda as a remote and even exotic hinterland peopled by traditionalists made it possible that the Venda practiced marriage differently. It was taken for granted that Mukoma's interests in the matter were subordinated to an ethnic consciousness. South African journalists, intellectuals and analysts grappled with the

[104] Established in terms of Section 187 of the Constitution and the Commission for Gender Equality (CGE) Act 39 of 1996

[105] The title of the report, issued in February 2014, was "When governance and ethics fail." Motsoeneng lied about completing matric, the examination that marks the completion of one's secondary school credential. Then Public Protector Thuli Madonsela was known for her flare in titling reports, bringing South Africa taglines that have come to epitomize malfeasance in South Africa ("Secure in Comfort" and "State of Capture").

same concern as the DRUM editor who worried over "offend[ing] the Venda." In this, they echoed Elizabeth Povinelli (2002, p. 4) in asking: "On what basis does a practice or belief switch from being an instance of cultural difference to being repugnant culture?" Commentators were not long overburdened by this paradox of liberal multiculturalism. Shortly after the initial reports, the Paramount King of Venda, King Toni Peter Mphephu Ramabulana, gave the authoritative pronouncement that what had transpired was decidedly un-Venda.

Anthropologist Marilyn Strathern's *Gender of the Gift* (1988) is useful in thinking through these responses. Strathern argues that Melanesian personhood is dividual and partible, with individual bodies "contain[ing] a generalized sociality within" (1988, 13). Melanesian gender is neither a biological fact of certain bodies nor a sturdy social attribution. Instead, gender is an embodied relation capable of being externalized during gift exchanges. Without claiming the same form of personhood in South Africa, there are resonances between the *Gender of the Gift* and the ethnicity of the "gift wife." It was not simply that the ethnicity of the "gift wife" lent the transfer plausibility. It was the giving of Mukoma, as a gift, that rendered her distinctly Venda among South African audiences, a point highlighted by the frequency with which she was referred to as "Venda girl."

In Thohoyandou, two responses circulated around The Sowetan reporting. First, the "gift wife" illustrated a sense of estrangement from the rest of South Africa. How could the rest of the country have accepted the article as an accurate reflection of Venda marriage practices? Do they think Venda people just give young women away? Venda people were quick to articulate the differences between the "gift wife" episode and idealized processes of wedding, the latter defensively identified as "our culture" (and described in greater depth in Chapter 3). They emphasized the involvement of family and especially the initiative and determination of the prospective bridegroom and his kin. A woman couldn't simply be volunteered to an unknown man.[106] It was generally agreed that Mukoma should have demonstrated more decorum while wearing *sheḓo*, especially in front of cameras.[107] The central objection was to a caricature of

[106] Ethnographers of Vendaland described the culmination of the *domba*, the last initiation before young men and women are ready to marry, as an occasion when the chief or his son might "choose" a bride from among new initiates and begin the *lobola* process (Stayt, 1931; van Warmelo & Phophi, 1948). This didn't appear in the rhetoric being deployed in national coverage.

[107] Young women wearing *masheḓo* at public events typically fold their arms over their breasts and look down.

Venda women – alienated and circulating between men – that resonates with Euro-American feminist critiques of marriage (e.g. Rubin, 2011 [1975]). That Motsoeneng might have jumped to that conclusion was evidence not just of the low regard he had for Venda, but a casual presumption of the subservience of Venda women to male desire. What's more, national news media found Motsoeneng's interpretation of the events credible.

For its part, Mudzi organized a press conference, held in the SABC's Johannesburg headquarters, to dispute The Sowetan article. Mudzi elaborated the role of ethnicity in the original coverage with a corrective of "our culture": "According to Venda culture, a wife cannot be given. It's disgusting (to say) that we Venda can give a wife," said a Mudzi spokesman to the media.[108] The organization denied asking Motsoeneng to select a wife from a line-up of young women and denied gifting him a woman. Mukoma herself explained that such a thing was not Venda tradition: "That is not Venda tradition. I'm proud of what I am and my culture. I was not half-naked. It's a *shedo*. I will continue wearing it." By way of a simultaneous disavowal that she had been naked and an insistence that the *shedo* was her choice, Mukoma refuted the subtext of the national discourse: namely, that Venda women are coerced into tradition that sexually exploits them.

The Mudzi press conference, which was variously described as "bizarre" or "unusual" by the journalists reporting on it, did not have its intended effect. Before the briefing, Mudzi officials had insisted that reporters remove their shoes and kneel so they could together entreat the blessings of the ancestors. Journalists covering the story were appalled that they were "required" to participate in "ceremonies" and "cultural rituals." If that wasn't bad enough, afterward, Mudzi asked who had brought the Tshivenda-English interpreters, noting that while they can speak in English, they preferred to speak in Tshivenda. The coverage of the press conference was simultaneously eroticizing – "two young bare-breasted women constantly bowed and did loud ritual ululating throughout the briefing before each member could speak" – and indignant, depicting the members of Mudzi as uppity, overly prideful and out to humiliate the news media.[109] Through their attire, conduct and embodied conventions, members of Mudzi did not just enact a "mode of public sociability" (Mahmood, 2005, pp. 73–76) at odds with the

[108] Seale, L. (2014, June 23). Vhavenda deny giving wife as gift [Https://www.iol.co.za/news]. *IOL News*. https://www.iol.co.za/news/south-africa/gauteng/vhavenda-deny-giving-wife-as-gift-1707410

[109] News24. (2014, June 22). Bizarre Motsoeneng wife gift briefing surprises media. *News24*.

liberal sensibilities of the journalists; they demanded observance of these conventions from these same journalists. In these ways, ethnicity played a role in national coverage, in turn conditioning a local reaction that made the ethnic stereotyping explicit as such. An uneasy tension characterized this reporting, which simultaneously tried to uphold the value of multiculturalism but resented this public assertion of difference that laid bare the limits of liberal universality.

Beyond the "our culture" corrective, a second response to this story was also evident in Thohoyandou. Early on a Saturday morning in July 2014, at Pinkie's Beauty Salon, it was Mukoma's motivations that were the subject of scrutiny.[110] Pinkie had set me to work completing tax forms necessary to register her business as an import-export company. Aluwani, a hair stylist, moved from the kettle, where she had set water to boil, to her teenaged client, seated at one of the salon's mirrored stations. David, a Nigerian schoolteacher and friend of Pinkie's husband, sat in front of the salon's television, quietly watching a Nigerian comedy. By this time, the original Sowetan article, which had come out two and a half weeks earlier, had run its course. On behalf of Venda people, King Mphephu had already remarked that gifting women is not an authentic practice, and Mudzi had held its press conference.

While sweeping loose hair from the floor, Pinkie brought up the SABC executive: "It is very wrong. Those old women gave this rich married man a young woman. And he was very old." I asked her about the age difference and she said she thought he was 58 and she was 18. Aluwani chimed in, "some girls like money too much. They look for old men to buy them things. This girl is like that. She just wanted to be with a wealthy man. They don't care how old." While these women generally agreed that the "gift wife" scenario was at odds with their sense of proper cultural practice, they interpreted the story through a different register, one that was more agnostic to questions of ethnicity. Women, in Pinkie and Aluwani's account of the story, are neither victims of false consciousness nor male coercion. Instead, they are self-interested and self-motivated, sometimes to a fault, willing to eschew established modes of conjugal union for easy monetary reward.

In the salon, the actions of Mukoma and her older female relatives were better understood through the register of "transactional sex." In coverage of the gifting, it was reputed that Motsoeneng had offered to pay Mukoma for her tertiary schooling. Paying for schooling, in

[110] Unless otherwise specified, pseudonyms are used throughout this dissertation to maintain the privacy of my interlocutors. This includes place names like Pinkie's Beauty Salon or the Khuḓani Regional Court.

particular, is a common form sexual exchanges take. Indeed, it is often presumed young women enrolled in college take older lovers in order to pay the high cost of tertiary education.[111] While Pinkie and Aluwani were quick to look down on Mukoma and women like her, material transfers have a long history of facilitating sexual relationships. As we will see in the next chapter, even as formal *lobola* payments have become more elusive, money and gifts legitimate sexual relationships and even did so in Pinkie and Aluwani's relationships. Pinkie was, in fact, cheating on her husband with an older man who provided her with gifts and money. In repudiating Mukoma, Pinkie was simultaneously insisting on her own respectability.

It was not the fact of exchange that caused national offense. After all, marriages are formalized through the exchange of *lobola* from one household for a wife from another. Rather, observers of the "gift wife" scandal dwelled on what and how the transaction was carried out to discern the sort of sexual relation entailed by the exchange (Zelizer, 2005). For the Venda stylists, the manner of Mukoma and Motsoeneng's "betrothal," such as it was, justified the conviction that Mukoma was one of these "girls [who] like money too much," who "look for old men to buy them things." For others living in South Africa, Venda otherness raised the possibility that Venda people make use of different standards to differentiate normative sexual exchanges.

While the salon stylists were scandalized by Mukoma's unethical participation in the Mudzi event hosted for Motsoeneng, national news coverage doubted that she was even capable of consenting. From this vantage point, Mukoma was a hapless victim of a false consciousness that was decidedly ethnic. For national news reporters and the feminist organizations behind the complaint to the Commission for Gender Equality, Mukoma's participation, however eager it might have seemed, was not *genuinely* willed because she was so completely under the thrall of a distinctly Venda culture. Willing was about whether a decision was arrived at independently and through one's faculty to reason (Ahmed, 2014). What activists worried over was whether Venda patriarchy had circumvented this internal process for Mukoma. This made Mukoma the sort of vulnerable figure, who was an ideal candidate for empowerment.

[111] I have heard some men who had no special qualms engaging in transactional sexual relations with younger women claim that they would never date women enrolled in college because the latter were reputed to take more lovers to cover their expenses and were therefore more likely to have sexually transmitted infections and especially HIV.

Empowering "Women"

The most prominent non-profit organization working on issues of sexual violence in Venda was the Thohoyandou Victim Empowerment Programme (TVEP).[112] TVEP manned and operated trauma centres at the two area public hospitals that served the population of Thohoyandou and surrounding areas. Work at the trauma centre was organized around the "buddy system," where an on-duty Victim Advocate was paired with a "client" for whom she would serve as the single point of communication for counseling, medical and legal services.[113] Over the course of 2017, the two trauma centres recorded 573 complaints of sexual offences.[114] By comparison, between April 2017 and March 2018, the Thohoyandou policing cluster registered 447 sexual offences.[115] I point out these figures not to claim that survivors preferred reporting to trauma centres to reporting to the police.[116] Instead, I mean to use this comparison to highlight the prominence of TVEP as a non-profit institution working in the field of sexual violence in Venda.

In addition to the case management services offered survivors through the trauma centres, TVEP also carried out civic education campaigns in area schools, churches and with traditional

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[112] Thohoyandou Victim Empowerment Programme is the real name of the organization and the institution for which I do not use a pseudonym. I use it here because its role in managing the hospital trauma centres makes it impossible to obscure the identity of the organization. More to the point, in the time since the conclusion of my fieldwork, the organization has undergone significant restructuring and staff turnover.

[113] At the time of fieldwork, all Victim Advocates were female, though this was not a condition of employment and men had served in this role before.

[114] Any complaint of a sexual nature reported to TVEP, either at its Trauma centres or its Central Officer, was noted as a "Sexual Assault." The Client Intake Profile further delineated categories of sexual violence including rape, attempted rape, compelled rape, sexual assault, suspected sexual assault, incest and abduction, but "Sexual Assault" served as a catchall category comparable to police statistics on "sexual offences." These were gleaned from the February 9, 2018 edition of the *Limpopo Mirror*, which included the annual statistics for 2017.

[115] The Thohoyandou Policing Cluster covers the catchment area of the Trauma centres and includes stations at Thohoyandou (250), Levubu (50), Mutale (30), Makuya (5), Tshaulu (15), Siloam (35), and Vuwani (62). Sexual offences include rape, attempted rape, attempted sexual offences, contact sexual offences. These statistics were obtained from obtained from SAPS at https://www.saps.gov.za/newsroom/msspeechdetail.php?nid=13730.

[116] In all likelihood, the latter statistics underestimate the number of complaints the police receive. Scholars of law enforcement in South Africa have shown how police discourage would-be complainants or intentionally fail to register cases in order to manage their workload deflate station statistics (Diphoorn, 2015; Kynoch, 2016; Owen & Cooper-Knock, 2014; Shaw, 2002). For sexual offences in particular, see Plessis, Nina du, Ashraf Kagee, and Anastasia Maw. 2009. "Women's Experiences of Reporting Rape to the Police: A Qualitative Study." *Maatskaplike Werk/Social Work* 45 (3): 275–89.; and Watson, Joy. 2015. "The Role of the State in Addressing Sexual Violence: Assessing Policing Service Delivery Challenges Faced by Victims of Sexual Offences." APCOF Policy Paper 13. African Policing Civilizian Oversight Forum. Mowbray, South Africa: Open Society Foundation for South Africa. http://apcof.org/publications/policy-briefs/.

leaders and other community groups. The institutional home of this programming was the "Empowerment Cluster." Hereafter, I use capitalized Empowerment to refer to TVEP programming and lower-case empowerment to refer to the liberal ideology of such programs. I have described TVEP's Empowerment services and the ways in which they unite ideas of agency and citizenship elsewhere:

> Didactic sessions are referred to as 'campaigns', a word intended to evoke political connotations. Using the rallying calls 'Know and claim your rights!' and 'Break the silence!' [Empowerment] purports to nurture activist impulses among disempowered groups, to teach people to 'hold service providers accountable'. Supported by international donors as part of a rights-based approach to development, [Empowerment] operates on the assumption that a citizenry that is aware of its statutory entitlements expects more and will potentially confront government with its expectations. (Rupcic, 2013, p. 466)

More than the support services offered through TVEP's trauma centres, foreign donors have reliably funded Empowerment programming since the organization's inception (Rupcic, 2013), in no small part because donors find worthy the cause of liberal subjectivity in Africa's peripheries (see also Englund, 2006).

TVEP was founded in 2001, during a period when the government provided seed funding to non-profit organizations involved in "Victim Empowerment," an umbrella term for state-funded services offered to survivors of what was then widely referred to as "gender-based violence." In the intervening years, some organizations working in this area have dropped "gender-based" for more gender-neutral descriptors of this violence in order to invoke a more inclusive idea of who can be a victim and who can be a perpetrator.[117] Nevertheless, gender remains a central axis of inequality along which vulnerability and empowerment are graded.

Funded as part of South Africa's 1996 National Crime Prevention Strategy, Victim Empowerment programming was initiated by the Department of Welfare, what today is called the Department of Social Development (DSD). From the DSD's National Policy Guidelines for Victim Empowerment, empowerment is defined as:

[117] "Gender-based violence" was popularized in 1993 following the UN Declaration on the Elimination of Violence Against Women. "Violence against Women (VAW)" is also increasingly eschewed for this reason. Instead, "Domestic Violence and Sexual Abuse" or "Intimate Partner Violence (IPV)" are more popular. In South Africa, "Gender-Based Violence" gave way to "Sexual and Gender-Based Violence" in the mid-2000s in response to highly publicized accounts of lesbian women being targeted for rape (Morrissey, 2013; Mwambene & Wheal, 2015).

> …having (or taking) control, having a say, being listened to, being recognized and respected as an individual and having the choices one makes respected by others (moving from victim to survivor).
>
> Victim empowerment aims to restore the loss or damage caused by criminal acts and their consequences through a variety of actions intended to empower the victim to deal with the consequences of the event, to leave it behind and suffer no further loss or damage. (DSD, 2008, p. 3)

Here, empowerment is about creating liberal subjects, that is, bounded individuals who are self-determining, who safeguard the space between self and other. In a larger context of economic liberalization, this subject is "empower[ed]… to deal with the consequences of the event" without the aid of government assistance to restore or prevent "further loss or damage." State remedy is instead narrowly confined to the policing, prosecution and punishment of crime.

In South Africa, as elsewhere, "*Empowerment* has become a technocratic goal that directs the flow of resources and training down the chain" (Murphy, 2012, p. 23), in this case, from state agencies to local, private, non-governmental entities. The availability of state funding earmarked for empowerment prompted the founding of numerous non-profit "Victim Empowerment Programmes" throughout the country, TVEP among them. The decentralization of government services to private entities resembles what Nik Rose diagnosed as "the death of the social," an abrogation of state welfare to increasingly local and private entities. This shift is reflected in the name change of the state ministry responsible: from "Department of Welfare," with its connotations of government entitlement, to "Department of Social Development," which suggests non-state enterprise and upliftment. It is further apparent in how TVEP and similar organizations refer to victims as "clients," a metaphor that conjures up ideas of private market transactions between willing buyers and willing sellers.

Victim Empowerment explicitly links liberal ideas of agency and crime prevention. It does so by making the liberal subject an imperative of governance. The empowered victim commits to certain procedural criteria. First, the victim's decisions are the reasoned products of an authentic will, uncorrupted by external influence. This is a commitment to liberal subjectivity. Second, the victim reports to police, opens a charge, volunteers their body as a crime scene for forensic examination, otherwise assists with the police investigation, and attends all relevant court proceedings. Reporting in this way is what one victim "might owe…to others who are vulnerable to similar treatment – fellow victims – to resist the injustices they face collectively

and repeatedly" (Vasanthakumar, 2019). In short, empowered victims are "good complainants," who "see the big picture, and participate [in the criminal justice system] out of a sense of civic duty" (Leggett, 2003, p. 14). To refuse the protocols entailed in empowerment is to disavow one's duty as a citizen. Victims who fail to meet these responsibilities are implicated in the criminal career of their assailants.

Consider, for example, the government's response to the murder of Uyinene Mrwetyana. On August 24th, 2019, Mrwetyana, a 19-year old University of Cape Town student, went to a Post Office in Claremont, South Africa to collect a parcel. The postal employee who assisted her told her that he could not accept her payment because the credit card machine was down, but instructed her to return at 2:00 pm, after the post office's official closing. Alone in the post office, he attacked her, raped and murdered her. On September 2, 2019, in response to the public outcry following Mrwetyana's death, the South African government's official twitter profile released the following statement:

Figure 2.4 September 2, 2019 South African Government Tweet

The statement was received with great outrage and was taken down shortly thereafter. Nonetheless, it makes plain that reporting is a victim's civic duty.

If the citizen's responsibility to the state is reporting, the pay off of empowerment for the victim is personal transformation: the heroic shift from "victim" to "survivor." This shift is also a moment when "victim" trades places with "perpetrator"; when the victim, who suffered violence

at the hands of an other, turns to the state to make that same other the target of state violence. In so doing, the survivor has helped avert future crime by helping to root out criminals, thereby facilitating the policy goal of crime prevention. Empowerment can be understood as a form of crime prevention if one accepts the premise that the right to state protection is sustained by the responsibility to report.

Venda women are doubly problematic for the form of liberal subjectivity that inspires feminist empowerment projects. As women, their sexual difference poses a problem to a politics that conditions equality on sameness. Looking at French feminism from the revolution through 1944, Joan Wallach Scott (1996) has characterized this as a paradoxical choice between equality and difference. Scott shows how French feminists, confronted with exclusion from the universal rights of man, lobbied for political rights by rallying around the very category "woman" it rejected as an exclusionary principle in politics. What makes the case of Venda women and the human rights programming that seeks to empower them distinct from Scott's historical case is that the category "woman" on which empowerment alights is not the same category "woman" – or in Tshivenda *musadzi* (plural: *vhasadzi*) – that is produced through local practices of gendering.

One is not born a *musadzi.*[118] As has been noted by other Africanist scholars of gender, *musadzi* can be translated simultaneously as adult female or wife, revealing how moral adulthood is imbricated with one's marital status.[119] Indeed, historically, paying *lobola* for a wife could make a cis-gender female a *munna* (man/husband, plural: *vhanna*) (van Warmelo & Phophi, 1948, para. 21). Before undergoing gendering initiations as adolescents, children may be referred to as *musidzana* ("girl," plural: *vhasidzana*) or *mutukana* ("boy," plural: *vhatukana*), but they are

[118] Famously, Simone de Beauvoir made a similar claim in *The Second Sex* when she contended, "one is not born, but rather becomes, a woman." Most interpret this passage to be an early exposition of the sex/gender distinction (Butler, 1986), though there is some debate over whether she intended a distinction between biological properties and social identity (Leboeuf, 2015). If we take her to be referring to sex/gender, Beauvoir's assertion about "woman" suggests that gender is attributed and performed through social interactions and such attributions begin after a child is born. As I describe here, this is different than *musadzi*, an accomplishment achieved by going through specific processes.

[119] For similar linguistic conventions, see: Comaroff, J. L., & Roberts, S. (1981). *Rules and processes*. University of Chicago Press: p. 134. Comaroff & Roberts, 1981, p. 134; Masquelier, A. (2005). The Scorpion's Sting: Youth, Marriage and the Struggle for Social Maturity in Niger. *The Journal of the Royal Anthropological Institute*, *11*(1), 59–83: p. 78.

more likely to be referred to with the gender-neutral "child," *ṅwana* (plural: *vhana*).[120] One's status as a *musadzi* is brought about through practices like *losha* as well as others, which are explicitly understood as gendering pedagogies. Observing similar practices in pre-colonial West Africa, Ifi Amadiume (1987) and Oyeronke Oyewumi (1997) have argued that the sex-gender notion – where sex is natural and gender is cultural – is a colonial imposition. Venda has not been immune from these colonizing effects of sex-gender. Nevertheless, *musadzi* remains distinct from the "woman" that animates empowerment campaigns.

Ethnicity is the second axis of difference that makes Venda women so attractive a target for empowerment. Euro-American feminist movements and international development agencies ask women, women of color and formerly colonized women to relinquish cultural difference, join liberal universality and reap the rewards of equality (Collier et al., 1996; da Silva, 2007; Hodgson, 2017; Lorde, 1997; Scott, 1996; Swidler & Watkins, 2017).[121] Post-apartheid, this empowerment project is also a nationalist project, insofar as it gathers together formerly segregated ethnic subjects under the banner of a unified "rainbow nation," as South Africans often refer to their country. Liberal personhood is achieved through autonomy and self-determination. Liberal citizenship is likewise achieved through reasoned, independent action, uncorrupted by the interests of others or their allegiances to groups. In these discourses, cultural belonging is linked to conformity to certain behavioral scripts and framed as an impediment to liberal personhood and feminist notions of agency (Abu-Lughod, 1990; Mahmood, 2005). It is worth noting that for legal regimes and human rights institutions, the liberal subject itself does not come into view as a unique cultural convention (Merry, 2006; Povinelli, 2002).

A Venda woman in *losha* failed to fulfill expectations of empowered womanhood. In February 2018, TVEP held a small conference for donors who had supported leadership workshops for girls from area secondary schools. The event was staged outside of TVEP's central office on a grassy lawn. The girls were seated outside on mats and cardboard, waiting for the donors to emerge from the interior of the building. As donors trickled out of the office building, the Venda TVEP employee who was responsible for organizing the workshops

[120] It's worth noting that girls in particular, might be referred to as *ṅwananyana*, which is literally translated as "small child."

[121] Liberal multiculturalism in turn conditions state recognition of cultural difference on a narrow performance of ethnicity (Povinelli, 2002).

encouraged the girls to ululate and *losha*. The mostly white, foreign donors smiled. Some looked embarassed. Afterward, Brigit, TVEP's white Programme Director, confided to me that she had been terribly humiliated by the *losha*ing girls. "We are supposed to be empowering girls," Brigit lifted her arms up, flexing her muscles as in a body builders' pose. "Instead, the first thing donors see is this," and then she mimicked *losha*, bowing to the side with her arms outstretched. For Brigit, *losha* was self-negation. For hailing an other through an act of humility, *losha* threatens the integrity of the liberal subject. Thinking with what might be called the "emancipatory liberal mind" (Ferguson, 2013, p. 224), *losha* is a gendered performance of submission, and for this reason, it cannot be an authentic expression of the will. Truly free will, by contrast, emanates wholly from within and resists external determination. To be empowered is to resist social influences on one's own desires and reasoning. Anything less is "false consciousness."

Critically, *losha* was not simply a distasteful practice that ran afoul of liberal feminist ideologies (ideologies that for Brigit imagined empowered subjectivity in very masculinist terms). Brigit's concern here was what its practice might materially foreclose for the organization, which ultimately operated within national and international economies of altruism. Empowerment of women marked as ethnic others has been described as a panacea for a range of issues, from HIV prevention (Jewkes et al., 2010; Mengo et al., 2019; Swidler & Watkins, 2017, pp. 138–165) to economic growth (Duflo, 2012), from environmental conservation (Braidotti et al., 1994) to infant mortality (Fantahun et al., 2007), from reproductive health (Blanc, 2001) to, as we will see, the prevention of a woman's own rape. In these ways, TVEP's concerns with empowering Venda women resonate within national and international projects of development. As an empowerment organization, the practice of *losha* by female staff members was an untenable contradiction.

Writing of the Egyptian women's piety movement, Saba Mahmood (2005) challenges commonsense notions of empowerment that frame agency in terms of resistance to social norms. She instead points out how personhood can be achieved through the practiced inhabiting of norms. Following Mahmood, I want to suggest that *losha* advances projects of moral personhood. In South Africa, anthropologists have shown how personhood is not given, so much as it is a normative accomplishment, with initiation, marriage and children serving as vital yardsticks for judging success. To be a person is to be entangled in networks of reciprocity and

obligation, the beneficiary of currents of good will that manifest in the form of material goods (Swidler & Watkins, 2007), labor (Miers & Kopytoff, 1977) and knowledge (Guyer & Belinga, 1995).

The female *losha* enacts a vertical relation of dependence. Viewed through the lens of liberal personhood, *losha* amounts to a disavowal of dignity. Viewed through the lens of what scholars of South Africa refer to as "relational personhood" (J. L. Comaroff & Comaroff, 2001), *losha* makes moral persons by emplacing its practitioners in a wider social network. It is through such networks that "distributive labor" occurs (Ferguson, 2015). Insofar as such affiliations enable one to take meaningful social action, they are central to self-realization (Guyer, 1993). Put differently, *losha* asserts a form of social membership upon which one can make material claims. In this way, *losha* is fundamentally political. This was once the sort of claim upon which whole polities were founded (Miers & Kopytoff, 1977). On a continent rich in land, political leaders accrued power through "wealth in people" (Guyer, 1993; see also Vansina, 1990). James Ferguson (2013) has noted that through the first half of the twentieth century, "declarations of dependence" were not hostile to freedom; they enabled it. He observes, "in a social system put together around competition for followers, it was actually the existence of possibilities for hierarchical affiliation that *created* the most important forms of free choice" (2013, p. 226).

In South Africa today, given entrenched unemployment and poverty, there do no exist the same "plurality of opportunities for dependence" (Ferguson, 2013, p. 226). Inequality is great and the space between rich and poor is measured in the distance between suburb and township and in the brick facades of gated residences and communities. Most often, "declarations of dependence" are made by poor people on slightly less poor family, friends or neighbors (Habib & Maharaj, 2008; James, 2014). With the contemporary political economy, the challenge is to find a patron well situated enough to permanently lift one out of such circumstances. Recall the hair stylists' interpretations of the "gift wife" scandal. Marriage could legitimate sexual relations between socially, economically and politically asymmetrical persons – in the case of Motsoeneng and Mukoma, between old and young, rich and poor – but only if conducted properly. *Losha* is one of many comportments that comprise normative sociality, sexual and otherwise.

Supporting Others

Since its establishment in 2001 through early 2018, TVEP has mostly been managed by white expatriates and non-Venda South Africans. TVEP's managers justified the racial and ethnic composition of the upper echelons of the organization through reference to the importance of English proficiency. South African non-profits live and die on funding secured from Euro-American donors, who demand funding proposals, program evaluations and other technocratic documentation in English (Wallace et al., 2007). TVEP flourished where other local Victim Empowerment Programmes did not, in not small part because of its ability to secure funding from international donors.[122] This dynamic amounted to a structural inequality in the landscape of humanitarianism, where usually white, native English speakers were at the helm of well-funded NGOs.

Much of TVEP's work with survivors centered around Client Intake Profiles, the organization's administrative record of client reporting to the trauma centre. Even as consultations with clients were (mostly) conducted in Tshivenda, English was the language of the Profiles.[123] In this way, the Profiles instantiated the broader racial politics I have alluded to above. The Profile was an ever-evolving form that served multiple functions. It was both descriptive and prescriptive in a way that closely mirrors police dockets in South Africa.[124] On the one hand, the Profile contained basic demographic information on the client, an account of the incident, and a description of the medical, counseling and legal services requested and received.[125] On the other hand, the document provided the Victim Advocates who staffed

[122] Sally Engle Merry describes a similar dynamic in transnational human rights circles, where "debates are all carried out in English…[And a] person who has not mastered the language would have a great deal of difficulty assessing the implications and innuendos of different phrases and sentences. NGO caucuses are typically held in English only because they cannot afford translators" (2006, p. 44). Likewise, Harri Englund (2006, p. 25) notes in Malawi that "[w]here as English opened out a world of opportunities, Chichewa appeared to close it."

[123] Not all clients were Venda. Many were also Tsonga. Being so close to Zimbabwe and Mozambique, there were also clients who had come from these countries to work in South Africa. Less often, clients came from elsewhere in Limpopo Province or Somali or Ethiopian foreign nationals working in the area. At the time of my fieldwork, there was one Tsonga Victim Advocate who was fluent in Tshivenda.

[124] Dee Smythe (2016, pp. 42–46) describes the way police dockets are used by investigating officers to script investigations and their supervision.

[125] Basic demographic information name, birthdate, contact details, sex, occupation, etc.; information about how the client arrived at the Trauma centre: with whom, at what time, etc.; information about the incident: date, time, place, name of perpetrator (if known), relationship to perpetrator; information about services and referrals: HIV testing and

TVEP's trauma centres with a script for the first and subsequent exchanges with a client. It was a tool TVEP's central office used to remotely manage the often-fraught encounters between Victim Advocates and clients and Victim Advocates and other service providers.

Victim Advocates filled the majority of the fields on the Profiles by hand at the time of the client's arrival to the trauma centre. Once complete, Profiles were physically transported to the TVEP central office, where the contents of the Profiles were regularly reviewed by line supervisors as well as more senior managers. At least twice a month, Victim Advocates came to the central office in order to review and respond to managerial feedback. Communications between Victim Advocates and their supervisors accreted over time in an open-ended "Plan of Action" section at the end of the Profile. Reading profiles was a way for management to carry out oversight, not just over the activities of lower-level TVEP employees and the quality of their work, but also over the service provision of state agents.[126] Managerial comments on Profiles were often quite specific about how police investigations should proceed: evidence to collect, witnesses to interview, crime scenes to scrutinize. Such comments directed Victim Advocates to confront the relevant Investigating Officer about particular details of the case. In this way, the Profile served as an itinerary for activism during activities that were putatively apolitical forms of service delivery (Rupcic, 2013).

Beyond the Profile's documentary, managerial, and political roles, the Profiles came to be seen as a resource that could be leveraged for additional funding. Once digitized, anonymized and "cleaned,"[127] Profile data could be made available to outside researchers in exchange for funding, usually in the form of an administrative or human resource line item on some other institution's budget. Profile data established TVEP as indispensable for understanding sexual violence in Venda. The organization's statistics on reporting were published in the local newspaper on a monthly basis. Researchers affiliated with TVEP published articles and

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counseling, pregnancy tests, post-exposure prophylaxis, desire for home visits; information about the status of the case: police officer, contact details of the police officer, police CAS number, prosecutor, court, court case number.

[126] For example, in the space of the Profile, managers asked Victim Advocates to make sure police officers collected evidence and visited crimes scenes; social workers visited minors in precarious home situations; and hospital staff turn over biological matter – like bloody clothes, a terminated fetus, corpses – to police as DNA evidence.

[127] Cal Biruk's (2018) *Cooking Data* provides an ethnographic account of how HIV/AIDS data are collected, aggregated, analyzed, and politicized in Malawi. Biruk argues that in spite of the preoccupation with "clean" data, data are never clean, rather the more appropriate metaphor for the productive work of data collection is "cooking."

presented conference papers, offering their findings as a corrective to police statistics (Mandiwana, 2005) while touting the successes of TVEP's model of service delivery and empowerment.

Drawing from readings of the Profiles, the organization's management developed a culturalist etiology of sexual violence in Venda. It was claimed that the Profiles told stories of Venda women who complied with the demands of their assailants without protest. They did not tell harrowing stories of violence and force. Two different conclusions were drawn from these observations that revealed tensions between the political commitments of TVEP's elite management committee. First, some managers took the Profiles as irrefutable evidence that servility was a cultural shortcoming peculiar to Venda women. Brigit was a zealous exponent of this position. "I know Zulu women!" Brigit insisted, "They would fight back! This is not about black and white. This is about Venda women." There was a distinctly moral valence to this conviction. For being failed liberal subjects, Venda women were regarded by some managers as contemptible. This form of victim-blaming uncritically reproduced assumptions that rape is narrowly defined by violent confrontations, a presumption that pervades police stations, clinics and courtrooms.[128] The second conclusion, drawn by managers who were alive to the racism and sexism of "submissive rape," was that such a cultural tendency might inhibit their clients' legal cases from resulting in conviction. Even though South Africa has embraced an expansive understanding of coercion in its new rape law, the stories of rape that seemed to appear in the profiles were troubling because of the difficulty of evincing non-consent from submission. For these managers, Venda women made for problematic complainants.

This etiology of sexual violence, what came to be called "submissive rape" in the central office, explicitly laid blame on Venda victims as ethnic subjects. "Submissive rape" was an argument that Venda women were so thoroughly socialized to be submissive toward men that they would acquiesce to their own violation. It also rendered the conceptual unity of crime prevention and empowerment a specifically ethnic concern, while justifying TVEP's

[128] There is an extensive literature on this, but to name a few examples: Davis, A. Y. (1983). *Women, Race, & Class*. Vintage; Estrich, S. (1987). *Real Rape* (First Edition. First Printing. edition). Harvard University Press; Koss, M. P. (Ed.). (1994). *No Safe Haven: Male Violence Against Women at Home, at Work, and in the Community* (First Edition edition). Amer Psychological Assn; Matoesian, G. M. (1993). *Reproducing rape: Domination through talk in the courtroom*. University of Chicago Press; Mulla, S. (2014). *The Violence of Care: Rape Victims, Forensic Nurses, and Sexual Assault Intervention*. NYU Press; Temkin, J. (2002). *Rape and the legal process* (Vol. 86). Oxford University Press Oxford: 60-67.

sensitization campaigns. TVEP's management saw in the two terms – submission and rape – a contradiction, and in this felt contradiction, a question was entertained whether black African women can even be raped (Gqola, 2016) – that is, whether they can be recognized by the state as victims of the crime of rape. Writing on the "unrapeability" of black African women, Gqola (2016, p. 5) notes that, "the creation of the racist myth that [African women cannot experience rape] also makes it possible for those coded as unrapable to be habitually raped as a matter of course."

"Submissive rape" wove itself into the fabric of the work of the central office and scripted engagements with victims in the trauma centres.[129] The management committee decided that the phenomenon was worth investigating more methodically. In March 2006, while I was a Peace Corps Volunteer with the organization, the task of securing funding for the "submissive rape" research project fell to me. On this assignment, I was to report to an Afrikaner woman who managed the organization's legal interventions and seek administrative assistance from the executive secretary, a Zulu woman. Uncomfortable with the way culture was being deployed as part of this assignment, I dragged my feet on the task. The proposal I ultimately submitted for internal review asked whether the appearance of injuries on J-88 medico-legal documents predicted convictions in court. This interpretation of the research objectives was rejected as missing the point.

But the issue could be investigated administratively, without additional funding or human resources. With the addition of several fields on the Profile, the organization could begin to

[129] The managerial concern with autonomy was not limited to survivors who appeared in the trauma centres to report sexual violence. In a parallel venture, called "The Breadwinner's Project," the organization undertook to quantify the number of domestic violence clients who self-identified as breadwinners, data for which was collected on the Survivor Intake Profile. The goal was to demonstrate that it was not economic dependence, but cultural subservience, that yoked abused women to their partners. I did not see the final report for the study, but I was told that it found that 45% of those who reported domestic violence to the trauma centres self-identified as breadwinners. Like "submissive rape," this project lays blame on female victims for the violence they experience. It is worth noting that self-identification as a breadwinner is a poor indicator of economic independence. During the sentencing portion of criminal trials, witnesses were frequently asked about their breadwinner status with follow-up questions asked about why they were breadwinners and how their livelihoods would be affected by the imprisonment of a given accused. The vast majority of women who self-identified as breadwinners did so because they were the primary recipients of social grants. Even so, they readily described relying on others, including partners, for labor and irregular income. By the end of the fieldwork period in 2018, the value of social grants ranged from R410 (approximately $29) to R1720 (approximately $121) per month. Almost of a third of all South Africans receive a social grant (Rossouw, 2017). These grants hardly alleviate the effects of decades of unemployment, racialized divestment and economic liberalization. Rather than afford financial independence, grants are quickly redistributed through social networks.

collect data on resistance. And so the "Incident Data" section of the Profile matastisized in order to accommodate managerial desire for information about "submissive rape." The form already included a prompt about the place of the assault, but five additional fields were added to try to callibrate the extent to which the victim's will was overawed by force. These included: "was a weapon used?"; the "type of weapon used?"; whether the "perpetrator threatened harm?"; was "force used?"; and "did perp say he had a weapon (even if he had none?)". The addition of these fields enabled the routine collection of quantitative data on "submissive rape." For TVEP's managers, these questions amounted to a measurement of the empowerment of Venda survivors. By introducing questions about coercion into scripted moments of care, TVEP sought to document for donors the cultural vulnerability of its beneficiaries and the worthiness of its empowerment efforts.

The "submissive rape" study first envisioned in 2006 was not undertaken until 2015, when a well-connected U.S. American research consultant agreed to draw up a funding application for research. He advised that the original proposal had gone unfunded because of its specific reference to Venda ethnicity. So he revised the proposal, limiting references of submission to a vaguely defined cultural vulnerability. The resulting proposal had three research objectives: 1) to determine the prevalence of "submissive rape"; 2) to identify covariates of "submissive rape"; and 3) to interview women who had experienced "submissive rape" about why they behaved as they did. "Covariate" masked the conviction that this phenomenon was unique to Venda. The donor rejected the initial request. Though talk of culture had obscured the racism of the idea, the U.S. American research consultant suspected that the proposal put in too stark terms the sexist idea that a woman submits to her own rape. The same consultant subsequently approached his donor contacts through personal channels. He proposed a reduced budget for just the first two research questions and dropping victim interviews.

The "submissive rape" study was ultimately undertaken. Two researchers read through and coded a sample of sixty Profiles from 2013, but found only one case of "submissive rape." The underwhelming findings provoked a second round of coding from a 2003 sample. Out of this second sample of sixty, fifteen Profiles were coded as documenting "submissive rape." The final report, circulated to multiple funders, interpreted the difference as "an impressive enhancement in the agency of women to resist rape, potentially as a result of TVEP's intensive campaigning combined with an increase in general awareness of women's rights." Thus, the organization was

able to tell a story of how their empowerment campaigns had produced liberal subjects, marked by their newfound ability to demonstrably refuse sex. To donors, TVEP framed culture as a problem that its Empowerment programming could and did solve.

Like other organizations, TVEP promoted ideas about its beneficiaries as cultural subjects to secure funding from donors for its empowerment projects. In official documents, reports and proposals, this "culture" was referred to in ethnically neutral terms. In the final "submissive rape" report, ethnicity is referred to only obliquely. Mention is made of "patriarchy" and "indigenous culture," but these are not named as attributes of Venda people. It is worth highlighting that the report locates TVEP's work in "Venda," not in the town of Thohoyandou, Thulamela Municipality or even in "the former bantustan of Venda." In academic-facing publications, the organization is even more circumspect. For example, one study, entitled "Culturally sanctioned SGBV [Sexual and Gender-Based Violence] as a driver for child perpetration of assault in regions of traditional leadership in South Africa," located problematic culture in the former bantustan – by way of a reference to traditional leadership – without naming that bantustan as Venda.[130] The study found that TVEP's campaigns effectively empowered villagers, changing "sociocultural norms" and resulting in a reduction of reported attitudes that the author linked to youth perpetration of violence. While the organization's public-facing language about empowerment was free of claims about ethnicity, culture was nevertheless explicitly linked to place-based ethnicity amongst the organization's management and even in face-to-face meetings with officials from national and international development agencies.

In this way, "culture" concealed "working misunderstandings" between international donors and local NGOs like TVEP, a phrase sociologists Ann Swidler and Susan Cott Watkins (2017, p. xi) have used to describe "pragmatic accommodations among donors and brokers who inhabit very different universes but nonetheless share in a joint endeavor." In this case, "culture" enabled donors to fund the empowerment of the culturally vulnerable without implicating themselves in discourses of ethnic othering. The spatial scale of the bantustan bridged these visions of culture. Overburdened with connotation, the bantustan could gesture to ethnicity while

[130] The study argues that villages in these areas tolerate violence and as a consequence produce more children who commit violent crimes. The study notes offhandedly that such places lack the "protective factors linked to child health and development." It further argues that parents in these places are without the knowledge to "guide[] childhood behaviour and reinforce desired and appropriate behaviour" and are unaware of "non-punitive discipliary techniques." By its own standards, it is a curious study. The findings are based on a survey of attitudes of residents, but the results are not compared with other "cultures" that putatively do not sanction violence.

simultaneously evoking vulnerability in political terms of historical disenfranchisement, materialist terms of poverty, sociological terms of rurality, and legal terms of custom. In the South African imagination, the former bantustan concentrates specifically ethnic culture at its most "authentic" (e.g. Hickel, 2015).

There is an alternative interpretation of the findings of the "submissive rape" study, which nonetheless implicates TVEP's efforts in the decline of "submissive rape." Recall the addition of new fields to the Profiles, prompting the Victim Advocate to collect information about coercion and resistance. The new questions, added in 2006, changed the course of interviews between Victim Advocates and survivors. Thereafter, Victim Advocates were tasked with eliciting more specific details about incidents of sexual violence, details that might have otherwise gone unspoken. Perhaps the difference between 2003 and 2013 was not in how victims responded to rape, but in what Victim Advocates asked victims. In this way, it was the Profile that produced the empowerment TVEP claimed to have inculcated in its culturally marked beneficiaries.

In the Trauma Centres

Anxieties about liberal subjectivity were unevenly worked into the fabric of care for survivors. In the organization's trauma centres, care was provided by a largely Venda staff. Chief among them were Victim Advocates, who provided first response counseling to survivors. Exchanges between Venda Victim Advocates and their clients transpired beyond the direct supervision of central office-based managers. The scale at which a Victim Advocate reckoned vulnerability was considerably larger than the scale of the bantustan or the scale of ethnicity. Victim Advocates appraised their clients along axes of age, class, and rurality. In these assessments, respectability was foregrounded as a more effective means of bringing about crime prevention through a particular mode of being in the world. Still, the imperative to "empower" impinged on the everyday work of Victim Advocates.

In conversations, Victim Advocates were quick to insist that "rape can happen anywhere to anyone" – vulnerability was universal. They themselves described being afraid of walking alone or going out at night, fears that they had passed along to their children. Two Victim Advocates shared with me their own experiences of sexual and domestic violence. Nevertheless, they also understood violence to be distributed in particular ways. Such judgments were rarely

articulated to clients in such stark terms, but they nevertheless worked their way through the trauma centre's care.

On a Saturday morning at the trauma centre, I sat waiting to speak to Ompilela, who was the on-call Victim Advocate for that shift. Friday night had been a busy one at the trauma centre. The two couches in the sitting room were full of clients and their accompanying family members awaiting police transport to take them home. Ompilela emerged from the debriefing room with a young woman who wore a tattered white bathrob and slippers. "I will tell you when they arrive," Ompilela said after the woman, as she passed me, slippers flapping, on her way to the trauma centre's sleeping quarters. Once she was out of earshot, Ompilela shook her head and told me, "that one, she wants to be a victim."

The woman had come in during the shift before Ompilela's. Ompilela had taken her to the debriefing room to give her the results of her HIV exam, which had only arrived in the morning. "She was positive. But it was not from today." Ompilela was referring to the duration between HIV exposure and seroconversion, the development of antibodies to HIV which can be detected through testing. HIV seroconversion typically happens several weeks following exposure, meaning the woman's seropositive status couldn't be attributed to the rape for which she was seeking help. Ompilela explained that the night before, the woman had been raped by a man with whom she had been drinking in a tavern. It had happened in a village adjacent to Thohoyandou that was known for its crime rate. By accepting drinks from the man, Ompilela implied, the woman had tacitly agreed to sex. Ompilela, who was in her 50s, remarked that young women from more urban areas are always going out like that. "So these things happen. But often, she will meet someone. He will promise her money. Then, when he does not pay, she will come here and open a case."

In Ompilela's estimation, the young woman had a habit of late-night drinking that resulted in her eventual appearance in the trauma centre and likely also her HIV positive status. Ompilela entertained two possibiilities. On the one hand, it was possible the woman's choice of weekend entertainment rendered her vulnerable to assault. On the other, the woman had contrived an accusation after a botched sexual transaction. This latter narrative of a false rape accusation, one spurred by a reneged financial exchange, was rehearsed to me in Pinkie's Beauty Salon, at lodges and in personal residences, but also by police and in the Khuḓani Regional Court and TVEP's trauma centres. I delve into the themes of sexual transaction in greater detail in the

chapters that come. Here, I want to highlight the nature of vulnerability, as Ompilela and other Victim Advocates understood it.

Among Victim Advocates, assessments of vulnerability were at once material. For example, urban residents report through the criminal justice system more often because of proximity to police stations. Or rich people are safer because they can invest in residential fortifications and private security. But their assessments were also cultural. For example, rural women are shy while urban women are brash and showy. Older women are modest and speak in euphemism while teenage girls are coarse and wear revealing dress. Rich women attend church while poor women spend their money on beer. These formulations were notably gendered. Drinking at night in taverns did not stain the reputation of men as it did women. In interviews with Victim Advocates, vulnerability elided with what has elsewhere been described as a "mercenary" quality of womanhood (see also McNeill, 2011, pp. 180–202; Swidler & Watkins, 2017, pp. 140–144). In these ways, the Victim Advocates echoed the hair stylists' interpretations of the motivations of the "gift wife."

In the TVEP trauma centres, as in the organization's central office, incredulity toward the survivor underwrote a therapeutic encounter that simultaneously tried to meet the demands of legalistic priorities.[131] In both sites, this happened through paperwork. Consider the following account of reporting, which I return to in Chapter 4. I accompanied Tshifaro and her 12-year-old daughter, Luambo, to the trauma centre on an early evening in October. Tshifaro worked weekend nights as a sex worker. She and her two children lived alone in a village adjacent to Thohoyandou. On nights when Tshifaro worked, she left Luambo in the care of a granny who lived next door. The granny went to sleep early, leaving Luambo alone in front of the television with her 14-year-old grandson, Rabe. Rabe had started touching Luambo in April, incrementally increasing the amount of contact. In September, Rabe had taken off his pants and told Luambo that they would have sex. He had been interrupted by Luambo's brother, who had arrived to pick

[131] Anthropologist Sameena Mulla (2014) has written about a similar dynamic in Baltimore emergency rooms. She points out that nurses and safe examiners share a preoccupation with collecting evidence – semen, public hairs, saliva – from the bodies of victims, who are explicitly understood as the primary crime scene in rape investigations. The material conditions for best collecting and maintaining forensic samples made for an uncomfortable and even violent experience of care for survivors. Enrolled in police investigations and criminal prosecutions, Mulla's hospital employees came to evaluate the veracity of survivors' disclosures through the prism of the law's commitment to a singular notion of truth.

her up and take her home. Rabe told Luambo not to tell, threatening to poison her brother if she did. Luambo told her mother who told me.

Dovhani was the Victim Advocate on duty that evening. Across the course of the evening, it became clear that Dovhani blamed Tshifaro for Luambo's sexual assault. While Tshifaro and Luambo were busy in closed conversations with the medical examiner and the police officer, Dovhani criticized Tshifaro: "Why is she leaving her children alone every night? How will she keep Luambo safe without anyone there? And what about her older son who is running around at night? He will grow up to be a rapist himself!" But Tshifaro's practice of leaving Luambo with the next-door neighbor was not unusual. Neighbors often shared childcare responsibilities. Nor was it uncommon for children to spend the night with trusted neighbors or family. Rather, Dovhani's criticism was based on the regularity with which Luambo was left at the neighbor's home *at night*. Indeed, on the Profile for Luambo's case, Dovhani exaggerated the frequency with which Luambo was left at the neighbor's house, saying that it happened "almost every day or every week for the whole year." Tshifaro had not mentioned her involvement in commercial sex work, which surely would have offended Dovhani's understanding for respectable womanhood. But she didn't have to. It was enough for Dovhani to know that Tshifaro was a woman heading off alone at night.

It was not a judgment Dovhani kept between the two of us. At the end of the evening, after Tshifaro and Luambo had finished giving a statement to a police officer, we discussed how the two would get home. The police officer thought it best that police transport be provided, but she noted that her shift was about to end so we would have to wait for another officer to assist. I interjected that I could drive them home. The police officer chided me, saying that it was dangerous to be driving around on a Saturday night. I insisted that it wasn't any trouble, that Tshifaro and I were practically neighbors. Tshifaro added that she would need to make a few stops after dropping Luambo off at home and didn't want to be a bother to the police. This provoked suspicion in both Dovhani and the police officer, who asked together, "where are you going *now*?" Tshifaro replied that she needed to drop something off with someone at JJs, a well-known local tavern. Dovhani scolded her, "after all this, now you are leaving your daughter to go to a shebeen?"

Tshifaro seemed to take the comment in stride, laughing it off. But Dovhani's negative evaluation of Tshifaro's behavior did not stop at the biting insinuation that she was to blame for

Luambo's assault. It extended to Dovhani's assessment of Luambo's credibility. Dovhani's account of Luambo's story occupied a page and a half of writing in her Client Intake Profile. It roughly conformed with the details as related by Luambo and Tshifaro, but Dovhani omitted certain details and exaggerated others. Dovhani further attributed motivations to mother and daughter that they never made explicit. Consider the following passage from Luambo's Profile:

> Sometimes when the mother left her [Luambo at the neighbor's place], she [Luambo] said she was crying and denied to go to the [neighbor-]family knowing that she is going to be disturbed or hurt her. Even though she didn't ask until she write the letter and left it on the table at home. She does that when she knows that her brother might tell her mother as he find [the brother found] him [Rabe] sitting next to the client not wearing t-shirt and by that he time he was trying to fix his belt.

On the Profile, Dovhani insinuated that perhaps Luambo lied about putting up a fuss before being left at the neighbor's home. Perhaps, she told her mother when she did because she feared her brother would expose what was a consensual sexual relationship with Rabe.

When an authorized "Child Protection Organization" like TVEP encounters a minor who has experienced neglect or abuse, they are required to submit a Form 22 to the Department of Social Development.[132] The Form 22 provides state social workers with a detailed account of the incident. On the basis of the Form 22, an understaffed pool of area social workers organize their case load, prioritizing which children and families to visit, and by necessity, which to overlook. On Luambo's Form 22, Dovhani indicated that there was only "mild risk" to the child (on a scale of mild, moderate to severe). As of fifteen months after their initial reporting, in spite of the uncomfortable situation they found themselves in with their neighbors, neither Tshifaro nor Luambo had been contacted by a social worker. Tshifaro worried that Rabe would try to break into their home to enact retribution on Luambo. For Dovhani, the conviction that Luambo was lying merited the additional evaluation that she was at no real risk of harm and therefore required no additional intervention. Discretionary evaluations of risk were a necessary feature of a state social safety net with limited resources. In the space of the trauma centres, gendered notions of respectability served as a standard for distinguishing who was worthy of state protection and who was not.

[132] Children under the age of 18 are legal minors in South Africa, per section 17 of the Children's Act.

Crime Victims as Citizens

As an empowerment organization, TVEP's mission was to create subjects who were resilient to crime. I have said that the question of what sorts of subjects these might be was a matter of "working misunderstandings." For TVEP's management, ethnicity loomed large in explaining vulnerability, but official accounts to donors referred instead to ideas of culture, stripped of ethnic identifiers. Such misunderstandings characterized the internal workings of TVEP and the gap between its English-speaking, elite managers and its mostly Venda frontline personnel. The latter diverged from empowerment rhetoric in three important ways. First, neither the bantustan nor ethnicity were the scale at which they understood vulnerability. They instead plotted cultural vulnerability along axes of class, age and rurality, which were materialized in normative gender practices like *losha*. Second, it was not a commitment to refusal, choice and independence that protected potential victims. Instead, it was a respectability borne of family-minded restraint. This etiology of sexual violence located vulnerability in an excess of volition. Third, in the trauma centres, the grounds for claiming the prerogatives of citizenship were not liberal subjectivity, but the respectability of relational persons.

Nevertheless, the task of liberalizing, as a mode of crime prevention, still made its way into the trauma centres. Profiles entextualized the imperative to "empower" through routine written communications between managers and Victim Advocates about particular cases. In February 2015, Esther, a 23-year-old woman who was four months pregnant, arrived at the hospital for a routine prenatal visit. During an exchange with a reproductive health nurse, Esther revealed that her pregnancy was the result of forced sex. After the prenatal exam, the nurse escorted Esther to the trauma centre. Lutendo, the Victim Advocate on duty, documented Esther's story in English in the "Summary of Incident" section of the Profile, a lined page for open-ended text. Lutendo's summary was brief and remarked that after "abus[ing] her sexually," Esther's uncle had forced her to marry a much older man who lived a two hours drive away. Her uncle had threatened to kill her, and Esther was afraid of confronting him and leaving her husband. Lutendo called a police officer who came to the trauma centre to take a statement, but it is not clear that a case was ever opened.[133]

[133] The Profile notes that a police officer from the Levubu police station arrived fifteen minutes after being called, but Lutendo never documented a SAPS CAS number, the number assigned to new dockets by police. I suspect that, based on his private interview with Esther, the police officer never opened the case. There are alternative explanations for why the CAS number doesn't appear. Lutendo might not have followed up, as she said she did.

Esther's Profile traveled to the Central Office, where it was reviewed by Lutendo's line supervisor. In the open-ended "Plan of Action" section of the Profile, Lutendo's managers made several requests for clarification. One instruction to Lutendo, posed as a question, read, "Also empower her on forced marriage?" Lutendo responded in writing six weeks later with, "Client said she withdrew the case and wanted to raise the child. I talked to her mother and she said she cannot allow her to terminate a pregnancy. She will support her and the child." But Lutendo did not seriously attempt the empowerment intervention envisioned by her supervisors. On the Profile, there was no record of additional contact made with the client after her visit to the trauma centre. Instead, Lutendo simply rearticulated Esther's original position – her fears about reporting – but reframed it as a choice that had become appealing. Making no mention of the uncle or the husband, Lutendo dismissed the call to empower by focusing on how Esther would be raising a desired child with help from her mother. In such ways, Victim Advocates sidestepped managerial directives to enter into additional exchanges with clients who were reluctant to proceed any further with their cases.

Lutendo was tasked with empowering Esther. Empowering Esther meant *getting her to freely choose* to carry forward a criminal case and sever her harmful relationships with her uncle and her husband, in spite of her fears and concerns about doing so. The question of how this is accomplished reveals the contradiction at the heart of empowerment logics. Empowerment presumes the choice that should be made. One reveals oneself to be disempowered by making "wrong" choices. In the field of sexual violence care, the empowered choice is criminal prosecution. Reporting at the trauma centre did not commit one to report to the police, but Victim Advocates encouraged it. They urged victims to think about their own experiences of harm as potential turning points in the criminal careers of their assailants. For example, by telling victims that reporting to the police "will prevent him from becoming a real rapist" or that the result of not reporting "he will continue to rape others."

In addition to the provocation to report to the police, the practice of empowering involved persuading a victim to think of the harm she experiences using legal categories, even when victims did not conceptualize wrongoing in these terms. During the course of fieldwork, Aids

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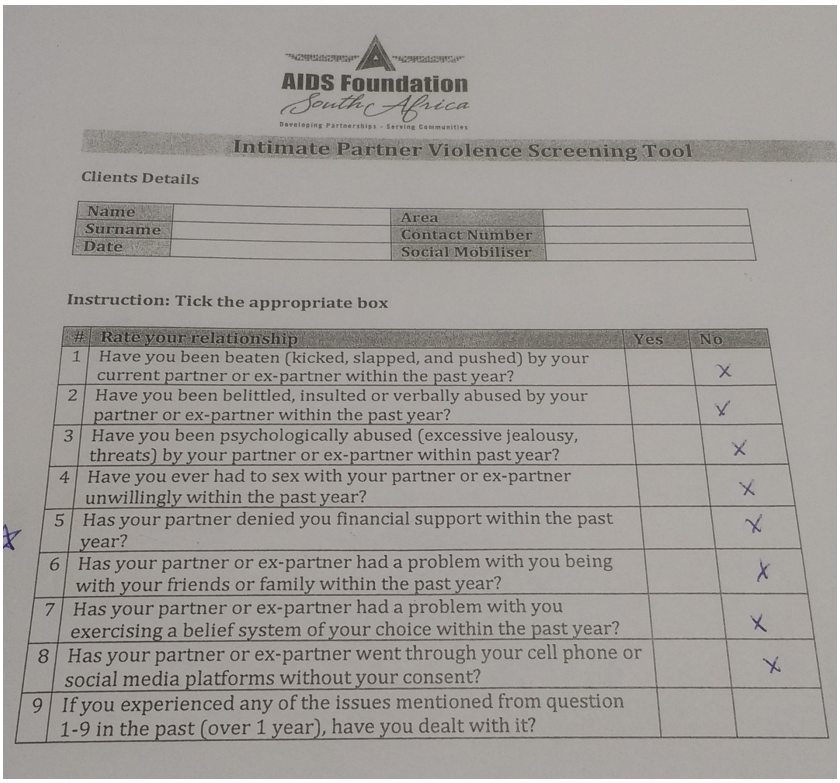
Alternatively, the police officer might have told her that the case was withdrawn without telling her the CAS number. Or perhaps Lutendo decided not to write the number down when she learned that the complainant had withdrawn the case.

Foundation South Africa worked with TVEP to administer a survey to estimate the prevalence of Intimate Partner Violence (IPV). The IPV questionnaire included questions about physical, verbal, emotional and financial abuse (see below).



AIDS Foundation South Africa

Developing Partnerships - Serving Communities

Intimate Partner Violence Screening Tool

Clients Details

Name		Area	
Surname		Contact Number	
Date		Social Mobiliser	

Instruction: Tick the appropriate box

#	Rate your relationship	Yes	No
1	Have you been beaten (kicked, slapped, and pushed) by your current partner or ex-partner within the past year?		X
2	Have you been belittled, insulted or verbally abused by your partner or ex-partner within the past year?		✓
3	Have you been psychologically abused (excessive jealousy, threats) by your partner or ex-partner within past year?		X
4	Have you ever had to sex with your partner or ex-partner unwillingly within the past year?		X
5	Has your partner denied you financial support within the past year?		✓
6	Has your partner or ex-partner had a problem with you being with your friends or family within the past year?		X
7	Has your partner or ex-partner had a problem with you exercising a belief system of your choice within the past year?		X
8	Has your partner or ex-partner went through your cell phone or social media platforms without your consent?		X
9	If you experienced any of the issues mentioned from question 1-9 in the past (over 1 year), have you dealt with it?		

Figure 2.5 AIDS Foundation South Africa IPV Screening Tool

TVEP's managers hoped that the survey would occasion one-on-one conversations about legal options available to those in abusive relationships. In this way, IPV screening was envisioned as "planting a seed" that might result in criminal reporting. But the first step was reframing objectionable behavior as abuse.

One week after their initial reporting, Tshifaro and Luambo returned to the trauma centre so Luambo could speak with a counselor. While Tshifaro waited in reception for the end of her daughter's counseling session, Lutendo pushed the IPV screen in front of her to complete. Tshifaro quietly worked her way through the screening tool. When she arrived at the questions about whether her boyfriend had a problem with excessive jealousy or went through her cell phone, she asked Lutendo with a laugh, "I don't like these things, but is it abuse (*tambudza*)?" Lutendo confirmed that, "it is abuse." After the questionnaire was completed, Lutendo invited Tshifaro into the debriefing room to speak privately. Later, Lutendo would tell me of this moment and moments like it, that "Women are not well empowered. To them, it is normal. We

explain to them that it is abuse." Such conversations were meant to provoke "rights consciousness" (Merry, 2006, Chapter 6), a shift in thinking about disputes as merely objectionable to understanding them as rights violations that are criminal.

And yet Lutendo herself had difficulty imagining a relationship that wasn't abusive according to the terms of the IPV screening. Twice, she administered the IPV screening to me. Dissatisfied with my first round of answers, which were all answered in the negative, she handed me a blank screening and asked me to complete it a second time. Reviewing my answers, she clarified, "your husband never yells at you?" I confirmed that he did not. "Jealousy?" I told her, "no, it is not a problem." "What about an ex-boyfriend? Why did you break up?" There, my answers were similarly frustrating. She threw up her hands and let my questionnaire fall to the reception desk. "So is it common, IPV?" I asked her. She nodded, "very." After a pause, she exclaimed, "Sonia! You should just admit it!" I would later learn from TVEP's Monitoring and Evaluation manager that nearly everyone administered the IPV screening had checked some box indicating abuse. It did not hurt that Victim Advocates received R40 (approximately $2.80) from AIDS Foundation South Africa for every case of IPV detected.

Those who designed the IPV screen and those who administered it both worried about the problem of "undercounting," where respondents do not necessarily identify their experiences as violence. AIDS Foundation South Africa circumvented this problem by designing an IPV screen that detailed specific types of behavior that the organization understood as intimate partner violence. It would later use this information to make more general claims about the prevalence of such violence. Data collection of this sort is often imagined as a transparent window into the state of the world as it is. And yet Lutendo's demands that I "just admit it!" suggest that the screen was less about investigating a problem than confirming its existence. More to the point, this exercise was not simply descriptive, but prescriptive. Even without the additional probing by TVEP's Victim Advocates, answering affirmatively to prompts on a questionnaire about violence might produce an appreciation of oneself as having experienced that violence. For the Victim Advocates, cultivating this awareness was part of the labor of empowerment. In these ways, the IPV screen was producing the sense of harm it sought to measure.

Not just about human rights as abstraction (c.f. Englund, 2006), the epistemological work of empowerment was a criminological endeavor. Victim Advocates motivated invitations to open a criminal case by deploying future victims of "rape," even when victims themselves did not

identify their experiences as rape. "Reporting will prevent him from becoming a real rapist" situates the client's sexual harm as a precursor to rape. "He will continue to rape others" draws an equivalence between future rape and what happened to the client. In these ways, Victim Advocates commensurated certain futures with victims' pasts. In forecasting violence as a necessary consequence of not opening a criminal case, Victim Advocates simultaneously recast a victim's experience of sexual harm as rape while responsibilizing them for its prevention.

Empowerment in the trauma centre involved conferring on victims the positive duty to report to the police, regardless of their own desires. Following anthropologist Aihwa Ong's (1996) insistence that citizenship is a mode of subjectification, I discern in moments like these practices of civic self-making, whereby victims were made citizens. Hypotheticals about the future transgressions of assailants conveyed to victims the weight of their personal experiences of sexual harm as a form of civic obligation. In this way, violence was constitutive of citizenship, not as a mode of belonging (Broch-Due, 2004), but as a duty owed to the state.

Conclusion

I began this chapter with a discussion of *losha*. As a gendered comportment, *losha* is subject to divergent interpretations of vulnerability that were expressed at competing transnational, national and local scales. Among elite aid workers, women in *losha* index both cultural vulnerability and failed liberal subjectivity. In the national coverage of the "gift wife," this cultural vulnerability was named as a distinctly ethnic form of sexual exploitation. By contrast, Venda women diagnosed the "gift wife" scandal differently, attributing to Agnes Mukoma a malignant self-interest that flouted proper decorum around gender, sex and transaction.

In the work of empowerment organizations, these discourses have greater urgency as they unevenly materialize in the everyday procedures and protocols of support for survivors of sexual violence. For the cultural vulnerability ascribed to them, Venda women made problematic victims and problematic complainants of rape, a form of criminal wrongdoing constituted by refusal. In the eyes of the elite managers who planned the course of service provision, they were not assertive enough. They were too accommodating of men. They failed to police the ground between self and other. For this faulty volition, Venda women were further cast as flawed citizens. Perceptions of cultural vulnerability were instrumental for NGOs like TVEP that promoted empowerment programming as a "best practice" method for vacating women of

harmful culture. By liberalizing women, empowerment organizations claimed to be rendering them individually and collectively more resistent to crime. Among TVEP's management, cultural vulnerability was understood at the scale of ethnicity and the scale of the former bantustan.

These discourses shaped the everyday labor of empowering victims of sexual violence. Nevertheless, a very different dynamic obtained in the trauma centres, where the typical encounter involved Venda women assisting Venda women. In this setting, cultural vulnerability was reckoned at larger scales than ethnicity and scrutinized through the lens of middle-class respectability. In the closed-ended fields of bureaucratic forms, these assessments were reduced to brief comments and check marks that resulted in the mobilization or denial of scarce resources. The gendered enactments of womanhood that rendered Venda women flawed citizens by the logic of empowerment were treated as conditions for state care and protection in the trauma centres. In the next chapter, I flesh out more fully the content of normative respectability introduced in this chapter. The next chapter grapples with practices around gender, sex and transaction through a discussion of personhood and family.

CHAPTER 3 – Finding "Good" Sex in South Africa's Moral Economy of Intimacy

In South African policy and legal doctrine, transactional sex is approached as a problem to be solved. Consider the 2007 Criminal Law (Sexual Offences and Related Matters) Amendment Act (hereafter, the Sexual Offences Act). This law provides the statutory grounds for a national push to criminalize non-consensual sex. The Sexual Offences Act promotes sexual autonomy by pivoting away from "absence of consent" toward a broad "coercion" standard.[134] The Act determines that legal sex requires voluntary and non-coercive agreement. It then enumerates a non-exhaustive list of "coercive circumstances" that vitiate consent. These include: use of force, threat of force or intimidation; abuse of power or authority; false pretenses or fraudulent means; and incapacity to appreciate the nature of the act of penetration.[135] In this way, the Sexual Offences Act enjoins legal practitioners to attend to imbalances of power between complainants and defendants, rather than an exclusive focus on the state of mind of the complainant. In a country where the gap between rich and poor is yawning, economic inequality is one of the most important dimensions of power.

"Coercive circumstances" accommodates legal concerns about the role of transaction in sex. During the drafting of the Sexual Offences bill, South African legal scholars Lillian Artz and Helene Combrinck (2003, p. 89) advocated for language that specified "threat of harm" as opposed to "threat of force" in order to encompass sex that occurs under circumstances in which "emotional harm or economic hardship" are possible. Since the law's passage, jurists inside and outside courts have interpreted the non-exhaustive quality of "coercive circumstances" to implicate economic forms of dependency (Mills, 2009). Some trial courts have found that economic exigency renders sex non-consensual and therefore criminal. For example, in a case that concerned the recruitment for sex work of secondary school students (who had reached the

[134] As discussed in the Introduction, the Sexual Offences Act maintains language about "consent," but defines "non-consent" through this non-exhaustive notion of coercion.

[135] Section 1(3), Act 32 of 2007.

age of legal majority), the Supreme Court of South Africa ruled that consent was vitiated because the "young women [] respond[ed] to the prospect of making money due to their poverty."[136]

If rape law has come to criminalize some forms of transactional sex, the law that criminalizes commercial sex work has begun to converge with rape law. Over the last two decades, the South African Law Reform Commission carried out an investigation of "adult prostitution" and its legal status.[137] This research was a response to a group of sex worker activists and allies who lobbied for the government to decriminalize the trade. The Commission published its findings in a 2017 report in which it endorsed the existing regulatory regime, total criminalization of commercial sex work. The Commission found that "exploitation, particularly of women in prostitution, seems inherent in prostitution and depends on the external factors of gender violence, inequality and poverty and is not caused by the legislative framework in which it finds itself" (2017, p. ix). The report goes on to discuss the difficulty of legally evincing the "choice" to sell sex. The Commission stresses the importance of distinguishing between consent to an individual sex act within the institution of commercial sex work (for which a sex worker would be guilty of a crime) and the non-choice of entering into the trade in the first place (for which all sex work bears an abstract resemblance to rape) (2017, p. 11). The report advises that decriminalizing commercial sex work would exacerbate the country's sexual violence problem.[138] While sex work was already illegal under South African law, the Commission

[136] Egglestone v The State (297/2005) [2008] ZASCA 77 (30 May 2008): para 27.

[137] As I discuss in greater detail below, there is a challenge in labeling and defining what counts as "sex work" or "prostitution." I favor "sex work" for highlighting the ways having sex is a form of labor. On the one hand, this characterization is not incommensurable with the claim that some sex work is exploitative (as indeed, all forms of labor have the potential to be). On the other, in calling sex labor, it becomes clear that commercial sex work occurs on a spectrum with other sorts of sex that involve remuneration of different forms. Here, I use "sex work" interchangeably with "prostitution" when describing South African discourse around these practices and specifically legislative attempts at their regulation.

[138] The report weighed the possibility of partial criminalization in the style of the so-called "Nordic model" of regulation, in which buying sex is criminalized, but not selling sex. It includes draft language for two legislative options, both of which would appear in a new omnibus Sexual Offences Act. The first option would follow the Nordic model. Though the report includes draft language for partial criminalization, the Commission most heavily endorses the second option, total criminalization with the possibility of being diverted from the criminal justice system. The report recommends diversion modeled after that which is available for youth offenders under the Child Justice Act. Diversion would "offer women with tools to examine future behaviour and provide opportunities for new and different choices in decision making" (SALRC, 2017, para. 2.512). On other words, the report proposes treating sex workers like errant children.

recommended consolidating regulation of sex work into an omnibus version of the Sexual Offences Act. On the grounds that sex work is exploitation, the Commission sought to alter the legal status of sex work: not just criminal, but of apiece with non-consensual forms of sexual violence. The report is currently under parliamentary consideration.

Legal doctrine of this sort blurs the distinction between consensual commercial sex and the crime of rape (Rubin, 2011). It follows from legal traditions of treating sex and money as incommensurable and mutually corrupting (Haag, 1999; Zelizer, 2005). The South African legal practitioners and scholars who have been influential in crafting this doctrine draw inspiration from the scholarship of Catharine MacKinnon, the U.S. legal scholar who has advocated a legal coercion standard that is skeptical of free sexual association across unequal status (du Toit, 2009; Mills, 2009, p. 86). Even as the Sexual Offences Act is distinctly gender-neutral, this theory of economic exploitation is uniquely gendered: it is women who are compelled by poverty to engage in sexual transaction. And for being compelled, such transactions justify a more expansive understanding of the crime of rape.

Yet people continue to have sex, more or less pleasurable, more or less perfunctory, under conditions of economic inequality and dependence. Such is the case in South Africa, as it is elsewhere. In South Africa, endemic unemployment, housing insecurity, and most recently, flooding in some areas coupled with water shortages in others have made it difficult for all but the wealthiest to claim any sort of autonomy. Against the legal imaginary of autonomy and independence, scholars of sexuality in Southern Africa (Cole, 2010; Hunter, 2010; Swidler & Watkins, 2007) have found that projects of personhood are advanced through sexual networks that convey resources, labor and knowledge. For advancing such projects, indebtedness is not necessarily a bad thing (James, 2014). Material transfers move from men to women, but are further distributed within larger households, families and communities. Bridewealth is foremost among such transfers, but transactions are abundant in South Africa's dating world as well. "Transactional sex" obscures a great deal of diversity in the sorts of relationships that arise from such exchanges and a great deal of diversity in their popular reception. Prostitution, for example, attracts considerable opprobrium.

But all this mixing of sex and money (or gifts or other material assistance) makes it exceedingly difficult to define commercial sex work in opposition to socially more legitimate forms of transactional sex. The South African Law Reform Commission report on prostitution

attempts the task. The original 1957 legislation criminalizing sex work did not define what sex acts constitute illegal commercial sex work. It instead criminalizes "unlawful sexual intercourse or indecent act for reward" and "carnal intercourse other than between husband and wife" and makes reference to "Persons living on the earnings of prostitution" and brothels.[139] A 2002 Constitutional Court case attempted to clarify that the law only applied to what is popularly understood as prostitution.[140] Part of the objective of the 2017 report was to propose new language specifying what sex would be criminalized as prostitution under the new law. The report devotes 17 pages to different perspectives on this question, but settles on the following definition in the language of the draft bill the report proposes, "Prostitution means providing or engaging the sexual services of a person 18 years or older for financial or other reward, favour or compensation for the purpose of engaging in a sexual act, irrespective of whether the sexual act is committed or not" (SALRC, 2017, p. 420).[141] As we will see, the proposed bill's definition of prostitution captures a range of sexual activities, which are not popularly considered prostitution.

This chapter describes normative sex in post-apartheid Thohoyandou. I contend that transaction offers a metonym for "good" sex that is distinct from and sometimes indifferent to legal notions of consent and coercion. By transaction, I refer to all sorts of material transfers, not simply monetary. While the type of transfer is important for distinguishing the moral status of the sex in question (Zelizer, 2005), how a transfer is itself categorized is subject to negotiation. And by metonym, I do not mean to suggest this legitimating work is strictly representational. Normative sex arises in social-sexual networks that perdure because they are material, built on relationships of reciprocity and obligation between differently situated networks of people, rather than on moments of willed connection between equal individuals. Transaction legitimates sexual

[139] Section 20(1)(aA) of the Sexual Offences Act 23 of 1957.

[140] S v Jordan and others 2002 (6) SA 642 (CC).

[141] In the text of the report, however, the Commission takes a narrower approach, specifying that it is not sex for money that constitutes prostitution, but transaction *without* affection or commitment. The report reads: "The distinction is perhaps that in one instance [prostitution], a woman engages in sex with various people outside of a relational commitment, with the sole purpose of acquiring or giving material gain; whereas in the other instance, the existence of a perceived or actual exclusive, intimate relationship or commitment between two adults may be accompanied by items of material gain, but does not depend on this. The difference seems to lie in the intention of the parties: the first scenario requires an exchange of material gain, without which the sexual act will not occur; the second may be an expression of affection or a response to a visible need that the other person might have" (SALRC 2017, 14-5). Insofar as the report almost exclusively deals with heterosexual intercourse, it would seem then that what distinguishes exploitative transactional sex from legitimate transactional sex is heteronormative monogamy.

relationships for men and women alike, but it is nevertheless a contested standard that competes with consent as well as other ways of pursuing social and sexual well-being.

Moral Economies of Intimacy

December is a busy time for marriages in Thohoyandou.[142] The "festive season," as it is often called, is a time when most workplaces close for several weeks, when the employed receive their year-end bonuses, and when *magaraba* (those who relocate to urban centers for work)[143] return to their families in the former bantustans, flush with year-end bonuses. With many others, Ndiimanae and Fhumulani held their "white wedding" in December 2018, a lavish affair attended by several hundred family, friends, neighbors and coworkers. Throughout the day, the two undertook wardrobe changes, at once donning matching red and white *ṅwenda* outfits before appearing in front of their pastor to exchange vows in a black and white suit and white gown. In happy photos from the event, the two pose together, smiling, Fhumulani showing off a large diamond ring. "She is loving the new ring," Ndiimanae joked with me over Whatsapp, when he told me about the event.

I had not been able to attend Ndiimanae and Fhumulani's wedding, but I was in Thohoyandou the year before when Ndiimanae first approached his family and Fhumulani's about marrying. Ndiimanae was a bartender at a hotel restaurant I would frequent to write my field notes. Over the years, we got to know each other well and would see each other socially. He was a junior pastor in his church and the sixth son of a local chief. Over the years, he had multiple occasions to butt heads with his father. Ndiimanae regarded his father's practice of "traditional rituals" to be un-Christian. Once, over drinks, a friend had joked with him about inheriting the chieftaincy from his father. Ndiimanae retorted that if such a thing would happen, he would sooner relinquish the land to the municipality than be chief.

On their first meeting, Chief Thidiela had been impressed by Fhumulani. She came from a middle class family, had an honors degree in social work from the University of Venda and her

[142] And as it turns out, throughout South Africa. December boasted the highest number of marriages solemnized in 2017 (Statistics SA, 2019, p. 2)

[143] Or as one friend put it on Facebook: "This word thou called (magaraba) i think ppl don't understand it,so let me explain it to u,magaraba asi vhathu vhane vhavha vha coubva chikhuwani (magaraba are not those people who are hurting, they are coming from the place of whiteness)."

clan name marked her as royal.[144] Shortly after this meeting, the Chief learned from neighbors that Fhumulani had a six-year-old son with a local troublemaker. A woman capable of such a poor lapse in judgment, Chief Thidiela insisted, would not make a good wife. More to the point, the presence of a son by another man might divide Fhumulani's loyalties. Chief Thidiela urged his son to reconsider the match. "What would happen if the biological father were to return and demand his son?" the Chief asked. "What would your new wife do?" The news devastated Fhumulani, but Ndiimanae took it in stride. In relating the story to me, he had laughed, saying, "I work at a hotel. I know there are no more virgins." Ndiimanae would not let his father's objections stand in the way of marrying his chosen partner.

Ndiimanae wore his father down and eventually elders were sent on his behalf to Fhumulani's house to negotiate *lobola* (bridewealth).[145] What happened next was related to me second hand, because Ndiimanae himself was not present, in keeping with conventional etiquette for betrothals. Fhumulani's family house was a hive of activity with extended family members visiting to assist with cooking and cleaning. Ndiimanae's uncles came prepared with *luambiso* (a betrothal gift).[146] At intervals, Fhumulani's family would demand that additional fees and *misho* (gifts, singular: *musho*) be paid in cash in order to proceed with the discussions. Ndiimanae described Fhumulani's *makhadzi* (paternal aunt), who presided over the negotiations, as very strict. On one occasion, his uncles arrived at Fhumulani's home at 9:30 am instead of the agreed-upon 9:00 am, and the groom's party was charged R200 for their tardiness. On another, the *makhadzi* demanded the addition of a R5000 gift to Fhumulani's parents. In South Africa, such levies are common during the process of betrothal and tend to be taken in good humor.

Eventually, the families settled on a sum of R35,000 for *lobola* (at the time, around 2500 USD), R15,000 of which was to be paid upfront. "She is expensive," Ndiimanae quipped. Ndiimanae claimed to be paying the entirety of *lobola* himself and suggested that he could afford to do so in one lump sum, but preferred to pay in installments because to do otherwise would risk

[144] *Mitupo* are clan names, but should not be thought of as strict corporate groups. For more information on *mitupo* in Venda, see: Ralushai, N. M. N. (1977). *Conflicting Accounts of Venda History with Particular Reference to the Role of Mutupo in Social Organization*. The Queen's University of Belfast.

[145] *Lobola* is widely used in Venda, but it is an Nguni word (the equivalent of the noun *ilobobo* used in Nguni languages). In Tshivenda, *mala* is the verb for giving *thakha*, the noun for bridewealth (Lestrade, 1930). I found *thakha* was most often reserved for cattle payments, which are uncommon.

[146] This marks the opening of earnest bridewealth negotiations.

insulting Fhumulani's family and inviting additional charges. He hoped to finish paying before their wedding. After the families agreed to the amount, they held a party celebrating the couple.

Marriage in this area, as elsewhere on the continent, has historically been accomplished, not through a ceremony of public commitment, but gradually, through the processual payment of bridewealth, building a productive home, and by having children. This form of union, frequently registered with a local customary authority, is popularly regarded as a "customary marriage" – though as we will see, as fewer people have been able to pay the prescribed amount of *lobola*, "customary marriage" has come to be applied to a broader range of sexual relationships. Today, couples who can formalize their union through the exchange of *lobola* will also hold a lavish wedding-event, presided over by a pastor and attended by several hundred family and friends. Almost a year after their families agreed to *lobola*, Ndiimanae and Fhumulani held the "white wedding" to commemorate their union. Between venue, decorations, clothing and catering, the "white wedding" likewise was a considerable expense for Ndiimanae and his family. It was at the "white wedding" that the "customary marriage," was registered with the Department of Home Affairs, and Fhumulani and Ndiimanae entered into a community of property under the auspices of civil marriage.

Men and women alike aspire to marriages constituted through *lobola*. *Lobola* marks the transfer of a woman's reproductive labor to her husband's home; expresses the groom's family's gratitude to the bride's family for raising a hardworking and respectful daughter for them; and indexes the groom's responsibility to his wife and her family and his capacity to fulfill these responsibilities. Thus, Ndiimanae worried that closing out *lobola* payments too quickly might communicate that they were easy for him to pay, casting shame on Fhumulani's family for asking for so little or provoking them to engage in additional negotiations to test the limits of his capacity to provide.

Conjugal relations created through bridewealth exchange occupy the pinnacle of South Africa's moral economy of sexuality. It is a transaction that enables men and women alike to become moral adults. In Chapter 2, I discussed the notion of relational personhood. *Lobola* contributes to the cultivation of such personhood, not just as an isolated milestone, but as one activity in a series that bring about practical conjugality. "*U fhaṭa muḍi* (to build a home)" is also

central to such projects.[147] The Tshivenda expression, "*musadzi u fhaṱa muḓi* (a wife builds a home)," orients these activities in a linear chain with marriage preceding *muḓi* (the home).

Marital transactions are not simply about meeting normative expectations. As this wedding reveals, *lobola* is a material sign (H. White, 2016). Carried out in payments of cattle or cash, bridewealth payments perform a marriage into existence under customary law and attract legal recognition under civil law. Such forms of recognition can be converted into labor, money, and authority. Husband's families come to rely on the labor of daughters-in-law. Conversely, a bride departing for her husband's home is understood to withdraw from the domestic labor of her natal family. *Mahosi* (chiefs) are more amenable to allocating stands of land to married couples. The transfer of bridewealth creates vested interests in the maintenance of the marriage. Historically, should the marriage be dissolved, a woman's family was expected to return some or all *lobola*, depending on whether children have arisen from the union.

As an exemplary practice of economic interdependence, bridewealth makes sex "good" by bringing it within the ambit of kinship. Betrothal involves the participation and approval of parents. As Ndiimanae's father's initial objection to Fhumulani should make clear, this does not mean the marriage is orchestrated by family who run roughshod over the couple's desires. Ndiimanae and Fhumulani had not lived together prior to being married, but it was not uncommon for Fhumulani to spend the night with him in his mother's home. This was possible because both families saw their courtship leading to marriage. During these visits, Fhumulani cooked and cleaned for her mother-in-law, demonstrating the sort of daughter-in-law she hoped to become. Cohabiting on a permanent basis without initiating bridewealth payments is broadly seen as illegitimate (Hunter, 2016), though as Ndiimanae and Fhumulani's case shows, the *anticipation* of marriage makes allowances possible (see also Jones, 2009). Even as extra-marital sex is so common as to be unremarkable – "there are no more virgins" – marriage subtends sexual and social aspirations.

After the families agreed on *lobola*, Fhumulani told Ndiimanae that they should refrain from sex until their "white wedding" a year later, out of respect for their elders. The prospect did

[147] There is a robust literature on the importance of the homestead in projects of social reproduction. Cognates for *muḓi* include *umzi* (in Xhosa), *umuzi*, (in Zulu) and *umuti* (in Swati). A greater elaboration on the homestead has been done in other Southern African contexts. See, for example, Hunter, Hickel, Feeley-Harnik; Morton, Christopher. 2007. "Remembering the House: Memory and Materiality in Northern Botswana." *Journal of Material Culture* 12(2):157-179; Waldman, Linda. 2003. "Houses and the ritual construction of gendered homes in South Africa." *Journal of the Royal Anthropological Institute* (N.S.) 9:657-679.

not thrill Ndiimanae. The interim between *lobola* and the "white wedding" was a liminal period for the couple. While marriage had been initiated within a customary regime, it had not yet been formalized under a civil regime. Even though the couple had enjoyed a sexual relationship prior to being engaged, Fhulumani understood *lobola* to raise the stakes of their sex by bringing their relationship under the scrutiny of their two families and their ancestors in a way it hadn't before. What's more, for Fhumulani's family, allowing the couple to continue sexual conduct at a time when the completion of *lobola* payments was imminent drew unwanted attention to their tolerance up until that point. Fhumulani's reluctance to have sex during this period highlights how normative sex implicates a range of others outside the heterosexual dyad of legal scrutiny.

This is largely because of the role of sex in reproducing family. Children born to married parents are the financial and spiritual responsibilities of their patrikin. Those born outside of *lobola*-authorized unions are illegible to kinship orders. With this in mind, Chief Thidiela cautioned Ndiimanae about the possibility that the father of Fhumulani's firstborn might return to make a claim on him, a claim that could retrospectively "restore" the boy to his biological father's patriline.[148] Such material entanglements between families extend to spiritual planes, where ancestors who are displeased with how a marriage has been conducted can bring poverty, sickness and misfortune. This wrath can have direct bearing on normative assessments of sex.

Consider Hangwani and Thabelo. At a local soccer game, Hangwani told me about how she broke up with Thabelo after dating for two years. It had been a serious relationship that the couple and their families saw leading to marriage. Over the years, Hangwani often shared stories about how controlling her *muzwale* ("mother-in-law") could be, criticizing her for how she dressed and demanding she attend family events where she was expected to cook and clean. What precipitated the break-up was Hangwani's learning that Thabelo had been sending money to a former lover to support their son. Thabelo, who claimed that he been unaware of the existence of the boy, had only learned of him after a series of distressing dreams in which a young boy called to him. A consultation with a local *inyanga* (often glossed as "traditional healer")[149] revealed the meaning of his dreams: his ancestors were instructing him to claim a son

[148] See also White, H. (2016). The materiality of marriage payments. *Anthropology Southern Africa*, *39*(4), 297–308.

[149] Chapter 5 includes a more extensive treatment of the *inyanga* within a large context of occult forces. Here, it helps to note that the *inyanga* is an ambiguous figure for their power to manipulate unseen forces, communicate with the dead, and divine the future.

he didn't know he had. The *inyanga* told Thabelo in no uncertain terms that he would need to placate his ancestors or face their fury. Based on the *inyanga*'s divination, Thabelo was able to identify the former lover as a married woman with whom he had a brief affair seven years prior. Thabelo approached the woman and she admitted his paternity. Secretly, Thabelo began to send her child support. Hangwani was furious when she learned. She was sure that Thabelo was not the father of the child. She contacted Thabelo's mother to let her know. Thabelo's mother told her to be patient, that she would intervene and stop the payments, but the damage was done. Hangwani felt the child support conferred recognition of Thabelo's prior relationship that threatened the primacy of theirs.[150] After all, the diverted resources should have been going to her *lobola*. In spite of appeals by Thabelo's family, Hangwani broke off their courtship.

The story of Ndiimanae and Fhumulani's betrothal is at once commonplace and exceptional. Their betrothal and wedding shared many of the features of contemporary weddings between "middle classing" (James, 2017; Pauli, 2016; Pauli & van Dijk, 2016) black South Africans: the prominent role of families in authorizing the match through transaction of gifts and money; the use of social media in packaging sleek video invitations and circulating images of the happy couple; the conspicuous performance of class distinction (James, 2017); the simultaneous embrace of ritual coded as "traditional" and "modern" (van Dijk, 2017); the pursuit of legal recognition by both customary and civil authorities; the coexistence of transaction with ideologies of love, romance and companionship (Cole & Thomas, 2009; Hunter, 2010); and the culmination of rites that produce a relationship form in which sex receives broad approval. There is nothing particularly controversial about this last proposition, that conjugal heterosexuality is normative, but it bears underscoring that transaction is constitutive of matrimony.

Crisis of Social Reproduction?

Unions like Ndiimanae and Fhumulani's – that is, marriages initiated through customary and civil ritual – have been in decline since the mid-twentieth century (Hunter, 2010; Pauli, 2016). This has led many commentators to declare that South Africa is in the midst of a "crisis of social reproduction," where "social reproduction" refers to the idealized workings of "social institutions

[150] Brady G'sell (2018, pp. 200–230) has shown that men understand child support payments as creating a claim to the woman who mediates the support. As a result, a woman who is not interested in restarting a relationship with the father of her child is loathe to press such claims. I discuss this in greater detail below.

in the reproductive process," as opposed to "public, political acts of men outside the domestic domain" (Barnes, 1999, p. xxxvii). Under conditions of extreme economic precarity, most people cannot afford to pay *lobola*. Beginning in the 1970s, rates of unemployment and underemployment began to rise. Post-apartheid policies of economic liberalization have further entrenched these trends, undermining the ability of young African men and their families to accumulate wealth. Even education, which once facilitated a longer route to prosperity through skilled, formal sector employment, no longer provides guarantees (Cole & Lukose, 2011). This downward trajectory in unemployment has coincided with a demographic decline in both civil and customary forms of marriage.[151] For these reasons, marriage in South Africa has been called a "dying institution" (Posel et al., 2011), one that is as desirable as it is unattainable.

The financial unattainability of marriage also makes it a sign of class distinction. By local standards, both Ndiimanae and Fhumulani were born to relatively affluent families. Ndiimanae boasted a royal heritage that provided him access to material and immaterial resources, not least of which was land. More to the point, Ndiimanae held an elusive job in the formal sector that allowed him to claim some independence from his family's finances. As a bartender, Ndiimanae earned R6,500 a month (roughly $450 a month at the time), but as of my departure, he had been promoted to restaurant manager and was earning a little more than R10,000 a month (roughly $690). Relative other South Africans employed in formal sectors, this placed Ndiimanae in the working class, but these resources went far in Venda, where the cost of living was relatively low.[152]

Among those who embrace the prevailing "low rates, high value" metanarrative of marriage (Pauli, 2016, p. 109), there are concerns that being excluded from marriage means being excluded from socially approved forms of sex. For example, South African journalist and scholar Jonny Steinberg (2013) considers the decline of marriage alongside notions of moral adulthood and concludes that the conduct of extra-marital sexuality among black South Africans

[151] Mark Hunter (2010) provides a comprehensive history of this decline. For more on the continuation of this trend, see Statistics SA. (2019). *Marriages and divorces 2017* (Statistical Release No. P0307). Statistics South Africa. http://www.statssa.gov.za/publications/P0307/P03072017.pdf : p. 2.

[152] Statistics South Africa published a Quarterly Employment Survey in December 2017, around the time of Ndiimanae's *lobola* negotiations. It reports that the average monthly salary paid to employees in formal, non-agricultural sectors for the prior quarter was R20,004 (Statistics South Africa, 2017b).

is "infantile." He reasons that married couples can have sex in the privacy of familial homes, while unmarried couples must make sexual overtures in taverns, restaurants, and hotels, and so,

> The notion that one's sexual performance is always potentially on display, that it may or may not get discussed and evaluated in Lusikisiki's circuits of sex talk, makes one a child. It is children who must leave their bedroom doors ajar, children who do not have the authority to keep private what ought to be private. It is adults who have the authority to close the door and be assured that it will stay closed. (Steinberg, 2013, p. 505)

The spatial distribution of sex Steinberg observes is made possible by a general prohibition against heterosexual cohabitation outside of marriage.

What to make of Steinberg's claim that a decline in formalized marriage has coincided with a decline in normative sex and "a crisis of social reproduction"?[153] First, it is clear that Steinberg subscribes to ideas of sex that are linked to liberal notions of personhood. Normative sex, for Steinberg, takes place within a space of privacy delimited by the negotiations of two individuals, as opposed to wider social networks. More to the point, the country's political economy has not morally disqualified all forms of extra-martial sex, not least because there is flexibility in how and whether sex gets claimed as conjugal. Returning to earlier Africanist kinship studies that conceptualized marriage as process (J. L. Comaroff & Roberts, 1977, 1981; Radcliffe-Brown & Forde, 1950),[154] these scholars stress social forms of recognition over legal forms.[155] Diverse criteria are used to evaluate the quality of sex: everyday forms of mutual assistance, romance, familial involvement, use of kin terms, reproduction, and curated companionship on social media, to name a few. Material forms of exchange continue to legitimate sex for partners, their families and friends, but such transactions are not always rigorously subjected to strict interpretations of bridewealth. Even heterosexual cohabitation can

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[153] In the 1990s and early 2000s, there was a great deal of ink spilled on the problem of the "African youth bulge." The unmarried status of these youth was said to make them "superfluous and non-adult" (Masquelier, 2005, p. 60), a source of concern over moral personhood (Cruise O'Brien, 1996; Masquelier, 2005).

[154] In a succinct statement, Comaroff and Roberts (1981, p. 167) characterize matrimony among Tswana peoples as marked by "the irreducibility of the conjugal process to simple jural formulation, the negotiability of its component elements, the culturally validated and terminologically inscribed ambiguity of the relevant statuses, and the generation of right and liability as an intrinsic property of the maturation of relationships."

[155] Noteworthy in this effort was a two-part special section of *Anthropology Southern Africa* on the theme "Change and continuity in Southern African marriages," published in 2016 and 2017. The articles in this special section affirm the role of bridewealth in enacting marriage, but remind their readers that *lobola* is a capacious sign that can accommodate many forms of transaction.

take more or less legitimate forms (Hunter, 2016; Moore & Govender, 2013; Posel & Rudwick, 2014).[156]

This has meant that demonstrated intention to fulfill bridewealth obligations has sometimes been enough to confer a provisional form of conjugality on a couple, one that is recognized, but also negotiated and debated by in-laws, friends and neighbors, if not by civil or customary authorities (Hunter, 2016; Jones, 2009; White, 2016). "Effective performances" of conjugality (H. White, 2016) may be achieved with small financial gifts retrospectively figured as *lobola*, but also when couples together buy a stand, build a home, garden a plot, have children and share in childcare expenses. The fulfillment of such everyday activities makes it possible for young men to credibly assert a future when they *might* pay bridewealth. It also makes it possible for young women like Fhumulani to spend nights at their lovers' natal homes with the expectation that marriage is on the horizon. That said, insistent in-laws eventually ask that such commitments be effectuated. If the bridegroom cannot successfully satisfy or renegotiate his obligation, it may precipitate a turning point in the relationship.

Let's return to Fhumulani and Ndiimanae. Fhumulani spent nights in Ndiimanae's natal home before the two were betrothed. Generally, a young woman's parents, and especially her father, police her sexuality. Historically, having sex with an unmarried woman was treated as an injury to its patriarch.[157] Even as families are involved in the sex of their young people, there is considerably more flexibility today. For Fhumulani's parents, her overnights to Ndiimanae could be tolerated because, on the one hand, the relationship was seen as a conjugal one, and on the other, Ndiimanae had already begun to shoulder Fhumulani's everyday expenses, expenses that would otherwise be paid for by her family members.

For young women whose long-term partners cannot support them in this way, the substitution of father for boyfriend can be explicit. Phathu related to me how her long-distance

[156] I sometimes heard people fret that cohabitation was destroying the fabric of marriage. Such claims frame heterosexual cohabitation as an emergent phenomenon. By contrast, historians have shown that cohabiting without having initiated *lobola* has been around since the 19th century. In Venda, Van Warmelo and Phophi observed in 1948 that, "A girl is not necessarily taken only after *thakha* has been given for her. Many go to their husbands and the *thakha* and *misho* gifts are paid subsequently. But amongst these the majority are such as have elope; and girls who marry cross-cousins on account of their poverty" (1948, para. 219).

[157] See the discussion of *ukuthwala* in the Introduction. Also: Delius, P., & Glaser, C. (2002). Sexual socialisation in South Africa: A historical perspective. *African Studies*, *61*(1), 27–54; Thornberry, E. (2019). *Colonizing Consent: Rape and Governance in South Africa's Eastern Cape*. Cambridge University Press.

boyfriend, Lucky, had refused to help her pay for lunch, claiming he was broke. Phathu knew Lucky to have a great deal of money and wondered whether his refusal was a way of testing her. She surmised that Lucky wanted to know that her love for him was uncorrupted by greed. Having expressed what she thought might be going on in his head, she responded by distinguishing between material exchanges that advance the acquisition of things and those woven into the fabric of relationships. "I can take care of myself. I am not working, but I have my father. He does everything for me. But I am 25 years old and when I have a boyfriend, I can't go to my father and say, 'daddy, I need airtime. I need pads.' I am not married, but my father knows that I leave for a week to sleep somewhere else. You can't expect me to say to my father, 'daddy, I need pads,' while you fuck me. Not when I have a boyfriend." She took a breath before concluding, "hey! I don't like a stingy boyfriend!"

Even as the idiom of marriage was sometimes used between them and before others, Phathu and Lucky were not on the brink of serious discussions of *lobola*. The transaction that provoked Phathu's concern was Lucky's paying for lunch, an everyday expense that is often shouldered by men on behalf of women in whom they have an interest. But in her elaborated mock reproach of Lucky, the hypothetical transaction she circled back on concerned the cost of her menstrual pads. Along with her sister and brother, Phathu lived with her father, who had long been divorced from her mother. Her initial suggestion that she can take care of herself was not an assertion of independence, but a reference to an alternative source of support, her father. In spite of being able to rely on her father, Phathu expressed contempt at the idea that he should finance her reproductive well-being when she has a boyfriend with whom she has regular sex. The implication is that Phathu's father would likewise recognize in his daughter's committed sexual relationship a certain set of material obligations. Phathu expected that a boyfriend starts to assume the financial support of his girlfriend, support normally tasked to her father.[158] In referencing her father and her status as unmarried, Phathu gestured to a shared morphology between her request for money and *lobola*. In so doing, she was making a claim about the legitimacy of their relationship while also distinguishing her request from those women who "don't go to him in the name of love."

[158] As an aside, it is worth noting that she cited her age to suggest her maturity and the need for her to shift relations of dependence away from her father. This use of chronological age to mark stages of adulthood runs contrary to classic literature that contends that marital status is the singular mode of achieving moral adulthood.

Scholars of South Africa insist that these forms of ambivalent conjugality can attract widespread recognition, even if that recognition is not legal. My observations suggest that this conjugality was in fact able to achieve limited legal recognition in the space of courtroom proceedings. In the Khuḓani Regional Court, legal practitioners gave "customary marriage" wide latitude. This typically occurred during sentencing, following a conviction, when the court aired additional evidence in order to arrive at a tailored sentence. At this point in the trial, those who have been convicted are given a platform to demonstrate their moral worth to society at large. Marital status is a significant part of this process. A presiding officer has the discretion to reduce a prescribed minimum sentence on the grounds that the convicted person has relations who depend on them. To that end, defense advocates would call a spouse to speak to the material contributions made by the convicted person. In the cases I observed, the convicted person was always a man and the partner was a woman. During testimony, the woman attested to being the wife of the recently convicted man and would describe the exact amount of money he contributed to her well being or the well being of their shared children.

In spite of official marriage rates, the defense advocate almost always called a wife to come testify on behalf of the recently convicted man. Following such evidence, all in court took for granted the language of "husband" and "wife," reproducing it in their questioning. Neither the prosecutor nor the magistrate tested the legal status of this union, though they might have asked additional follow-up questions or requested documentary evidence. This was even true when the couple in question had never cohabited or had children, two indices of matrimony. Instead, testimony of everyday material aid was sufficient to manifest conjugality. The question of whether the marriage was formalized through a customary transaction of *lobola* or through civil registration was typically not broached.

But every so often, it emerged that the claimed relationship did not go uncontested by all parties after all. For example, in one case, the defense called a woman who was claimed as a "wife." On the stand, she agreed to this status and Prosecutor Mathebula and Magistrate Sinthumule likewise referred to her as the offender's wife. Later, when a social worker was called to give a report on the consequences of the crime, she described the same woman as a "girlfriend." On the stand, the defense advocate cross-examined the social worker, asking her "why do you refer to her as the offender's 'girlfriend' and not 'wife'"? The social worker responded, "they did not refer to her as wife." The defense responded, "did you bother to ask the

offender or his family?" The social worker replied, "I did. But there was no formal meeting of the families," by which the social worker meant that *lobola* had not been negotiated. Thereafter, Magistrate Sinthumule began referring to her as the offender's "girlfriend."

Such everyday gifts of food, transport, airtime, clothes, electricity, rent, children's school fees constitute the sort of "provider love" men are expected to offer women with whom they have sex (Hunter, 2009, 2010). Even as marriage through bridewealth continues to organize social and sexual aspirations, South Africa's moral economy of sexuality admits other forms of normative sex. Commonplace practices of reciprocity and financial support are implicated in this moral economy. Here too, the meaning of these practical transactions and what they produce are subject to ongoing debate and relitigation. In this landscape of sexuality, material exchanges do not uniformly corrupt sexual relationships, as legal formulations of coercion suggest. Rather, sexual relationships are recognized as moral precisely because they are constituted through forms of mutual assistance that are *both* meaningful and material (Hunter, 2009, p. 136).

Blessings, Slayqueens and Players

Economic transactions legitimate sex as conjugal or aspirationally conjugal, but they also mark sex that has nothing to do with marriage as "good." More often than marriage, these latter forms of "transactional sex" draw the charge of exploitation from feminist legal scholars, Marxist economic anthropologists and activists[159] – though it is worth noting that married women are also sometimes cast as victims of bridewealth.[160] Journalist Helen Epstein writes that "These people are so poor…that sex has become part of their economy. In some cases, it's practically the only currency they have" (2008, p. 101). Epstein's argument is a popular one. For Epstein, the continent's unique experience of poverty has meant that sex has moved from a more privileged place where choices are guided strictly by sentiment into economic spheres of base calculation. Elsewhere, this sort of sex has been called "survival sex." For example, Janet Wojcicki (2002)

[159] A point famously made by Emma Goldman in her 1910 "Traffic in Women" speech and reiterated by scholars of commercial sex work.

[160] For example, Judith Singleton, an anthropologist who carried out fieldwork on sexual violence in Mpophomeni, a town in KwaZulu-Natal, South Africa, notes that, "The practice of lobola has influenced not only the decline of marriage and social organization but also meanings of marital rape…lobola plays a role in the ways in which women and men think about ideas of sexual coercion and consent" (Singleton, 2016, p. 89). She goes on to say that when a man pays *lobola*, he can claim sexual license.

argues that women who engage in "survival sex" are disproportionately targeted for sexual violence because gifts given by men to women justify a claim of sexual entitlement. She argues that economic exigency obscures the reality of sexual violence, a reality denied by "narrow definitions of what constitutes rape" (2002, p. 271).

In the abstract, extra-marital sex and especially non-procreative sex raise objections from elders and zealous Christians.[161] But of course, sex happens among unmarried young people. Even as it may attract moral opprobrium from some quarters, for unmarried young people, transaction *also* ratifies sex as "good." Popular expressions like "no romance without finance," "you can't eat love," or "terms and conditions" communicate the laughability of a sexual relationship where all that is on offer is earnest sentiment. Scholars label this "transactional sex" (Jewkes et al., 2012a; Leclerc-Madlala, 2003; Sileo et al., 2019; Swidler & Watkins, 2007), a term of art that tends to connote commodification, especially when compared with sexual exchanges that implicate family, like those involving *lobola*. Most who participate in transactional sex distinguish it from commercial sex work, which they describe as having a fixed price and being without affection.[162] As should be clear from what follows, the transactional quality of this sex does not preclude affect, pleasure or long-term obligation. At the same time, I do not want to belabor the similarities with Maussian gift exchanges. For some, there is a calculus to transactional sex amenable to thinking in terms of equivalences. The bigger problem with "transactional sex" is the coherence it tends to attribute to sexual exchanges outside marriage, a coherence that invites generalizations about the sociality implied by the sex.

Here, I wish to focus on one form of "transactional sex." During the time of my fieldwork, "blessing," a term that derives from prosperity gospels, was popularized as a way to describe relationships that involved a (usually) older, (often) married man giving gifts and money to a (usually) younger woman for sex and affection. There is nothing particularly new

[161] As we will see in Chapter 3, some contend that having sex with a woman on birth control is dangerous because she is chemically preventing the natural discharge of dirty blood.

[162] Indeed, it might be said that transactional sex can be broadly normative because of a particular imaginary of sex work, as uniquely professionalized and commodified. In practice, however, sex work in Thohoyandou, as elsewhere, admits bounded forms of care as well as flexibility in payments. I did not carry out fieldwork among sex workers, but I met several women who self-identify as sex workers or prostitutes. For them, clients sometimes became boyfriends and services could be bought on credit or through payments that were not monetary. Elizabeth Bernstein (2007a) has described similar dynamics in the United States.

about such relationships, and South Africa is not particularly unique in hosting them,[163] but the label "blessing" rebranded these exchanges and served as a popular appropriation of the sorts of transactions that sometimes get reduced to survival sex. Indeed, even affluent, professional women sought and claimed "blessers." The cartoon below depicts the folly of "romance without finance." Widely circulated on Whatsapp, the image juxtaposes Serge Cabonge, a wealthy celebrity whose blessing is his claim to fame,[164] with the "Level 0" young man, pockets empty and out-turned, rendered as a naïve fool who has nothing but love to offer.

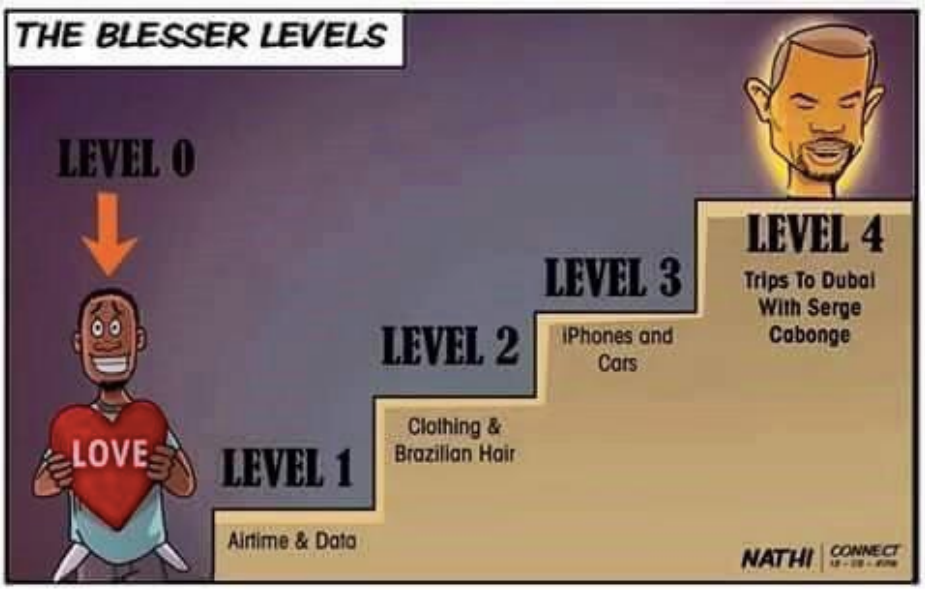

Figure 3.1 Cartoon of "The Blesser Levels" by Nathi, received on Whatsapp

This image also reveals how this sort of gift-giving is racialized. Cabonge, a black man originally from Angola, is rendered as light-skinned while his "Level 0" counterpart is a darker-skinned black man. In a country where entrenched economic inequalities cut along racial lines, skin color here indexes a man's capacity to offer "blessings." Likewise, black women seeking blessings are discriminated against on the basis of skin tone, with blessers explicitly pursuing so-called "yellowbones," women with lighter skin color. On web sites and cell phone apps that connect would-be blessers and blessees, women post photos of themselves that have been filtered to make their skin appear lighter. Colorism of this sort has a long history in South Africa, a country that since the 1930s has been both a major consumer and producer of skin lightening

[163] For example, in the United States, there are apps that link "sugar daddies" with "sugar babies."

[164] His twitter handle is @only1international.blesser.

products (Thomas, 2009). By recent estimates, one in three women of color in South Africa make use of skin lightening products (Dlova et al., 2015). The role of color in blessing is suggestive of how racism is implicated in economies of intimacy in ways that are not directly linked to class.

For many young women, blessings are pursued recreationally. Smart, pretty and adventurous, Sally was never short of suitors. When we first met, she was twenty-four. She had completed secondary school education. During fieldwork, she was mostly unemployed and living with her father. Sally nonetheless was able to afford a smartphone and data, dinners at local restaurants, small shopping excursions, and for a few months, a small rented room in an inexpensive dormitory. Funding for this consumption came from men she would sometimes call "blessers" or sometimes call "boyfriends." To me, she would more often than not refer to them by their first names. The following story of a night out on the town is suggestive.

Sally and I met at Pinkie's Beauty Salon, where she got her new weave styled. Sally was bubbly, excited about our plans for the evening. It was Saturday, month-end, meaning everyone was flush with wages and grant payments. The salon was busier than usual. Three women sat on a bench chatting while they waited for one of the two stylists to become available. Just outside the salon, four men sat on plastic chairs, sipping beer and watching a loud stream of pedestrian and vehicular traffic pass. While Pinkie retrieved a hot iron from the back of the salon, Sally leaned forward, peering at her reflection in the mirror. "Oscar will be depositing something into my account so we can have a fun time. And Gudani will come with my ticket any minute." In the mirror, she looked at my reflection, appraising my appearance with a frown. "Will you wear that?" I was wearing jeans and t-shirt. "Should I change?" I asked. She did not respond, but after her hair was done, she took to me to Dunns, and over my objections, insisted on buying me a light summer dress for R99. She intimated that the money for the dress was coming from the night's sponsors. Later in the night, we would receive transport from a third and fourth man, each of whom chipped in a little extra for our evening's dinner and drinks. I had not met these men, nor had I heard her mention them up until this point, but Sally spoke of them as though I should be familiar with them. Later I would learn that they were older professional men, married, two of them with jobs that kept them in Pretoria.

Sally called upon these men for occasional cash infusions. Sometimes, they came unsolicited, surprising her when she received a notification on her cell phone of a transfer to her

bank account. Sally did not regard what she was doing as sex work. It was instead a pleasurable way of socializing, not just with men, but also with women. As the above account makes clear, blessers would finance entertainment and gifts for friends and family of their blessees. It was not the first or last time my offer to pay was rejected with "blessings are coming." In return, Sally would flirt with her blessers and periodically have sex with them. While Sally genuinely enjoyed the company and intimacy of some of these men, the challenge of it for her was to find a blesser whose material support could be secured with as little sex as possible. Over the phone, she would defer the attentions of older men, claiming that she was home sick or on her period. This could also be achieved by selecting *magaraba* who spent the majority of their time in Gauteng for work and would return to Thohoyandou for holidays that they mostly spent with their families. Sally described an older primary school teacher who lived in a rural area some 100 kilometers away as an ideal blesser. In six years, they had only had sex four or five times, but she claimed he deposited R1000 into her account every 22nd of the month. This might have been an exaggeration, but it nonetheless reflects the ideal form of blessing. As skillful as Sally was at outmaneuvering her blessers, she eventually would capitulate to sex in order to maintain the relationship.

For blessees like Sally, this was not exploitation. Indeed, the material support of a blesser might allow one a degree of autonomy from one's primary partner. Husbands are controlling. Regardless of whether *lobola* has formally been paid, many husbands demand to know where their wives are at all times, what they are doing and with whom. This is especially the case at night. Drinking at a club or tavern is generally considered inappropriate behavior for a woman and especially for a wife. As a result, there are typically far more men at such venues than women. Even so, this did not stop many of the women I met at the salon from leaving home at night, though they preferred to do so at a time when they knew their partners would be out themselves. On one Saturday night outing, Aluwani had to dodge calls from her mother-in-law, who demanded she come to her house so they could attend church together the next morning. It was not uncommon for women involved in nighttime socializing to receive a barrage of angry text messages and phone calls from their primary partners. When my own husband, Max, came to visit me in the field for six months, Pinkie lamented that I would no longer be able to go out as much with him around to monitor my behavior.

Blessers, by contrast, are happy to accompany blessees out at night or to support them in doing so with their own friends. Blessings in the form of cash can be spent in any way the blessee wants, whereas shared household income might be more assiduously accounted. Women can leverage blessings – or the threat of blessings – in order to obtain greater material support from their partners. Consider Athina, who posted a photo of Armani baby clothes on Whatsapp with the hash tag #blessed. The impression Athina meant to give was that she had a man in her life who was willing to spend extravagantly on her baby. The audience for this message was her baby's father, with whom she had an on-again, off-again relationship but who was errant in his child support. The clothing was actually a knockoff her sister had gotten during a recent trip to Johannesburg, but the threat of a blesser was enough to provoke an angry phone call from Athina's partner who nonetheless sent her additional money that month. In these ways, blessings did not just give women financial independence; they enabled women some freedom vis-à-vis their primary partners. Indeed, many women regarded blessings as coming with fewer strings than marriage. Luise White (1990) has made similar observations of sex work in early twentieth century Nairobi. White shows how, prior to colonial criminalization of the trade, sex work was the initiative of women, who were able to accrue wealth, property and power through the practice.

For their part, men take pride in assuming the mantle of blesser. It is not just about the sex, but the social recognition they receive. At the Khuḓani Regional Court, the male lawyers would often boast about their weekend exploits at the local hotel, recounting for one another the blessing they had done. Locally quite affluent, these men earned between R30,000 and R40,000 a month (approximately $2070 to $2760). Their weekend outings usually involved renting a room at the local hotel and casino, where they would flirt with young women, buying them food and drinks, before taking them upstairs to the hotel room. Advocate Ramudzuli, a Legal Aid Board advocate,[165] was notorious for leaving his ties at these hotels. On many a morning, he could be spotted briskly walking through the corridors of the court, begging ties off other lawyers whose cases were later in the afternoon. Advocate Ramudzuli's reputation was so well known that one Christmas, the clerks chipped in to buy him a tie.

[165] The Legal Aid Board is the parastatal through which public defenders carry out their work.

Prosecutor Mathebula was also a well-known blesser. He thought of himself as a Level 2 blesser, purchasing women fancy dinners, drinks and dresses. In the back windshield of his car, he displayed a custom-made bumper sticker with an image of his six-year-old son that said "Blesser on board." I questioned him about it one day, asking if he wanted his son to become a blesser. Without missing a beat, he replied, "I want my son to become like me."

Prosecutor Mathebula paid child support to his son's mother for the boy's care, but he was otherwise a committed bachelor. The other lawyers, though, juggled blessees while maintaining wives with whom they were building a home. To these partners and households, they reserved the lion's share of their salaries. Prosecutor Seoka, for example, maintained a girlfriend in Thohoyandou, but was also married with children who lived in a township outside of Johannesburg. Prosecutor Seoka's salary went largely to his family in Johannesburg but he was also constructing a family home on a piecemeal basis in the former homeland of Lebowa, where he was born. Each month, he would buy some quantity of cement, bricks or glass for what he envisioned would be a large, multi-generational household. One December, Prosecutor Seoka drove me from Thohoyandou to Johannesburg. We traveled via Lebowa, where he showed me his stand. He explained that he saw this reproductive household, which would one day be the permanent residence for his mother, his wife and children, as his legacy. The everyday gifts and meals he gave his girlfriend in Thohoyandou was the stuff of pleasurable sexual recreation, but the home he was building was a form of "provider-love" that made him a man (see also Hunter, 2010).

Men and women alike are admired for their magnanimity, but men especially are expected to distribute money and gifts to the women in their lives. To fail in this masculine ideal is to risk being called stingy (*dzima*), an inexcusable form of anti-sociability. But not all sexual exchanges are created equal. Even as "blessing" has rebranded transactional sex into something of a fashionable sport, older people and Christians tend to view blessers and especially blessees as unscrupulous. During church services, for example, pastors admonish their congregants to seek blessings from the church and its leadership, warning that "*so kou tamba* (just playing)" saps resources from the home. As the language of "play" indicates, to participate in "blessing" to the exclusion of longer-term sexual exchanges, like those enacted through *lobola*, is viewed by some as a distraction from the more important project of cultivating moral adulthood.

These judgments apply to men and women, but the stakes are especially high for women. The figure of the "slayqueen" tells us something about the gendered limits of transaction in conferring respectability upon sexual relationships. Seated in Pinkie's Beauty Salon, David was visiting after knocking off from his job at a primary school. Plans for a weekend braai were in the works, and I told him that I planned to come with two friends. He demanded to know who they were. I showed him several photographs of the young women that I had on my phone. Taken in the genre of a selfie, the two girls were poolside, wearing tight-fitting dresses and high-heeled shoes, directing lipsticked pouts toward the cellphone camera. He laughed, "hey! They are slayqueens!" I asked him what the term means. He explained that it refers to a woman who has no money of her own but receives money from men to buy brand name goods in order to look and act like a movie star. When slayqueens go out to the club, they buy the most expensive bottle of alcohol to keep on the table, so everyone will see. I asked if it was a type of "blessing." David agreed, "it is, but she is not taking money from men and putting it toward building a house." For David, "slayqueen" was a pejorative term that marked a moral limit between material transfers that advance long-term social projects of personhood – *u fhaṱa muḓi* (to build a house) – and consumables that serve the short-sighted and egoistic goals of drawing attention. Critically, his remark reveals that blessing relationships need not be incommensurable with such projects.

The "player," who can afford to spend money on multiple women, is a more ambiguous figure. Earlier in this chapter, we met Phathu, who expressed concerns that her boyfriend, Lucky seemed unwilling or unable to shoulder the expenses her father had been paying on her behalf. Lucky was a regionally famous deejay with a reputation for being a "player" – a reputation he embraced. His Facebook profile and Instagram account were filled with photos of Lucky with attractive young women in expensive nightclubs, hotels and restaurants, consuming luxury brand goods. He had acquired the nickname "Mr. 200" after a public incident on Facebook in which he got in a dispute with a young woman over R200 he had given her for transport to come to his birthday party, which she did not end up attending. R200 (about $14 at the time) was an increment of money that was germane to "blessing," as opposed to more substantial sums earmarked for bridewealth. Lucky reveled in the nickname, taking a series of photographs of himself covered with R100 and R200 banknotes. The implication of such images was that he *could* deploy his resources to establish a wife and reproductive household, but he preferred

engaging in fleeting relationships with numerous young women. Many of his followers were impressed by this heterodox masculinity that decoupled committed intimacy from sex and money. Still others criticized him for behaving like a child. After meeting Phathu, he used his social media account to curate his relationship with her so as to suggest that he had undergone a normative conversion. On his social media, he posted, "I know I used to be a player, but now I have a woman who I can say is mine." He tagged photographs of Phathu as his "hometown wife." In so doing, Lucky evoked a pattern of labor migration that is more than a century old, one in which mines and farms in the area surrounding present-day Johannesburg drew young African men from across Southern Africa in a vast movement catalyzed by colonial edicts that foreclosed livelihoods outside of wage labor. He continued to see other women, on whom he likely spent money. Phathu was aware of these dalliances, but for a time, both of them were happy to disavow them on social media.

Slayqueens and players are not disreputable figures because they participate in economic transaction; they are disreputable figures because they abjure the responsibilities associated with social reproduction. In a post-apartheid South Africa marked by unemployment, where few can afford *lobola*, everyday forms of assistance like food, airtime and rent have come to instantiate normative conjugality. These sorts of gifts are also exchanged as part of blessing practices. As a result, transaction has become less effective in qualitatively distinguishing one type of sexual relationship from another. As the lines between marriage and blessing blur, the social obligations owed to heterosexual partners have become muddied.

Love and Pleasure

Thus far, I have argued that transaction and especially *lobola* are powerful metonyms for evaluating "good" sex, even as legal doctrines claim that material interests vitiate consent. However, consent and transaction are not the only metaphors for thinking about "good" sex in South Africa. Love and sensory pleasure are also important and distinct from these other standards of evaluating sex.

First, love. In Ndiimanae and Fhumulani's betrothal and wedding, bridewealth, choice and love converge in an idealized sexual relationship. The quantity, quality and form of transaction distinguish meaningful social relations, but so too do demonstrations of romance, commitment and intimacy. In the days before their "white wedding," Ndiimanae posted a

declaration of love to Fhumulani on his Facebook wall that situated their relationship outside of monetary concerns. In English, he wrote,

> When I met this girl I had one pair of trouser and 3 shirts and one red t-shirt…I used to walk from home to anywhere without taxi fare just to help her do applications, we drank water and comeback strong, I had shoes with holes behind and underneath we laughed it off and progressed with life. She would come to my home and eat whatever we eating the things is I didn't try to impress this girl I was myself, she was the woman by my side through my struggle…

With this post, Ndiiamane describes Fhumulani's disinterest in his financial standing as a way of portraying her love as authentic and unwavering. The accompanying image he posted was a photo of the two of them in the front of a car. In the image, Fhumulani holds her cell phone at an angle to capture Ndiimanae behind the wheel and herself beside him in the front passenger seat. Ndiimanae is wearing a crisp button-up colored shirt and Fhumulani is wearing a satiny, purple blouse. Both of them wear gold-rimmed sunglasses. If the post itself is set in the past tense, the image is meant to conjure a present and suggest a future of prosperity. The trajectory is one of upward mobility, achieved through mutual assistance and genuine feeling.

Most of the responses to the post were congratulatory, but one young man quipped, "she is one of the few" and commented that it is rare to find a woman who will stand by you without needing to be impressed. For this male poster, transaction does not legitimate sex so much as corrupt it. He endorses love as an alternative and a mutually exclusive standard for evaluating the quality of sexual relations. This comment alludes to the frustration and anger many young men feel about being excluded from or marginalized within moral economies of sexuality. These frustrations often take the shape of normative arguments about the incommensurability of love and money. Women also see love as constitutive of "good sex," but they are less likely to see love and transaction as mutually exclusive. Instead, they parse forms of material transfer and support in reckoning the quality and type of sexual relation.

Consent is often equated with love through ideologies of choice (Zelizer 2005), but it is worth highlighting love as its own distinct metonym for "good" sex, one that at times sits in practical and political tension with consent. The occult transgresses sexual relations. Magical interventions can mean that love is not always the result of uncoerced choice. For example, the *munemnembe* tree is said to produce leaves, which can be used to cultivate love in an otherwise disinterested woman. As I argue in greater detail in Chapter 5, the omnipresence of witches

makes it difficult to claim one's volition as authentic, independent and sovereign. In eliding love and consent, contemporary consent campaigns limit their moral imaginary of "good" sex to companionate forms of heterosexual romance, an elision that fuels politically conservative goals under the sign of gender equality (Fischel, 2019).

Pleasure is also an important part of sex, though infrequently the subject of ethnography or sociologies of African sexuality (Thomas & Cole, 2009). One evening in Nando's, over a carafe of "strawberry colada," I asked Sally what makes for "good" sex. It was a stupid question and came during a lull in the conversation after she had been discussing recent boyfriend troubles. She looked at me as though I was an idiot. "Sonia, have you never had sex?" It was not the first time my inadequacies as an ethnographer had led someone to ask me this question. "Well," I stammered, "some people think that marriage or consent or money make sex 'good.'" She laughed, "yes, but you can be married to someone who is bad in bed."

"You can find some men who cum right away so you can't orgasm at all." She said this pointedly. Pinkie's Beauty Salon sometimes staged discussions about the differences between white men and black men in bed. The consensus was that white men did not last as long as black men. Being married to a white man, this was sometimes raised as a reason for why I should cheat on him. Sally continued, "someone who is good in bed can make you cum three times." This was a numeric standard by which she evaluated the stamina of her lovers and the pleasure of sex. Sexual aptitude is also gauged in the number of "rounds" one can engage in in any fixed period.[166] But pleasure or its absence cannot be reduced to genital sensation. Sally went on to describe a maxi taxi driver from whom she occasionally received blessings as kind and very generous, but she did not enjoy sex with him because his body and breath smelled foul.

Deception and Consent

"No romance without finance" weighs heavily on poor men in South Africa, who cannot afford to participate in moral economies of intimacy following the conventional rules. For some men, then, the solution is to misrepresent one's assets, exaggerate one's prospects or to lie about

[166] This notion of "rounds" complicates how any given sexual encounter is reckoned. For survey researchers interested in condom use, for example, it is important to specify sexual behavior during "all rounds" (Zule et al., 2018).

affluent relatives. Women, for their part, have come to anticipate such charades and vet partners through a process of credentialing that can be extensive.

Tshifhiwa was a clerk in a pharmacy a short walk from the salon and a regular visitor to Pinkie's. He was wont to complain about how money made women unfaithful, but this conviction did not prevent him from claiming resources he did not possess. In spite of having a stable job, he seemed to be perennially cash-strapped – so much so that he made a habit of swiping R10 banknotes from the metal lockbox that served as Pinkie's till. Pinkie, who had a reputation for business success and the largesse that often comes with it, for the most part tolerated the petty thievery of her friend. On a day toward the end of the month, Tshifhiwa visited the salon to partake in the day's shared lunch. Tshifhiwa, Khuthadzo and I sat on the porch outside, sharing Styrofoam trays of tripe, cabbage and *vhuswa* (Tshivenda for the cornmeal porridge that is known in South Africa as "pap"). Tshifhiwa eyed a pretty, young woman seated in the interior of the salon. She was scrolling through her smartphone while waiting for her hair to be styled. In a whisper, Tshifhiwa asked if he could borrow my cell phone, an over-sized Motorola-brand smartphone. At the time, Motorola-brand smartphones were not sold in stores in Limpopo province and most concluded that my phone was a luxury item only available in the United States.[167] With my cell phone in hand, Tshifhiwa approached the girl on the bench. From where I was seated, I could see him flirting with her, gesturing to the phones they had in their possession. Khuthadzo leaned toward me and explained, "he wants her to think that your phone is his."

This was not the most foresighted ploy. For one thing, the culmination of a successful love proposal would be an exchange of phone numbers, but my phone was locked and Tshifhiwa did not have the password. I would later learn that he claimed it was out of charge, a plausible enough explanation. He had proposed to take her number with his second phone, but this likely aroused a different set of suspicions. Middle-class young people often have multiple phones with different sim cards for different network providers. Carrying multiple phones, or at the very least multiple sim cards, improves overall cell-phone coverage, especially in Venda, where certain mountainous areas are better served by one network than another. Because most people use pre-

[167] There is something to be said about luxury and nation here. I had bought the phone in the United States, where it was one of the cheapest smartphones available. Most young people in South Africa not only own smartphones, but are savvy about the newest models and the most high-end brands, and so I assumed that the cell phone I selected would not draw too much attention. But my plan backfired.

paid plans where calls and text messaging are cheaper within network, carrying multiple phones has the potential to reduce the amount of money one spends on airtime. These are pragmatic reasons for carrying multiple phones, but auxiliary phones are also used to conduct "side" relationships. In this way, one can reckon the depth of friendship with someone through the number of cell phone numbers that have been divulged. By Tshifhiwa's account, the young woman bristled at being relegated to a lesser model of phone and accused Tshifhiwa of already being married. After playfully expressing his ardent admiration for her, she eventually relented in giving him her cell phone number.

On this occasion, Tshifhiwa succeeded at convincing a young woman that he had more money than he did. He was not always so successful. Early one morning, a secondary school student arrived at the salon, asking for Pinkie. Pinkie had not yet arrived, but Khuthadzo, Sally and I kept the young woman company. The four of us made small talk with Joy, who was waiting on Pinkie to get her hair plaited. She was an eighteen-year-old Pedi-speaking woman who had come to the area to attend a regionally renowned winter school in preparation for her matric examinations. "Do you know Tshifhiwa? The pharmacist who owns the shop next to the PEP?" Joy posed the question to Sally. Sally took a moment to think about it, Tshifhiwa being a common name. "Is it not Tshifhiwa Ndou?" I suggested. Sally thought on it a moment and laughed. "Did he tell you he owned that pharmacy? He is not a pharmacist and he does not own that shop." Sally laughed, "he is just working there." Joy shook her head, "that one, he was just talking." Sally agreed, "he can talk, that one." Later, Tshifhiwa scolded Sally about exposing his story, but his prospects were not so grave that Joy rejected him. After all, Tshifhiwa received a regular salary and could afford to act as a Level 1 blesser to a teenager who was only visiting the area for a couple of weeks.

Men like Tshifhiwa often engaged in petty deceptions meant to misrepresent the amount of material support they could invest in their sexual relationships. The gambit was to maintain the deceit long enough to convince a woman that it would be worth her while to have sex with him. Women, for their part, expected men to lie and carried out low-level reconnaissance of the sort that Joy accomplished in the salon. For this reason, such misrepresentations were not exactly the stuff of sexual transgression. Rather, intimacy under conditions of economic precarity call for prevarication and falsehood, even as such strategies were not the most useful in establishing a long-term, normative relationship.

Still, Tshifhiwa's claims about himself were not simply lies; they represented aspirations he strove to realize. Several years after this exchange, Tshifhiwa struck off from the pharmacy where he was employed as a clerk and opened his own health store. While he has not yet become a credentialed pharmacist, today he owns his own store, where he sells over-the-counter medicines. If Tshifhiwa was pilfering small sums of money from Pinkie when I first knew him, it was because as soon as he received his own wages, he made down payments toward setting up this new venture. He did so because maintaining his assets as cash would have left him vulnerable to the claims of family members (Ferguson, 1994) as well as women with whom he wanted to have sex. For Tshifhiwa, dishonesty enabled him to participate in moral economies of intimacy while pursuing the economic standing he falsely represented himself as occupying.

While wealth constitutes its own form of coercion in South African jurisprudence, deception about wealth does not. The Sexual Offences Act includes fraud in the non-exhaustive list of "coercive circumstances" that vitiate consent.[168] Fraud includes deception that causes a mistake as to the nature of the act in which one is engaged *(error in negotio*). The classic example of this in South African jurisprudence is a man who disguises himself as a prophet and prescribes sexual treatment to women who are afflicted with poor health or other misfortunes. I discuss this ruse in greater detail in Chapter 5. Fraud also applies to deception that leads to mistaking the identity of the person with whom one has sex (*error in persona*). In evaluating the latter form of fraud, courts deploy a liberal theory of the person that distinguishes between the unchanging true nature of the individual and qualities or attributes that are otherwise incidental to this essence.[169] Wealth, in this legal model, is not an essential element of one's person. Obtaining consent by falsely misrepresenting oneself as wealthy does not constitute rape.

[168] Even as the more expansive approach to non-consent is relatively new, fraud has a long history in South African rape jurisprudence, as it does elsewhere. For example, in a 1909 case, a man was convicted of rape after convincing the complainant that the intercourse was part of a medical treatment. The judgment was passed by Justice Kotze in the Butterworth Circuit Court in March, 1909. This case is described in Anders, P. C., & Ellson, S. E. (1915). *The Criminal Law of South Africa*. W.E. Hortor & Co., Limited: p. 199. This earlier approach to fraud followed not from an explicit provision of rape statute, but from the common law notion that fraud can compromise a contract.

[169] This is also the difference between fraud in factum – fraud as to the nature of the act, which does not constitute true consent – and fraud in inducement, which is not coercion in most jurisdictions.

Transaction without Consent

Thus far, I have shown how economic transactions legitimate sex as "good." This is true even when resources and sex are transacted across unequal socio-economic standing. While legal ideologies of rape treat such economic transactions as constitutive of sexual violence, local understandings of sex posit a more complicated relationship between economic transaction and sexual violence. On the one hand, for *facilitating* consensual sex, economic transaction is sometimes framed as a deterrent to rape, a point I discuss in the next section. On the other hand, for *legitimating* sex, material transfers ratify sex in ways that subordinate questions of consent, coercion and force. Many suppose that a gift from someone of the opposite sex entails relinquishing some sexual control. In this view, principally, but not exclusively espoused by men, transaction can justify forced sex, because it is bad form to deny sex after receiving some form of assistance.

Sexual obligation is most striking in conjugal relationships that have been officially ratified through the exchange of bridewealth. By all accounts, forced sex is endemic to the institution of marriage (Jewkes et al., 2011b, 2012b; Singleton, 2012; Vogelman, 1990, p. 81). Marital rape has been criminalized in South Africa since 1993,[170] but it rarely goes reported or prosecuted. Between TVEP's two trauma centres, there are roughly 80 reports of domestic violence a month, most of which are brought by women against partners. But the unanimous response of Victim Advocates about whether married women brought complaints of sexual violence committed by partners was "never." One Victim Advocate laughed at the question and responded without missing a beat, "married women are raped every day. That is normal." She then went on to relate a story about her own husband forcing her to have sex.

The Sexual Offences Act makes clear that an extant or prior relationship with the complainant is not grounds for a defense of rape.[171] While cases between spouses rarely made it to the Khuḓani Regional Court, it was not uncommon for prosecutors to try men who had raped partners from whom they were estranged at the time of the incident. During these trials, the

[170] The Family Violence Act of 1993 (Act 133 of 1993), which was amended in 1998 with the Domestic Violence Act (Act 116 of 1998).

[171] The relevant provision can be found in Chapter 7, Paragraph 2, Section 56(1): "it is not a valid defence for that accused person to contend that a marital or other relationship exists or existed between him or her and the complainant."

defense given was that the woman was in fact a consenting spouse, a status that was evinced through testimony that she had accepted some form of material assistance around the time of the assault. To underscore the point, the evidence given in such a defense was not simply "she consented once, therefore, she was consenting on this occasion." The evidence concerned the acceptance of gifts or money, which was meant to show that at the time of the alleged rape, the couple had been in a vibrant and happy relationship. The following example of such a rape trial is particularly egregious for the amount of violence that the defense attempted to explain away by pointing to very minor transfers.

The case began late morning, after a number of other cases on the day's roll were postponed. The complainants, Tshimangadzo and Fhumulani, were sisters, and when they took the stand, they were consistent in the stories they told. They explained to the court that Mulalo and Tshimangadzo had been husband and wife, married in a customary fashion for roughly a year. During that time, they lived together and had a daughter, Tshimangadzo's third child. But the relationship soured and they broke things off on bad terms. Tshimangadzo moved out of their shared home and returned to her mother's house, where her younger sister, Fhumulani, was also living. Mulalo did not take the separation well. He would often linger outside of the gate of her mother's home, shouting insults and threatening Tshimangadzo and her family. When they encountered one another on the street, he would tell her "you are my wife. You should be sleeping with me at my place," a proposition she rejected repeatedly.

The first two charges, intent to commit grievous bodily harm and rape, were filed in 2014. According to the sisters, Mulalo had let himself into the yard of the house where they were seated with Tshimangadzo's children. He attacked them with a machete. Fhumulani had protected her sister and her children, absorbing the blows with her arm. Injured, Fhumulani scrambled away while Mulalo dragged Tshimangadzo back to his house where he raped her. The next day, Tshimangadzo and Fhumulani filed charges against Mulalo with the police. Mulalo was arrested and detained shortly after. While he was imprisoned, Tshimangadzo and her children moved out of her mother's home into their own place, a one-room structure in a village adjacent to the one where her mother lived. Almost a year after his arrest, Mulalo found Tshimangadzo in her new home, where he raped her a second time. Tshimangadzo was not sure of whether Mulalo had been let out on bail or whether prosecutors had decided against pursuing

the first two charges against him.[172] Tshimangadzo again reported the matter to the police. This complaint was the third charge addressed during the trial at the Khuḓani Regional Court. On this occasion, when Mulalo was arrested, he was denied bail.

Advocate Ramudzuli, the public defender assigned to Mulalo, began setting out the basis of his defense during his cross-examination of Tshimangadzo. He leaned into the microphone, which was mounted on a cardboard dais on top of the shared lawyers' table. Calmly, without making eye contact with Tshimangadzo, he stated matter-of-factly, in English, "The accused will indicate to the court that he went to your house to give you money for transport to get the baby to the hospital." Before the interpreter could complete the interpretation of his remark into Tshivenda, Tshimangadzo was already shaking her head *no*. "*A si zwone* (that's not true)," she replied. Advocate Ramudzuli persisted, "He will further indicate that, at the time, you even addressed him as 'my husband.'" Arms folded across her chest, jaw set, she repeated, "it's not true." Advocate Ramudzuli continued, "The accused will tell the court that on that day, your sister insulted him and told him that there was a man who had proposed love to you who had money, a car and cows." Tshimangadzo shook her head, "no, she didn't say that."

Advocate Ramudzuli paused for a long moment, fingers tracing the words in the docket in front of him. Then he turned back to look at Mulalo, who sat in the accused's dock directly behind him. He addressed Magistrate Sinthumule, "may I approach my client?" Advocate Ramudzuli gathered his robes around him and extricated himself from behind his green swivel chair. With one stride, he closed the distance between himself and his client and leaned over the low wall that separated the accused and the gallery behind him from the front of the courtroom. While the two whispered back and forth, Prosecutor Mathebula, the prosecutor representing the complainant's interests on behalf of the state, shot me a look and rolled his eyes. Advocate Ramudzuli often carried out the work of consulting with his clients while court was in session. As a state-appointed public defender, Advocate Ramudzuli was overworked. It was not unheard of for him to take on eight new clients in one day, clients charged with serious criminal offences who faced hefty minimum sentences.[173] Even so, Advocate Ramudzuli was unusually disorganized and disinterested.[174]

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[172] Investigating officers are required to notify complainants of trial dates, but this is observed in the breach.

[173] In the 2017-2018 fiscal year, the average Limpopo-based legal professional employed by Legal Aid local offices registered 254 new criminal matters and finalized 243 criminal matters. This estimate is based on statistics reported

After consulting with his client, Advocate Ramudzuli resumed his place next to Prosecutor Mathebula at the lawyers' table. He asked Tshimangadzo, "Do you remember that on the date of the second incident, you asked the accused for money?" Tshimangadzo replied firmly, "I did not ask him for money." Shifting from one foot to the other, Advocate Ramudzuli asked slowly, "he did not give you R80 for relish?"[175] Flustered, Tshimangadzo conceded, "it was not R80. It was R60. But I did not ask him for the money." Advocate Ramudzuli seized on this, "so you agree that he gave you money on that day?" Tshimangadzo muttered, "I did not ask for it." Advocate Ramudzuli pressed on, "the accused will further tell the court that at that moment, your phone rang and he heard that it was a male person. But you told him it was your mother."

Advocate Ramudzuli was hoping that his cross-examination would introduce doubt about the state's case. For scholars of sexual violence and especially legal scholars who study rape trials, Mulalo's defense may seem unsurprising (Haag, 1999; Matoesian, 1993; Temkin, 2002). Mentioning money is a common strategy used by defendants to discredit complainants in rape trials. The strategy raises the ethical stakes by implicating the complainant in the commodification of sex, thereby undermining her credibility through an association with a stigmatized group. But this was not Advocate Ramudzuli's tack. At no point did he propose that Tshimangadzo agreed to sex in exchange for Mulalo's money. Instead, this cross-examination and Mulalo's testimony attempted to use material assistance – in the form of money for the baby's healthcare and R80 for a shared meal – to index a long-standing and enduring sexual relationship that was not just normative, but conjugal and therefore consensual.

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by Legal Aid in their 2017/18 annual report (Legal Aid, 2019). Local Legal Aid offices in Limpopo Province employed 69 legal professionals during this period (p. 36). Limpopo also reported opening 17,527 new criminal matters and closing 16,784 criminal matters (p. 35). Criminal matters are not always finalized in the same the fiscal year that they are opened.

[174] He was often absent or late for spurious reasons. He rarely appeared in court with his diary, which meant he was never quite sure which clients he would be representing on a given day. In spite of court rules prohibiting cell phone use, he spent the majority of the state's case scrolling through his cell phone with important consequences for his clients. Advocate Ramudzuli often had a poor understanding of the evidence that had been put before the court and missed important opportunities to object to state questioning. What's more, the cell phone produced interference on the audio-recordings of the trial, a loud buzz, which would make it difficult for his clients to secure an accurate transcription in the event of an appeal. For these reasons, many of his clients eventually dropped him as a legal representative, preferring to instead attempt to represent themselves.

[175] "Relish" refers to non-meat food that accompanies a plate of *vhuswa* (pap). It might include, for example, *thophi* (butternut squash puree), *gwengwelele* (a tomato gravy), or *kabishi* (cooked cabbage).

This conjugal-transaction defense constituted its own genre, a distinct form of "legal storytelling" in which "particular story genres, character types, and images cognitively 'cue up' certain descriptive as well as emotional and normative responses" (Sherwin, 2000, p. 43). Such legal stories partake in commonsense narratives that have purchase beyond the courtroom, making legal storytelling compelling in a way that cannot be reduced to technical legal arguments. In asking about everyday forms of material support, Advocate Ramudzuli attempted to paint Mulalo as a dutiful husband and a responsible caregiver who financially supported his family with the limited means he had at his disposal. The defense in turn portrayed Tshimangadzo as a loving wife – addressing him as "my husband" – whose commitment was only shaken by her unscrupulous mother and sister, who sought a formal marriage proposal for her from a wealthy man who had the financial wherewithal to pay *lobola*, historically paid in cows.

This particular "legal story" taps into the frustrations of poor and working-class men who cannot afford to secure their sexual relationships in the eyes of their partners, families and communities. It might have been legible to many male defendants and their lawyers, and even some presiding officers, but Magistrate Sinthumule was consistent in rejecting this genre of argumentation. On this occasion, she reminded Advocate Ramudzuli that evidence of a prior or extant relationship does not constitute consent in the eyes of the law. In the end, Magistrate Sinthumule convicted Mulalo on all three charges and sentenced him to fifteen years.

It is worth noting that if Magistrate Sinthumule saw in this case an example of structural gender exploitation, it did not revolve around transaction. Magistrate Sinthumule asked Tshimangadzo a series of questions about whether she, her sister and her mother shared their home with male family members. Later, in her chambers, Magistrate Sinthumule would explain to me that she regarded Mulalo's violence as predatory because he had taken advantage of a household of women who were especially vulnerable for living without male family members. In so doing, Magistrate Sinthumule was gesturing to a different way of thinking about sex, gender and vulnerability. In her view, these sisters were exposed to Mulalo's violence because of the erosion of the family, idealized as a multi-generational, shared household in which fathers, brothers and uncles protect daughters, sisters and nieces. If such an arrangement was patriarchal, Magistrate Sinthumule conceded, it was also political insofar as it organized responsibilities and

rights to welfare. Male family members, including husbands, do not simply have a duty to provide for female kin; they are also responsible for their general well being.

The everyday forms of material support Mulalo could manage substantiated what both partners and their families regarded as a customary marriage – at least for a time. What's more, this form of customary marriage received legal recognition in the context of this trial. When the couple separated, Tshimangadzo was still legally entitled to collect child support from Mulalo, being that he had fathered one of her children.[176] Such "maintenance," as it is described in South Africa's law, is envisioned as an entitlement guaranteed to children, one that does not devolve from the state but between private citizens. A child's primary caregiver administers this right. In the above case, money for food and the infant's medical care flowed from Mulalo to Tshimangadzo to their infant. Advocate Ramudzuli's defense of Mulalo makes clear that this transaction is open to interpretation. Men like Mulalo can interpret maintenance as something closer to the everyday forms of material support that form the basis of a sexual relationship. Tshimangadzo attempted to reject the implication of a sexual debt by insisting that she had not requested such support.[177]

Because of the obligations that come with receiving gifts, many women are careful about who they accept gifts from (see also Archambault, 2017, p. 144). Men, too, worry about the sexual reciprocities entailed by gifts from women, but these do not take the form of concerns about compelled sex. The sexual control they fear is the imposition of fidelity (see also Hunter, 2016). On Valentine's Day 2018, I was seated in court awaiting trial, listening to the lawyers and clerks discuss their plans for the evening. A prosecutor asked me who my Valentine would be. The court personnel had all met my husband on several occasions while he visited me in Thohoyandou. I replied that Max, who had long since returned to the United States, would be my Valentine. "But he is not here!" it was objected. I shrugged and offered, "I sent him Valentine's Day underwear in the mail," and then I used my cell phone to show him the unique pattern of hearts and tacos adorning the pink boxers I had sent. The prosecutor slapped his knee and laughed, "That is a typical woman's move! With those underwear on, he cannot cheat on you

[176] Maintenance Act, No. 99 of 1998.

[177] For a similar discussion of the ambiguities of maintenance, see: G'sell, B. (2018). Making Motherhood Work: Women's Child Support Claims, Race, and the Remaking of Citizenship in South Africa, 1958-2015 [Doctor of Philosophy, Anthropology and History]. University of Michigan: chapter 6.

because any other woman will see that underwear and know right away that it was a gift from a woman in his life. With that gift, you are claiming him." I had not thought of it that way, but I had to agree that he was right in his assessment of the effect the gift.

Transaction Facilitates Consent

For most of the twentieth century, legal doctrine has treated sex and monetary concerns as morally incommensurable on the grounds that the latter undermines the autonomy of one party to reject the former (Haag, 1999; Zelizer, 2005). This notion of incommensurability laces through approaches to rape law that envision sex as always potentially harmful to women. Economic transaction-as-rape imagines a heterosexual dyad comprised of a destitute woman forced by circumstance to yield to an affluent man for money.[178] It follows from this ideology that, all other things being equal, the sex freest of coercion happens between equals, and for the purposes of this chapter, between economic equals.

I began the last section by suggesting that local understandings of sex posit a complicated relationship between economic transaction and sexual violence. While transaction can be used to justify forced sex, having the material resources to participate in economies of intimacy is typically understood to mean one doesn't have to compel another to have sex. This is because local etiologies of rape do not treat non-consensual sex as a problem of power, but as a problem of unsated or insatiable appetite. Sex in this model is not recreational; it is a physiological necessity, especially for men (Porter, 2016). Anthropologist Jonathan Stadler has referred to this as "men's perceived lack of agency in sexual decision making" (2003, p. 128). In this rendering, rape occurs as a result of the desperation of having gone without sex for a long time. There are some temperamental differences that mean some men can endure a drought better than others, but rape is regarded as an almost inevitable consequence of prolonged abstinence. Given that economic wherewithal is connected to the ability to find a consensual partner, it stands to reason that poor men are those that are most likely to go without consensual sex for long periods.

In the salon, sex deprivation was the subject of much banter. Aluwani arranged the Styrofoam containers of *vhuswa* and chicken on two metal stools between the four of us. Sally plucked a small portion of the *vhuswa* and kneaded it between her thumb and forefingers. It was

[178] This genre of melodrama also runs through anti-sex trafficking campaigns (Vance, 2012).

generally acknowledged that the Fry Pan was the best place to buy *vhuswa* in the neighborhood, but on this day, it was unexpectedly closed and we had had to turn to ShopRite for the staple. She tasted the *vhuswa* and told us, "I will be eating later." She turned to Solomon pointedly and asked, "and you, will you be eating later?" Solomon replied, "ha, I don't have sex." He looked at me, hoping I had been scandalized. At that particular moment I was distracted, having been tasked with sending out dozens of text messages to Pinkie's clients to remind them to pay their month-end bills for the cleaning supplies they had purchased on credit. In response to Solomon, I absentmindedly nodded and said, "that's good." Solomon was appalled, "is it good? Will you not go mad?"

Sally and Solomon were seriously involved at the time. I would learn later from Solomon that Sally regularly slept over in his natal home, where he, his mother and unmarried sister also lived. Sally would clean their home, cook for them, and together, they would go to church together. Her joke to Solomon about "eating later" was meant as innuendo: we will be having sex later. Food-related euphemisms like this one highlight the connection between sex and survival. "To eat" can be used as a euphemism for sex while "I am hungry" might idiomatically describe unsatisfied sexual desire.[179] Likewise, "take-aways" refers to sex that happens before a couple has to take a long hiatus. Solomon's remark about abstinence and insanity demonstrates the stakes of being persistently denied sex.

And the "madness" that comes from abstinence and rejection is thought to be one cause of rape. Consider a different conversation in the hair salon between the "pharmacist" Tshifhiwa and me. It was early afternoon and we were seated outside, watching the lunchtime crowd of pedestrians make their way to and from Shop Rite for groceries and lunch. I asked him about how things were going with his newest love interest. The week prior, he had been doting on one of the women Pinkie had hired to deliver cleaning product, lavishing her with attention and calling her "my sweetie, my baby, my chocolate" in English. He had spoken of throwing her a birthday party over the weekend, but in the end, it had not come to fruition. Tshifhiwa clucked his tongue and responded, "that one, she is like all the others." He speculated that she had asked around about him and his prospects, and on learning that he was not financially well situated, had started ignoring his text messages. "This is why there are so many rapists," he noted pointedly,

[179] In Tshivenda, *u ḽa* and *ndi na ndala*, respectively. Holly Porter (2016) has made similar observations in her study of sexual violence in Uganda (see also Archambault, 2017, p. 127).

referring to my research. “Women are greedy and you will find most men cannot afford to impress them.” I looked at him a long while before he added, “But not me. I am not one of those.”

Recall the “Level 0” blesser who has nothing but love on offer. For women, sex without transaction is not desirable sex. In this etiology of sexual violence, men who cannot afford such transactions risk long periods of rejection, when the denied need for sex may express itself in unhealthy or antisocial ways, including rape. This theory of rape was not just the stuff of idle musings in the hair salon; it was also espoused by jurists in the space of the Khuḓani Regional Court. During closing arguments, for example, prosecutors would often frame rape as a problem of unsatisfied appetite: “The offender committed the offense to satisfy his own sexual desires without any regard to the complainant. If he wanted sex, why did he not just approach a prostitute and pay for it?” Reproaching an offender for failing to engage the services of a sex worker is a striking bit of rhetoric in a country where sex work is not just criminalized, but treated as a form of gendered exploitation adjacent to rape. Recognizing the role money plays in enabling sex, the prosecutor’s point was that there are economical ways of satisfying one’s sexual needs. Insofar as economic exchanges may enable sex, they are thought to deter rape.

Even as men like Tshifhiwa circulate this theory of sexual violence, they do not see themselves in it. This etiology knits together an array of claims about gender, sex and money that have been discussed throughout this chapter. It is an extension of concerns about social reproduction. Namely, widespread unemployment and financial insecurity make it difficult for men to successfully inhabit orthodox forms of masculinity rooted in “provider-love.” Where certain legal theories of sexual coercion imagine a poor woman compelled to have sex for money, this etiology of sexual violence instead imagines a poor man compelled to rape because he is unable to afford a normative sexual relationship.

Conclusion

In South Africa, legal ideologies are skeptical of sex across unequal economic status. And yet transaction validates sex as normative and even moral. This is the case with bridewealth and marriage, but it is also the case with everyday gifts, payments and cash allowances for relationships that may or may not be marital. While commercial sex work in South Africa is widely seen as discrediting, differently situated men and women boast about sexual relationships

in which they give and receive "blessings," a term that itself evokes a moral sense of deservedness. The line between the two practices might be drawn through commodification or long-term emotional connection, but the more reliable distinction pivots around the recreational quality of "blessing."

Local discourses around sexual violence differently articulate the relationship between transaction and consent in ways that cannot be reduced to the attenuated choice of exploitation. Transaction between men and women creates a sexual obligation, one that can result in rape if it goes unmet. This formulation is amenable to the interpretation of exploitation, but most of my interlocutors did not see it that way. Perhaps because they were less likely to see themselves as fully determined products of a stratified political economy than socially-networked moral agents. A second way the relationship between transaction and consent was theorized was through a local etiology of rape. In this view, sex is an urgent human need – especially for men – that must eventually be met. Men who can attract willing partners, through everyday material outlays, are less likely to commit rape. Where legal theories of rape coalesce concerns about exploitation around wealthy men, local etiologies of rape see impoverished men as unable to finance romance, making them especially likely sex offenders.

I have argued that transaction ratifies sex for men and women who are navigating moral economies of intimacy. A corollary of this argument concerns certain currents of feminist legal scholarship and Marxist economic anthropology that situate sexual autonomy and transaction under conditions of capitalism in a zero-sum relationship. While the former are worried about the possibility of consent under conditions of economic inequality, the latter see alienation as a necessary part of commodified exchanges. Both traditions of thought look to structural inequalities to make political arguments about what sort of sociality is valuable. This chapter makes clear that sexual exchanges are not simply about survival, and power does not always condition sex through the elimination of choices. Nor does the play of money in courtship, intimacy and desire necessarily amount to impersonal commodification and violent abstraction. But even when sex enters economic realms of equivalences, the imbrication of sex, money and power is not necessarily lived exploitation. Inequality in sex can instead be an abundance.

CHAPTER 4 – Embodied exposures: Rape, HIV and Criminal Justice in South Africa

It was busy for a Wednesday morning. Four children, a middle-aged woman and two grannies sat in the TV room, watching a Kung Fu movie. From my seat in reception, I observed a woman consult with a Victim Advocate about the contents of a 3" by 4" medication adherence booklet. The woman was on her way to pick-up HIV prophylaxis from the hospital dispensary and she wanted clarity on how to take the medication over the course of the next month. An orderly arrived at the door and quickly greeted before interrupting to ask after two HIV tests she had come to collect. A moment later, another woman appeared at reception. She waited for the others to leave before inquiring with the Victim Advocate about the results of her HIV test.

A great deal of the everyday activity that takes place in this space involves HIV counseling, testing, prevention and treatment. But this is not a HIV clinic. This work is instead carried out in the two TVEP trauma centres, facilities officially designated by the state Department of Health to administer free post-exposure prophylaxis to those who report rape in Venda. For many, this motivates a first entry into the criminal justice system.

In South Africa, HIV and rape are widely understood to be interlaced scourges. South Africa shoulders the largest share of the global HIV burden of any one nation. Population-wide HIV prevalence figures are difficult to estimate (Meel, 2003), but a recent report by UNAIDS (2019) found that in 2018, 7.7 million South Africans, nearly 20.4% of those aged 15-49, were HIV-positive. South Africa also has a reputation of being the "rape capital of the world." Among doctors and public health researchers, it is agreed that rape and HIV are risk factors for one another.[180] In South Africa, these "twin epidemics" are said to coexist in a "vicious cycle, with abuse enhancing risks of HIV infection and further abuse" (Jewkes et al. 2010, 42; see also Armstrong 1993). Beyond these biomedical links, in the 1990s, HIV and rape came to be entangled political issues as the African National Congress negotiated a peaceful departure from

[180] It is generally presumed that rape is violent sex that can increase risk of HIV transmission through vaginal or anal abrasions (Anderson et al., 2009; Draughon, 2012). Epidemiologists also understand HIV status to be a risk factor for rape (Gielen et al., 2007). Being HIV positive attracts stigma that can limit opportunities in housing, schooling and employment. Experiences of homelessness and poverty can in turn put one at risk for sexual assault.

white minority rule to universal enfranchisement. In this landscape, HIV and rape fueled a "moral panic" among white South Africans about the capacity of the country's non-white population for moral citizenship (Fassin, 2007; Posel, 2005a, 2005b).

The last 25 years have seen a continuation of the apartheid regime's preoccupation with "governing through crime" as democratically-elected administrations answer popular calls to embrace ever more punitive forms of justice (Simon, 2007; Super, 2013). As discussed in the Introduction, there is widespread consensus that non-consensual sex is insufficiently criminalized in South Africa, for reasons variously identified as historical, political and cultural. This chapter brings HIV and rape into the same frame to explore how state forms of care advance a carceral politics.

This chapter makes three interrelated arguments. First, I argue that the public provision of life-extending medicine has been instrumental to a national drive to incorporate those who experience sexual wrongdoing and those accused of it into the criminal justice system. For survivors, the promise of post-exposure prophylaxis (PEP) was conditioned on reporting to law enforcement or state-designated health facilities and subjecting oneself to legal recognition as a victim of rape. I argue for thinking about this as a form of state coercion that differently affects residents of the nation's former bantustans.

Second, I suggest that the everyday criminalization of non-consensual sex is accomplished through medico-legal activities that frame the crime of rape as the embodied harm of exposure. In civic education campaigns that advertise post-rape care services, criminal framings of sexual harm are promoted alongside what Miriam Ticktin (2011) has described as the "medicalization of gender-based violence." The "virgin cleansing myth" – a belief that sex with a virgin will cure a HIV-positive person that is attributed to black South Africans – is an organizing trope of such sensitization efforts. I argue these campaigns gain traction among potential beneficiaries precisely because they cast sexual wrongdoing as a medical condition while subordinating questions of sexual sovereignty. In so doing, they promote ideas of harm that resonate with local understandings of sexual harm as both distinctly sexual and corporeal, if not precisely biomedical.

The chapter concludes in the Khuḏani Regional Court, where it makes its third argument. In the 1990s and early 2000s, South Africa's democratically elected parliament debated the merits of legislation that would criminalize non-disclosure, exposure or transmission of HIV. To

date, such legislation has not been passed, but HIV nevertheless shapes how rape is prosecuted and sentenced in South Africa. Through the prism of the "virgin cleansing myth" and wider concerns about HIV prevalence in South Africa, jurists materialize artifacts of state care – patient records, test results, prescriptions – as evidence of culpability for the harm of exposure. I argue that in courtrooms, seropositivity simultaneously offers a motive for sexual violence as well as legal justification for a lengthier prison sentence, in ways that render rural, black men especially vulnerable. In bringing the clinic and the courtroom together, this chapter contends that health-related entitlements enjoyed by residents of South Africa constitute a form of governing through care constitutive of governing through crime.

HIV, Rape, and Risk

My introduction to South Africa's HIV epidemic came in a public health idiom. As I have mentioned, I first arrived in South Africa in 2005 as part of a cohort of Peace Corps volunteers funded by the President's Emergency Plan for AIDS Relief. To that end, during two months of in-country training, we received lengthy instruction on HIV prevention and treatment, envisioned as a "training of trainers." U.S. American volunteers would scatter to their assigned organizations and schools and disseminate information on the "ABCs" of HIV prevention – abstain from sex, be faithful to your partner and condomize.

The training was rudimentary, but the message left with volunteers was powerful and enduring: HIV made sex in South Africa dangerous. Following training, many volunteers swore off sex for the length of their two-year service. As it was explained to us, we had almost a one-in-three chance of selecting a partner from whom we might be infected. In our roles as U.S. American government anointed-health workers, volunteers did not simply partake in these anxieties around sex; we actively reproduced them. With negligible biomedical training, the majority of us fresh out of college, Peace Corps volunteers were tasked with facilitating sexual health presentations. Facilitators with this level of experience often served as "brokers" of awareness-raising programming of this sort (Swidler & Watkins, 2017). Peace Corps volunteers represented only one face of a larger public health establishment that circulated fears about HIV.

During "safety and security" trainings, Peace Corps volunteers were also warned of rape in South Africa. As an institution, the Peace Corps has an exceedingly poor record of addressing sexual violence committed by and against volunteers (Foster et al., 2014). Female volunteers

were warned to conduct themselves modestly and to avoid solitary company with local men, lest they get the wrong idea. Such precautions were racialized, casting the naïve vulnerability of (mostly white) U.S. American women against the insatiable sexuality of rural, black South African men. Given South Africa's HIV prevalence, we were reminded, the stakes of such unwanted encounters were great.

Linked public health discussions around rape and HIV – like those emerging from the Peace Corps – reinforced racist discourses around the hypersexuality of Africans. Sociologist Deborah Posel (2005a, 2005b) has identified this new attention as a post-apartheid "politicization of sexuality" that instantiated white fears about the morality of newly enfranchised non-white South Africans. With experts, technologies, protocols and funding flowing from the United States and Europe in order to address the twin crises of rape and HIV, new forms of governmentality targeting HIV-positive sex offenders and their victims resonated with colonial efforts to regulate the sexuality and reproduction of formerly colonized people. This point was not lost on then-President Thabo Mbeki, who criticized activists, journalists and professional humanitarians for dwelling on sexual issues at the expense of structural problems like poverty and inequality. Mbeki's stance toward HIV, and especially his rejection of Euro-American pharmaceutical interventions, was decried as "AIDS denialism."

The "politicization of sexuality" has justified new practices and created new sensibilities that infiltrate everyday experiences of love, desire and pleasure. Workshops are an important procedural form for materializing policy into checklists, workbooks, competencies and bodily comportments (Hodzic, 2016; Merry, 2006). Even as abstinence remains a cornerstone of mainstream sexual health programming, this is neither a feasible nor a desirable strategy for navigating the connections between rape and HIV for most South Africans, whose joys and sorrows are bound to the country in a way that most Peace Corps volunteers' are not. Fears about HIV coincide with and shape post-apartheid policy efforts to more effectively criminalize non-sexualize sex. One consequence is that South Africans worry over rape, not simply as a violation of sexual autonomy, but as a possible death sentence.

Health statistics like HIV prevalence are often deployed as though they correspond to an objective reality. Medical anthropologists have drawn attention to the conditions of their fabrication. Numbers are abstractions that obscure the sorts of simplifications, conflations, uncertainties, negotiations, and improvisations that can happen during the course of study design

and funding, data collection, entry and analysis, and circulation (Adams, 2016; Biruk, 2018; Epstein, 1996; Jain, 2010). Data are politicized to make and reproduce worlds (Bowker & Star, 2000). Where matters of sex are concerned, certain figures are only weakly tethered to lived experience, but nonetheless circulate widely, justifying sex panics and legal crusades that curtail the civil liberties of minority groups (Chapkis, 2003; Rubin, 2011; Soderlund, 2005).

Anthropology has had much to say on the category of risk. Mary Douglas' classic work on risk warns against treating risk as a self-evident or neutral category. Rather, risk draws a line between danger and blame, moralizing and vilifying certain individuals and behaviors. In state projects, risk is mobilized to determine who counts as a citizen and who is excluded. Anthropologists have examined risk alongside Foucauldian notions of governmentality, asking how medical, legal and penal institutions produce, manage and distribute risk. In South Africa, risk discourses link HIV and rape in order to enroll survivors in the criminal justice system through the promise of medical care. As elsewhere, this public health campaign marks a new pedagogy of sexuality, one that unwinds lessons about risk and pleasure (Parikh, 2005).

Putting aside for a moment the thorny question of how statistics are produced, the biomedical riskiness of sex in South Africa is grossly exaggerated in public health campaigns. Epidemiologists find that absolute risk of transmission from any given act of sexual penetration is actually quite low: given serodiscordant partners, transmission rates range from 4 to 14 out of 10,000 per act of intercourse (Barré-Sinoussi et al., 2018; Patel et al., 2014). These rates are further reduced when the seropositive partner is on anti-retroviral medication that reduces viral load. Yet non-specialists in South Africa and elsewhere overestimate the risk of transmission, in some cases by more than a thousand fold (Anglewicz & Kohler, 2009; Knauper & Kornik, 2004; Kohler et al., 2007; Meyer-Weitz, 2005; Sterck, 2014). This is in no small part because absolute risk of HIV transmission is rarely communicated during public health interventions. In South Africa, it was not uncommon for public-facing facilitators like Peace Corps volunteers or their local counterparts to be unaware of these figures. Instead, the message conveyed during life skills trainings and health workshops in South Africa concerned *relative* risk: an emphasis on population-wide seroprevalence and the superadded risk of sex with a seropositive person.

As I came to learn during training in public health, the elision of absolute and relative risk has been actively cultivated by public health practitioners who worry that disseminating more accurate information about risk per sex act might undermine the goals of prevention

campaigns. Typically, HIV and sexual health curricula dwell on ways of reducing risk without ever mentioning rates of transmission. Consider the U.S. Department of Health and Human Service's *AIDSinfo* online resources. Targeting a popular audience, "Understanding HIV/AIDS" offers an exhaustive account of HIV across 49 factsheets, but at no point mentions the transmissibility rates for different activities (DHHS, 2019). Reticence to circulate such information emerges from theories of "risk compensation behavior," the notion that people adjust their risk-taking behavior in response to changes in how they perceive risk in order to return to an *a priori* "target risk level" that balances risks and benefits (Underhill, 2013). From a bioethical standpoint, reluctance to communicate accurate estimates of epidemiological risk in the context of transnational humanitarianism can be criticized as a form of neo-colonial paternalism. As we will see, it is also a striking example of how statistics, "not only measure and claim to represent but also coconstruct the worlds and relations they emerge from" (Biruk, 2018, p. 214).

Less is known about the absolute risk of HIV transmission from any given act of *forced* sex. This is in part because of the challenge of attributing seroconversion to a given act of penetration, and in this instance, a reported case of rape. Because of the importance of immediate medical assistance, survivors who receive clinical care often do so before they begin to produce antibodies that might be detected through testing, complicating the observational study of seroconversion among survivors. Population-level studies do not seem to support the claim that any one instance of non-consensual sex is a greater determinant of HIV infection than an act of unprotected, consensual sex (Anema et al., 2008). Rape by a non-partner does not appear to be significantly associated with HIV infection (Jewkes et al. 2010). The theorized mechanism by which rape contributes to risk over and above consensual penetration is the presumption that rape is a particularly violent form of penetration that results in abrasions and lacerations conducive to transmitting the virus (Draughon, 2012), but consensual sex *also* results in lacerations that can facilitate infection.

Where sexual violence has been a more demonstrable driver of HIV infection is in the context of long-term partnerships. Sexual forms of intimate partner violence are positively associated with HIV risk behaviors as well as seropositivity (Dunkle et al. 2004; Jewkes et al. 2010). These studies suggest that gender inequality, more than genital injury, mediates the connection between rape and HIV infection. This is at odds with popular understandings in

South Africa, which are far more likely to locate HIV risk in encounters with unfamiliar sex offenders than in long-term and especially abusive relationships. Like non-consensual sex perpetrated by a stranger (Davis et al., 2008), condoms are infrequently used between primary partners in South Africa (Hunter, 2010, pp. 196–198). Yet, it is fears of the unknown seropositive rapist that draws survivors to seek clinical care for rape.

While risk tends to be conceptualized in relation to deviations from an idealized norm (Lupton, 2013, p. 3), risk discourses in South Africa are effective precisely because they posit the deviation *as* the norm. That is, within the context of a generalized epidemic where a high population-wide seroprevalence rate tends to be overestimated, it becomes possible to assume any given person is HIV positive. Given the public health interventions linking HIV and rape, the stock figure of the sex offender is often imagined to be an HIV positive man, and for reasons I describe below, this figure is a rurally-based black man. Local etiologies of sexual violence contribute to this equivalence. Recall from Chapter 3 that it is an unsatisfied or extreme appetite that marks a rapist's sexual desire. This puts him at greater risk of acquiring and transmitting the infection. And as we will see, just as those men who commit sexual offences are imagined to be seropositive, seropositive men are also imagined to be rapists.

Surfacing Crime Victims through Medicine

"Rabe is an orphan. His mother died of *that thing*." Tshifaro had called me to ask for advice. Over the phone, she explained to me how Luambo, her twelve-year-old daughter, had left a note for her, detailing how Rabe, their fourteen-year-old neighbor, had been molesting her for months. Though Luambo insisted there had been no penetration, Tshifaro's elliptical reference to "that thing" communicated her concerns that her daughter might have been exposed to HIV. Tshifaro asked that I drive them both to the local trauma centre, where Luambo could get an HIV test and post-exposure prophylactic (PEP) medication to prevent possible infection. Several hours later, after consultations with a Victim Advocate, a medical examiner and a police officer, Tshifaro received the results of Luambo's HIV test. Smiling, she showed me the sheet of paper that documented her daughter's seronegative status.

We first encountered Tshifaro in Chapter 2, when her claims for care were neglected by trauma centre employees who questioned her respectability. Tshifaro knew of the trauma centres' services and was confident that Luambo would be able to receive medicine that would

prevent HIV infection. The government guarantees survivors who report within the first 72 hours of an assault emergency contraception and a free regimen of PEP.[181] When Thohoyandou-based police officers accompanied rape survivors to a designated health establishment for PEP, they turned to the TVEP trauma centres. In this way, post-rape care services were a form of "biological citizenship" (Nguyen, 2010; Novas & Rose, 2000; Rose, 2006) tied to criminalization: claims to biomedical rights created new political subjectivities as those who reported to state-designated health establishments were rendered legible as crime victims.

Not exactly free, state-sponsored PEP is predicated on state recognition of rape. While adult victims need not open a criminal case in order to receive prophylaxis, they must disclose an experience of rape to either police or health officials to acquire the drugs.[182] The reporting mandate is stricter for children (under the age of 18) and mentally disabled victims. The Sexual Offences Act requires the reporting of sexual abuse of minors to police officials. This mandate is not limited to designated reporters like social workers, clinicians or teachers, but rather implicates all citizens in a generalized duty to report to police on behalf of abused children and those with mental disability. Failing to report the abuse of a minor is a criminal offense, punishable with up to 5 years imprisonment.[183] Thus, minors like Luambo who appear at a clinic requesting PEP following rape automatically have cases reported to police. In these ways, a claim to biomedical care is procedurally rendered into a claim for state protection against criminal violence.

The 72-hour window is a standard feature of PEP guidelines and comes from research that suggests PEP is not effective at preventing seroconversion after 72 hours.[184] Survivors of sexual assault must receive PEP *in time*. The Sexual Offences Act requires that police officers prioritize getting a survivor to a hospital or clinic where PEP can be administered within this

[181] Section 28(1)(a), Sexual Offences Act, Act 32 of 2007. PEP can also be purchased commercially.

[182] Section 28(2), Sexual Offences Act, Act 32 of 2007.

[183] Section 54, Sexual Offences Act, Act 32 of 2007.

[184] The efficacy of PEP has never been subjected to a randomized controlled trial (CDC, 2016, p. 11). These guidelines have instead been informed by the seroconversion findings of animal transmission models, perinatal clinical trials, and observational and case studies.

timeframe.[185] Nevertheless, "therapeutic disjunctures" (Sanz, 2017) between biological and logistical temporalities spring from multiple sources: poorly stocked rural clinics (Kim et al., 2007); police officers and hospital employees who may not understand how to fulfill their responsibilities to survivors (Vetten & Haffejee, 2005); and survivors who do not know about PEP, the 72-hour timeframe, or that they are legally entitled to it (Nare, 2013). In response to these last two, organizations have used protest and education to build up a civic architecture around claiming PEP and reporting rape.

Activists and advocates have politicized these therapeutic disjunctures. During annual "Silent Protests" on college campuses across the country, university students and members of the public quietly march together with strips of black tape over their mouths. The printed placards they carry repeat the same handful of slogans: "Stop the war on women's bodies," "Break the silence," "Disrupt rape culture," "PEP for all who need it now." Given legal requirements for accessing PEP, this last placard's reference to "need" is actually quite narrow. Public provision of PEP is an example of the "judicialization of health" (Biehl, 2015; Biehl et al., 2016), but it narrowly draws who counts as a patient-citizen. In the context of a protest about sexual violence, "PEP for all who need it now" does not include those who have been exposed to HIV through consensual sexual encounters or intravenous drug use, for example.

What's striking is how effective PEP messaging has been. When Tshifaro reached out to me about her daughter's sexual assault, her concern was about HIV exposure. During consultations with employees at the trauma centre, Tshifaro spoke at length about the urgency around getting her daughter on PEP. The possibility that their neighbor, Rabe, who had been orphaned by a mother who died of HIV, might himself be infected was the primary fillip to their reporting, even as Tshifaro was otherwise hesitant about reporting Rabe through official channels. On our car ride to the trauma centre, Tshifaro expressed apprehension about damaging what had been an amiable relationship between herself and her neighbor. Besides childcare, Tshifaro had relied on Rabe's grandmother to run the odd errand or to borrow small amounts of money to tide her through rough patches. Tshifaro wondered whether it wasn't better to approach Rabe's grandmother directly. Having sought assistance from the police before, Tshifaro viewed

[185] Section 28(3), Sexual Offences Act, Act 32 of 2007.

Rabe's grandmother as a more constructive route to modifying Rabe's behavior. It was the promise of PEP for her daughter that overruled her concerns for her neighbor.

Like Tshifaro, many people know that the hospitals stock a medicine that can prevent HIV infection and will give it to you if you say you have been raped. During salon-based interviews, one question I routinely asked was what a person should do after rape. A common answer was, "Go to the clinic to get medicines for HIV" or "Report it to the police so they can take you to the clinic. They will give you transport to the hospital." The remedy for sexual violence was located in biomedical institutions. The majority of rape complainants who appeared in the Khuḓani Regional Court found their way to criminal justice through the trauma centres. In testimony before court, many mentioned being advised by neighbors or headmen of the temporal urgency of accessing PEP. This was a provocation that hastened reporting through the clinic and ultimately resulted in reporting to the police.

Indeed, the Victim Advocates who placed orders for PEP in the trauma centres worried that messaging about the free provision of PEP might be too effective. Victims who seemed overly keen to access PEP aroused misgivings among Victim Advocates, who suspected that some clients might be falsely reporting rape in order to claim state-financed medications. As feminist scholars have pointed out, service providers working in and alongside the criminal justice system scrutinize those who report against an expectation about "the good victim," a construct inflected by normative ideas about race, gender, class and sexuality.[186] Linked as this status is to state entitlements, evaluations of credibility are an important form of gate-keeping. In the trauma centres, "victim" was not as transparent a category as what was imagined in the law, which entitled PEP to any "victim," defined as "any person alleging that a sexual offence has been perpetrated against him or her."[187]

This brings me back to Tshifaro. Tshifaro was concerned that her daughter, Luambo, might not be legible as a victim to Dovhani, the Victim Advocate on duty that night. Tshifaro was anxious about approaching the trauma centre because she earned a living selling sex. The

[186] Classics in this scholarship include: bell hooks' (1982) *ain't i a woman*, Angela Davis' (1981) "Rape, Racism and the Capitalist Setting and (1983) *Women*, *Race and Class*, and Susan Estrich's (1987) *Real Rape* are classics in this literature. Their insights and relevance continue to be enriched by scholars of sexual violence (Haag, 1999; Mulla, 2014; Temkin, 2002).

[187] Section 27, Sexual Offences Act, Act 32 of 2007.

TVEP workshops she had attended on earlier occasions specifically targeted her as a sex worker. When we arrived at the trauma centre, I let Tshifaro know that Dovhani was someone who had worked at the organization for years. I said it off-handedly, by way of introduction, and as a reassurance that Luambo would be in capable hands, but my remark did not have the effect I intended. Tshifaro took me aside to press me on how often Dovhani visited TVEP's central office, where she had attended sex worker advocacy workshops years ago. In spite of the organization's programmatic advocacy of sex workers' rights, Tshifaro feared that trauma centre staff might recognize her and treat Luambo differently as a result. As we saw in Chapter 2, Dovhani did not need to know that Tshifaro was a sex worker to judge her and Luambo wanting as victims.

Sex work is illegal in South Africa, and as a result, sex workers are often excluded from the protections of law enforcement, even as they are more vulnerable to robbery, assault and rape by clients, police and others (Deering et al., 2014; Mgbako et al., 2012). During her time on streets and in bars, Tshifaro had experienced sexual violence and had prior need of police intervention and PEP. These experiences had taught her to be leery of the criminal justice system. Reporting to police had sometimes resulted in her own arrest. Friends who worked with her shared stories of the trauma centre as a place of stigmatization and judgment, where claims for PEP were sometimes denied. Even on our visit, Tshifaro was not able to escape chastising remarks by the police officer and Dovhani, who overheard Tshifaro making plans to go out later at night and chided her for leaving her daughter alone at home. If PEP was conditioned on reporting, an additional, implicit prerequisite was recognition by hospital-based staff as a deserving rape victim.

In these ways, tying PEP with reporting rape invites assessments of who gets to make claims to state care. For those who desire HIV prophylaxis, a condition of care is inhabiting the subject position of victim vis-à-vis the state. The reporting requirement, especially stringent for children, further justifies violent forms of state coercion, beyond the inclusions and exclusions built into the mandate. Among frontline personnel tasked with procedurally rendering reports of rape, there is some confusion about how to fulfill the legal obligation to report. Consider one account related to me by Vhutshilo, a Victim Advocate. It was early in the morning, at the end of her shift, and she was waiting for the next Victim Advocate, who was late to take up her post. I asked her how her shift had been and she related difficulties she had had the evening prior with a

15-year-old girl who came to the trauma centre seeking PEP. Vhutshilo conveyed to the girl that PEP administration and reporting are both tied to the medical examination. But the girl had not wanted to be examined. Vhutshilo explained to me, "Some young clients don't want the doctor to see their vagina. We explain the process and why it is necessary. Then, they become comfortable with it. I prepared this 15-year-old client like usual, but when she got on the examination table, she kept her legs pressed together. The doctor asked me if I had prepared the client, and I told him I had. The doctor asked the client and she admitted that she had. The doctor then took her to the theatre to give her an injection to relax her so she could be examined." I asked Vhutshilo if that happens often. "It was the only time I have ever seen it. But it was necessary. The police cannot open a case without a J-88, which they need for evidence, and she was a child."

Here, Vhutshilo and the forensic examiner both incorrectly interpreted their legal obligation to report child sexual abuse as an obligation to participate in the criminal investigation and specifically the forensic examination. One of the most important pieces of evidence generated in the trauma centres is the J-88 medico-legal form, a report completed by a forensic examiner that documents a victim's physical condition. The document includes space for information about the medical examiner and their qualifications; the victim's basic demographic information, general health history and sexual history; and the medical examiner's findings. The J-88 asks medical examiners to remark on the condition of the victim's clothing and emotional state. Diagrams of body parts provide space for medical examiners to document wounds with details about lascerations, bleeding, swelling, tearing, bruising and discharge. There is space for information about samples that have been taken from the victim's cloths, pubic hair, and vagina. There are additional fields for recording clinical findings from the gynecological exam. Like TVEP's Client Intake Profile, the J-88 medico-legal form scripts the practice of remedy for survivors.

Writing from an emergency room in Baltimore, Sameena Mulla (2014) has characterized these forensic examinations as "the violence of care," a violence that emerges at the intersection of law and medicine. In her study of rape trials in India, Pratiksha Baxi has likewise described such examinations as a form of "state-sanctioned assault" (2014, p. 86). In South Africa, the J-88 prescribes the "two-finger test" as part of the forensic exam for survivors. Criticized by feminists, epidemiologists and human rights groups (Jewkes, 2018; Mathews et al., 2013; WHO,

2017), the "two-finger test" determines how many fingers the survivor's vagina will easily accommodate. Widely debunked, the test has historically been used to test virginity, the conceit being that a vagina that easily yields fingers is "habituated to sex." Its appearance on the J-88 as the prompt "Vagina: Number of fingers admitted," means that it is often completed by medical professionals, even though jurists do not request such information or raise it in court.[188]

A forensic examiner who drugs a minor survivor in order to carry out this penetrative examination against her will does not simply "mimetically reenact the desire of the rapist" (Baxi, 2014, p. 86); rather, there is a compelling legal argument that his actions constitute an altogether new sexual offence. And such acts are not unprecedented in the space of the trauma centre. In the past twenty years, two forensic examiners employed by the local Department of Health have been accused of sexually assaulting patients, one of whom was ultimately convicted. That Vhutshilo and this doctor regarded the examination as a compulsory element of reporting for minor victims and a requirement for receiving PEP reveals how the criminalization of non-consensual sex is simultaneously given effect through state remedy and state coercion.

A Politics of Medicalization

"Rape (*u binya*) is a big problem in South Africa. We see this problem every day. Rape causes illness, *ne*? There are those who believe that sleeping with a virgin will make them HIV negative, not so? Then, it is children who are sexually abused, not so?" It was a cool morning in a village 20 kilometers from Thohoyandou. Gudani, the Venda woman making the remarks, paused as members of the audience nodded in recognition. Gudani was facilitating what was described as SGBV in the agenda for the day, an acronym for "sexual and gender based violence." Behind her on the makeshift stage was a row of local dignitaries, including members of the village royal council, a prominent pastor and a police captain. Arrayed in front of Gudani were a hundred black plastic chairs, filled with a mostly working-age audience in various states of attention. Behind the chairs, another several dozen older women sat listening, legs outstretched on mats on the ground, the odd child toddling from one lap to another. "It isn't right when someone forces you to sleep with them. It is a crime (*mulandu*)," Gudani emphasized.

[188] I did not observe the "two-finger test" referenced as evidence during the course of my courtroom observations. Nevertheless, guided by the J-88, South African forensic examiners routinely carried out the test. In the Southern African Legal Information Institute database of reportable verdicts (see saflii.org), the test was mentioned only three times, and on one of these occasions, it was to remark that the field had not been completed.

"You should report to [the trauma centres at] Tshilidzini or Donald Fraser [public hospitals]. You should report to the clinic. Or the police. Report quickly. They can give you medicines that will prevent you from becoming sick or pregnant. The medicine will help you if you take it in the first 72 hours after that offense."

This particular event was organized by the Safer South Africa Foundation, a national organization with the mission of reducing crime by empowering communities. The organization had funded an art competition in which aspiring artists designed anti-rape posters and today they were honoring the local artist who had come in third place. Gudani, a TVEP outreach officer, was tapped to speak on the subject of SGBV. Organized by area non-profits, civic associations, churches and government agencies or as a part of gazetted events like Child Protection Week or Woman's Day, such campaigns are a routine part of public life. With a lively atmosphere generated by free lunch, music and t-shirts, they often draw large crowds. Rape awareness campaigns like this one encourage survivors to report to the police or state-designated health facilities by emphasizing the distinctly corporeal facets of sexual harm, particularly as they relate to HIV transmission. Rather than dwell on a woman's right to sexual self-sovereignty, public-facing workshops often prioritized a discussion of the embodied experience of sex: both its capacity to cause life-threatening disease and the curative powers attributed to it by seropositive sex offenders.

Sexual violence programming endorsed reporting through the criminal justice system by insisting on two related claims. First, a single act of rape carries HIV risk over and above a single of consensual sex. Second, seropositivity motivates sexual violence, especially against child victims, because of the prominence of a belief that sex with a virgin can cleanse the body of the virus. What has come to be dubbed the "virgin cleansing myth" (Leclerc-Madlala 2002; Jewkes, Martin, and Penn-Kekana 2002) is a central feature of campaigns aimed at getting survivors of sexual violence to report. The myth is attributed to black South Africans, especially those who live in rural areas and subscribe to "traditional healing paradigms" (Wreford, 2008). Campaigns encourage reporting through the guarantee of therapeutic intervention.

Scholars have remarked on how yoking narrow public health concerns to HIV has been instrumental to non-profit organizations dependent on donor funding and beholden to transnational development agendas. The sheer volume of international HIV funding structures most other forms of medical humanitarianism (Benton, 2015; Swidler & Watkins, 2017). TVEP

was not immune from such influence. The organization's budget has included a great deal of funding earmarked for HIV-related projects from bilateral and multilaterial aid agencies, non-profit foundations as well as from commercial pharmaceutical companies that produce antiretrovirals. And yet, the consequences of uniting rape and HIV exceed straightforward financial considerations, resulting in what anthropologist Miriam Ticktin (2011a; 2011b) has characterized as a "medicalization of gender-based violence."

Writing on medical humanitarianism in France, the United States and Morocco, Ticktin (2011a; 2011b) documents how gender-based violence came to be treated narrowly as a medical condition rooted in the suffering body. The humanity of this body appeals to principles of liberal universalism through abstraction. The raped body of humanitarian attention is sympathetic for being abject and innocent, outside of personal relations and desires, particular histories or politics. For Ticktin, the medicalization of gender-based violence is profoundly depoliticizing. Legal scholar Alice Miller (2004) has made a similar argument, pointing out that human rights approaches to sexual violence need to reposition survivors as citizens entitled to making claims on the state. In this view, medicalization posits harm without cause, sexual violence without gendered domination. In its approach to rape, medical humanitarianism effectively sidesteps questions of structural violence linked to patriarchy, racism, capitalism, nationalism, and colonialism, narrowing the scope of intervention to HIV prevention, emergency contraception, fistula and psychological trauma. This biomedical form of care is indifferent and undiscriminating, consisting as its does of extending life for its own sake (Stevenson, 2014).

There is much to recommend Ticktin's interpretation of medicalization. The anti-rape poster being celebrated at the aforementioned event was notable for being bland and inoffensive. It featured a circle of black and white people holding a disk with the words "Stop Rape" in large letters and "in Africa" in smaller words above. Talk of human rights was absent from the poster and Gudani's presentation. Rights (*pfanelo*), the right to refuse sex (*pfanelo ya u hana vhudzekani*), security (*vhutsireledzi*), freedom (*mbofholowo*), discrimination (*khethululo*), and gender equality (*ndinganyelo nga mbeu*) often appear in Tshivenda-language versions of educational brochures and life skills workbooks to describe the harm of rape or the rights of crime victims. But in smaller, more local events, especially those hosted by traditional leaders, the favored framing of the crime of rape centered the harm of embodied exposure.

And yet, for being medicalizing, these activities cannot be said to be indifferent to causes. They were undertaken as part of a national effort to promote understandings of sexual violence, not simply as a medical condition, but as a criminal violation of sexual autonomy. In other words, medicalization in this instance did not leave "victims without perpetrators" (Ticktin 2011, 255), but was fundamental to conscripting both into the operations of the carceral state in the roles of complainant and accused. With financial and logistical support from state agencies, TVEP's educational programming communicated to diverse audiences that all forms of non-consensual sex should be recognized and reported as the crime of rape. In children's workbooks distributed in public schools, illustrations depicted cartoon dyads in moments of interpersonal violence, stressing that such acts constituted crimes that should be reported to the organization's trauma centres or the police. In 2014, TVEP administered a survey on behalf of a team of international academic researchers as part of a larger study called, "Know Rape." "Know" worked as a twofold imperative: an organizing principle for researchers to create evidence-based interventions in the field of gender-based violence but also a call for rape-afflicted populations to embrace criminal epistemologies of non-consensual sex. The imperative *to know* quickly slid into the imperative *to act*: knowing rape is knowing rape as a crime to be reported to the police. In TVEP's funding proposals motivating these activities, increased criminal reporting was the crucial link between the abstract goal of reducing sexual violence and funded activities in the area of awareness-raising.

TVEP was not alone in encouraging Thohoyandou area residents to understand their experiences of sexual wrongdoing as the crime of rape. Didactic posters adorned the walls of courtrooms, police stations and government offices, explaining that "anyone can be raped," that "rape is a crime" and where to report it. To commemorate Children's Day in 2017, the Khuḓani Regional Court invited primary school students from a nearby school to visit the courthouse for a workshop. The children were given a tour of the courthouse, including a holding cell that had been cleared of accuseds for the purpose. The warrant officer who accompanied the children teased them not to commit crimes, or they would also have to share a urinal with others in the cells. Seated in the court gallery, the children listened as Magistrate Sinthumule, the prosecutors, the public defenders, the clerks and the visiting ethnographer explained their roles in the criminal justice system. Then, the court intermediary, whose normal duties included mediating the examination-in-chief and cross-examination of child witnesses, explained to the children that no

one had a right to touch their private parts. “It is a crime,” she told them. “If it happens, tell an adult. Tell the police.” The students were reminded that they could always reach the police at the 10111 emergency hotline.

Such messages are communicated alongside messages about HIV. One of the key tropes in campaigns to medicalize sexual violence is the “virgin cleansing myth.” The myth is a well-worn explanation for HIV in South Africa. It appears in newspapers, radios and chain mail-style text messages circulated over Whatsapp. The myth was often rehearsed to me in Pinkie’s Beauty Salon. On one occasion, I provoked discussion of the myth by posing an abstract question to Pinkie and three other women about extra-legal forms of remedy. Julia, a hair stylist, recounted the story of a man who lived in her neighborhood, who was discovered to have raped a 9-year-old girl. It was a convoluted story in which witchcraft brought about retribution in the form of her neighbors’ violence. Julia concluded by remarking on the character of the man who had been suspected, “this one, he was a drunk, a troublesome person who was always having sex with prostitutes.” She explained, “the rape of small girls is common here, because there are those who believe that sex with a virgin will cure HIV.”

During fieldwork, this was how I most often heard of the “myth,” as a story about belief. In his *Belief, Language and Experience*, Rodney Needham (1972) questions the value of “belief” as an ethnographic analytic, noting that belief, as a doctrine of propositions, is a local category, with European roots in the Nicene creed and epistemological debates between Hume and Kant, and more recently, Wittgenstein and Hampshire. Ahead of recent critiques of the ontological turn (Graeber, 2015), Needham warns that theorizing with belief permits the conclusion that the content of belief is both widely shared and suggestive of a systematic cosmology that explains something essential about a coherent culture group. In his work on witchcraft in South Africa, Adam Ashforth draws on Needham, eschewing “belief” for what he instead describes as “frameworks of plausibility” (2005, p. 123). Heeding Needham and Ashforth, I am less concerned with the virgin cleansing myth as an intelligible “folk cosmology” (McNeill, 2011, pp. 180–202) with earnest adherents than with what talk of the myth does.

Widely attributed to rural black men (Leclerc-Madlala, 2002; McGreal, 2001; Wreford, 2008), the myth has galvanized a “moral panic,” especially among white South Africans, around the capacity of the country’s black population for moral citizenship (Fassin, 2007; Posel,

2005b).[189] While Ticktin warns that the medicalization of gender-based violence is de-politicizing, in South Africa, medicalization coincided with a post-apartheid moment when sexual violence exploded into national consciousness as an issue of political import (Nuttall, 2004; Posel, 2005a, 2005b).[190] On billboards, talk shows, radio programs, and in newspapers, talk of rape pressed into every corner of public life. In particular, "baby rape" emerged as a new category of violence, explained by the virgin cure.[191] Posel (2005a, p. 127) writes of this moment, "the politicization of sexuality is perhaps the most revealing marker of the complexities and vulnerabilities of the drive to produce a newly democratic, unified nation." With Posel, I understand politicization as a process that does not always, unambiguously advance the cause of social justice.

In South Africa, the medicalization of gender-based violence is used to recruit survivors into the criminal justice system, where they are tasked with fulfilling their duties to the state as citizen-crime victims. In this way, medicalization fits within feminist legal projects that lean heavily on punitive forms of justice (Bernstein, 2007b; Halley et al., 2018; Miller, 2004). Because of the outsized role of the "virgin cleansing myth," everyday efforts to criminalize non-consensual sex endorse the view that seropositive black men are especially likely to target the very young for sexual violence. As we will see, this has important consequences for the prosecution of rape.

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[189] This was not lost on the nation's newly elected black leaders. At the 51st National Conference of the African National Congress, a document, entitled, "Castro Hlongwane, Caravans, Cats, Geese, Foot and Mouth and Statistics: HIV/AIDS and the struggle for the Humanization of the African," addressed these concerns:

> Yes, we are sex crazy! Yes, we are diseased! Yes, we spread the deadly HI virus through our uncontrolled heterosexual sex! In this regard, yes we are different from the US and Western Europe! Yes, we, the men abuse women and the girl-child with gay abandon! Yes, among us rape is endemic because of our culture! Yes, we do believe that sleeping with young virgins will cure us of AIDS! Yes, as a result of all this, we are threatened with destruction by the HIV/AIDS pandemic! Yes, what we need, and cannot afford because we are poor, are condoms and anti-retroviral drugs! Help!

While "Castro Hlongwane" has been derided for its "AIDS denialism," this passage is a succinct rebuke of discourses that link HIV, rape and the "traditional cultural beliefs" of black South Africans.

[190] Ticktin and Posel have slightly different definitions of politicization. While Ticktin defines politicization as a disruption of the established political order (2011, p. 251), Posel describes something as politicized when it becomes subject to heated public debate (2005a, p. 127). I understand these definitions as commensurable: public debates arise precisely over the nature of an established order and how best to supplant it.

[191] In response, epidemiologists sounded a cautionary note, simultaneously stressing that South Africa was not exceptional for its rates of sexual assault against the very young and that there was no evidence to suggest a sudden increase in such violence (Jewkes and Abrahams 2002, 1240; Jewkes, Martin, and Penn-Kekana 2002).

Embodied Exposures

Ticktin's is a political argument about medicalization. She notes that the turn to medicalization has meant interventions are leveled at individual bodies and their immediate needs as opposed to gendered dynamics that create and condone violence and inequality. For Ticktin, "medical" refers to biomedicine: an ontology that locates pathology in individuated bodies, organized into ever-reducible parts that relate to one another mechanistically. Here, I want to highlight how we might consider sexual harm more expansively than the analytic of medicalization permits. In so doing, I suggest that South African campaigns to criminalize non-consensual sex through medicine have succeeded by tapping into alternative ways of understanding sexual harm, neither as biomedical illness nor the crime of rape, but as what I refer to here as "embodied exposure." These campaigns, which emphasized the quality of sex and its pathological potential, mirrored the way many Venda women talked about undesirable sex. I use "embodied exposure" in contradistinction to the harm imagined by theories of medicalization and criminalization by highlighting how sexual wrongdoing is at once experienced as social, sexual and embodied.

One afternoon at Pinkie's Beauty Salon, Tshifhiwa and Sally were debating why so few people get married and stay married in South Africa. We met them both in Chapter 3, when Sally was funding a night out with her "blessings" and Tshifhiwa was exaggerating his personal fortunes in order to trick young women into dating him. On this day, Tshifhiwa interpreted the decline in marriage as a problem of women's greed. Sally had a different interpretation. 25-years-old and with a reputation for being something of a "party" girl, she surprised us all by suggesting that the problem was that young people proceeded with their relationships quickly, recklessly even, and without the counsel of their elders. Examining her make-up in the salon mirror, she told a story of a relationship she had been in: "Last February or March, I met a man. He had so much money, this man. We were together for a month and he treated me like a queen. We moved in together very quickly. Then he became abusive." Sally repeated the phrase in English, "physically, emotionally, sexually abusive." She illustrated the abuse with an example: "I was having my period. And I told him that. But he slept with me anyway." Tshifhiwa quipped, "You know what the problem was? You were only seeing his money."

In this account, Sally described her experience with the English words "sexual abuse," a phrase used in transnational human rights discourses and popularized by local NGOs and

government service providers to refer to non-consensual forms of sexual activity. It was clear from Sally's story that she did not consent to having sex. She told her partner that she was menstruating, *but* he slept with her anyway. By telling him about her period, she made plain her disinterest in having sex at that time. Nevertheless, sexual autonomy was not at the narrative center of her account. Instead, it is worth taking seriously the role of Sally's period as a potential source of injury, as opposed to a convenient excuse for not wanting sex. In South Africa, menses is regarded as dangerously polluting (Ashforth, 2005, pp. 160–161; Leclerc-Madlala, 2002; Ngubane, 1977). For men and women alike, sex during menstruation can cause genital sores, infertility and HIV. As such, sex with a menstruating woman is a self-evidently undesirable form of sexual activity, its transgressive quality stemming from the possibility of contagion. For Sally, this sex was undesirable and even wrongful, not simply because it was forced, but because it was dangerously profaning.

Fraser McNeill, a medical anthropologist working in Venda, describes these as "folk etiologies" of sexual disease that locate blood-borne illnesses in women's bodies (Decoteau, 2013b; see also, Leclerc-Madlala, 2002; McNeill, 2011, pp. 188–189; McNeill & James, 2011). Vaginas, for being internal, can trap all manner of polluting dirt and transmit it throughout the rest of the body. Adult women are thought to have especially wet vaginas, to which polluting "dirt" (*tshika*) clings. This is especially true of women who are thought of as promiscuous or women who have undergone abortions. Julia's remark about "the troublesome person who was always having sex with prostitutes" flags the man as someone who was likely seropositive. Sex with women characterized as especially "dirty" can result in diffuse forms of sexual pathology, including HIV. All adult women go through periods of dirtiness, periods when the reproductive rhythms of a woman's body are held in abeyance – such as menstruation or pregnancy. Such periods are reckoned as particularly toxic times to have sex with a woman. If sex with a "dirty" woman causes sexual disease, the converse is also true: "a man can 'cleanse' his blood of HIV/AIDS through intercourse with a virgin, but the girl herself would not be infected in the process" (Leclerc-Madlala, 2002, p. 17). The effect of sex with a virgin is both therapeutic and prophylactic. Julia concluded that the "troublesome person" had targeted a young girl for sex in hopes of curing himself of HIV. This is not exactly a biomedical understanding of pathology.

The harm of sexual disease does not proceed from atomized bodies in strictly mechanistic ways. It spills out into households and communities in ways that are sometimes but not always

predictable. Sally imagined that she might have been protected from her partner's abuse by the intervention of older family members. The following exchange happened on a Sunday afternoon, when Pinkie met with Mashudu, a regular customer, at the salon for a special hair appointment. I happened to be passing the salon, and Pinkie greeted and waved me in. As Pinkie wrapped a towel around Mashudu's shoulders and neck, she instructed me to turn up the volume on the radio. The women were listening to a Sunday radio program to which listeners called in to testify to miracles in their lives. The testimony Pinkie had wanted to hear was one given by a woman about her cheating husband who had become faithful after he joined her church. Reflecting on the radio testimonial, Pinkie shook her head and observed, "Men/Husbands (*vhanna*) are not faithful." Mashudu agreed. "He is only yours when you are together. He stays with another woman for months and then he just comes home at night after drinking and forces you to sleep with him (*kombetshedza u mulala*). And now you see, there are so many orphans." Mashudu narrated an act of non-consensual sex within the context of a long-term relationship. Her use of the second person made it seem as though she was posing a hypothetical, but her husband lived and worked in Johannesburg, a 500-kilometer drive away. In this way, even if only obliquely, she was implicated in her story.

Mashudu used the verb *kombetshedza* ("to force") to describe how the sex came about, but neither coercion nor power were emphasized in Mashudu's evaluation of sexual harm. Mashudu did not expound on the thwarted sexual desires of the married woman. Instead, she elaborated on the conjugal wrongdoing proposed by the radio program: infidelity. Insofar as there was a critique of the workings of gender, it concerned infidelity, which was seen as a special propensity among men. Her mention of orphans evoked the stakes of infidelity through a thinly veiled reference to HIV: cheating imperiled the lives of parents, who would leave behind children without caregivers. Given the high prevalence of HIV in South Africa, infidelity is a cause for worry and alarm among couples in long-term relationships, all the more so because condom-free sex enacts the commitment and trust characteristic of such relationships.[192] The

[192] While the conventional wisdom in the field of public health is that coercive sex puts victims at risk for HIV, the coercive quality of this sex was not where Mashudu located HIV risk. Researchers note that coercive sex is mechanically riskier, as violent vaginal penetration can lead to abrasions and lacerations that facilitate transmission of the virus (Zablotska et al. 2009; Mengo et al. 2019; Jewkes et al. 2010). In a 2011 study, a team of South African researchers carried out a cross-sectional household survey among 1229 South African men aged 18-49. Their findings differ from this conventional public health wisdom about sexual violence and HIV. They found that rape perpetration was not significantly associated with HIV status, but that physical forms of intimate partner violence were (Jewkes et al. 2011).

suffering of this body was not confined to an atomized human form but distributed with disastrous effect through a family from an outside secret lover.

Rape awareness campaigns successfully recruit survivors into the criminal justice system by simultaneously medicalizing and criminalizing sexual violence. These framings resonate with the sexual harm described by Sally and Mashudu, but there are important distinctions. The pathology of sexual violence, as imagined in biomedical discourses, afflicts an atomized body. It travels through bodily fluids in predictable ways. Embodied exposure, by contrast, travels through physical and social bodies. These are not simply unfortunate epiphenomena of what is "the true nature and experience of sexual violence" (Artz & Combrinck, 2003, p. 88). Neither can embodied exposures be reduced to questions of autonomy and coercion that are so central to evincing the crime of rape. That these categories shade into one another is what makes rape awareness campaigns so effective. And the "virgin cleansing myth" is what enables a commensuration of medical-criminal notions of sexual harm with notions of embodied exposure.

Accursed Womb

Nowhere is the distinction between what I am calling embodied exposure and rape-as-biomedical condition or rape-as-crime clearer than in cases of sexual harm committed against children. A week before Tshifaro, Luambo and I went to the trauma centre, Tshifaro and I met to discuss her own experience with sexual violence. I was put in touch with her by Rendani, a mutual friend, who knew I was interested in speaking with sex workers about their experiences with law enforcement. It was early on a rainy Friday night. We were parked in a rocky dirt lot outside a strip mall. In the darkness, the lights of passing cars transformed the rhythmic landing of rain on the windshield into colorful explosions. Music throbbed from the interior of a nearby tavern. We had taken cover inside the car when it started raining, me in the driver's seat, Rendani in the seat next to mine, Tshifaro behind her in the rear passenger seat. I craned around the side of my seat to look at her, but she avoided eye contact.

I explained my research interests to Tshifaro. Before I could finish, she interjected, "I had that experience. I was raped when I was a child." Rendani, taken aback by the abrupt disclosure, excused herself and left us alone in the car to talk. As she told her story, Tshifaro addressed me from the back seat, behind the front passenger seat where Rendani had been. I remained in the driver's seat. I leaned in to hear her over the sounds of nighttime Thohoyandou. She told me,

“My mother died when I was two years old and that’s when I started to live with my grandmother, aunt and uncle. I was in Standard A at the time, what is now called Grade R. When he started doing it, I didn’t know what he was doing. I only learned about sex later. We didn’t learn about those things in school then. Maybe if my mom were alive, it wouldn’t have happened.”

Her uncle was 18 years old at time. Tshifaro remembered vividly how it first started. Alone in the sitting room together, he confronted her with two options, “Do you want to be beaten or do you want to be eaten?” She was terrified and confused. She responded that she wanted to be beaten. And so her uncle beat her severely. The next time he found her alone in the house, he asked her again, “Do you want to be beaten? Or do you want to be eaten?” She replied that she wanted to be eaten. Recall that “to eat” is a euphemism for sex. For two years, before she left for school in the morning or after he returned home from work, Tshifaro’s uncle forced himself on her.

Tshifaro told no one about it while it was happening. She was six years old at the time and too young to understand what he was doing to her, and so she hadn’t approached any of the other adults in her life. One night, Tshifaro’s grandmother left her home alone in order to assist an ailing family member. On her way out, she locked Tshifaro in the room where they usually slept alone together. With his mother gone, Tshifaro’s uncle broke into the room to get at Tshifaro. When Tshifaro’s grandmother returned, she found the door unlocked and asked Tshifaro what had happened. Tshifaro’s grandmother called a family meeting to discuss her uncle’s behavior. He was reprimanded and told to stop touching his niece. This household intervention fits within “customary law” traditions, which prioritize families as the first level of mediation in disputes concerning sex (e.g. Delius and Glaser, 2002). After that, he refrained from sexually assaulting her, but continued to beat her.

Not long after the family meeting, Tshifaro was sent by her grandmother to her father’s home. There, she suffered verbal abuse and material neglect, especially at the hands of her stepmother, who regarded Tshifaro as an unwelcome expense. Food was withheld from her so she routinely went hungry. At the behest of his new wife, her father eventually stopped paying her school fees and Tshifaro dropped out of secondary school. Instead, she was put to work in the house. “They treated me like a domestic.” She washed the family’s clothes, fetched wood, cooked, and cleaned, chores that left her with little time for anything else. Even though Tshifaro

was an undesired presence in her father's home, Tshifaro's grandmother could point to principles of patrilineality to justify banishing her there. For Tshifaro's part, she regarded her uncle, the only male in her grandmother's household, as spoiled.

Because of these experiences, Tshifaro grew up with anger. She was quick to get into physical altercations with other children. When things got bad, she ran away from home, sleeping over at friends' homes. For a brief period, she lived as a "street kid," in her words. As a teenager, she came to appreciate the depth of her uncle's abuse and worried that others might become his victims too. She warned family members with small children who spent any time in her grandmother's home to be vigilant of her uncle. This only estranged her from her extended family, a consequence she attributed to their favoring the household's eldest male member. Now, as an adult woman, they had severed contacts from her and her two children. "Are we hungry? Are we eating? They don't know." Only ever precariously employed, Tshifaro worried about how to feed and cloth herself and her children. At the end of her grandmother's life, Tshifaro and her grandmother had a partial reconciliation. As a result, it was Tshifaro, and not her uncle, who inherited their natal home. It was the last material assistance she received from the family. Without primary and secondary education, Tshifaro struggled to secure a stable and well-paying job in an economy where so many are unemployed.

Tshifaro claimed estrangement from her family as a vulnerability that led to the next great misfortune in her life. Five years before she accompanied Luambo to the trauma centre, Tshifaro made the same trip with her firstborn, Matodzi, Luambo's older brother. He had been raped by an older boy in the neighborhood under circumstances similar to those surrounding Luambo's assault. Unable to provide care for Matodzi while working, Tshifaro had left her son with neighbors who did not closely supervise his outside play. In spite of reporting to the police, she did not think any intervention had been made with her son's young assailant, who she routinely bumped into outside a Thohoyandou ShopRite, where he helped shoppers with their groceries in exchange for change.

This story flowed from Tshifaro with little probing on my part. Sitting in the car, she explained, "my womb (*mbumbelo*) is cursed." She would repeat it to me several days later, after learning about what had happened to Luambo. In recollecting her childhood to me that night, her uncle's sexual abuse reverberated through her past, present and future relationships: from her mother's death through being cast out by her grandmother, from her father's neglect through her

present-day poverty. It was a curse that took up residence in her womb and was passed on to her children. Her uncle had never admitted what he had done, let alone apologize. Tshifaro wanted to confront him to learn, "Is he a sick person (*ndi mulwadze*)? Is he a demon? Is he a spirit of death (*ndi muya mufi*)?" Her uncle's violation helped explain a sequence of calamitous events.

A form of sex across economic difference, prostitution is often framed as an ur-form of gender exploitation and conflated with non-consensual trafficking. I had come to Tshifaro to ask about violence she might have experienced while at work, and she had such stories – her own and those of others. She eventually told these stories when I asked about them, but the story she foregrounded, the story that spilled from her without prompting was the story of her uncle and how his violence had worked its way through family members, born and not yet born.

It was not uncommon for me to hear rumors about young girls who had been raped. Everyone had a ghastly story about a relative of a friend or a distant neighbor. These stories ended in a remarkably similar way. The person telling the tale would inevitably conclude by shaking his or her head and saying, "the girl lost her womb," that is, that the womb was so violated that it was expelled from the body. This seemed altogether plausible to me until I came across one of these cases in the Khuḓani Regional Court. I first learned of the case from an entry in a conversational journal compiled by my research assistant, Rotshidzwa. Seated in court, I recognized the broad strokes of an account she had documented: same village, victims and circumstances. In her conversational journal entry, Rotshidzwa had described the tragic womb-loss of the younger victim, an eight-year-old girl and noted that the case was being deliberated in the Khuḓani Regional Court. When the case appeared before the Khuḓani Regional Court and the J-88 was read into the record, I was surprised that womb-loss was not among the injuries sustained by the girl. This prompted me to inquire with the Victim Advocates: had they ever assisted child rape victims who had experienced womb-loss? For sure, they had seen violence inscribed in the bodies of children in heinous ways, but not one had encountered a case of womb-loss.

Womb-loss was a powerful trope used to make sense of the horror of sexual violence against children. In pointing out that this womb-loss was not literal, I do not mean to minimize the violence of child sexual abuse. Nor do I mean to suggest that those who circulated such stories thought they were being figurative. Writing about sexual violence in Uganda, Holly Porter (2016, p. 125) notes that sex with children is seen as "cosmologically" transgressive. This

form of transgression to afflict fertility in ways that echo across space and time and between generations, subverting projects of relational personhood. In Tshifaro's account, the harm she experienced was embodied but was not strictly biomedical. Instead, it inhabited her womb, to be passed on to her children as a roving curse. Indeed, it was not altogether clear that this curse originated with her. Tshifaro considered the possibility that this was a curse she inherited from her mother, who had died as a young woman while Tshifaro was still a toddler. The embodiment of this curse was not limited to individual bodies. Rather, it corrupted relationships with Tshifaro's extended family, thwarted her schooling and left her in a place where it was difficult to support herself and her children.

In Chapter 2, I described how Lutendo administered an Intimate Partner Violence questionnaire to Tshifaro in the trauma centre. After completing the IPV screen for her relationship with her then-boyfriend, Tshifaro told Lutendo that she had experienced abuse at the hands of her uncle as a child. She explained to Lutendo that while she was not interested in opening a criminal charge against her uncle, she did want to confront him. It was an unusual request, but Lutendo completed a referral to put Tshifaro in contact with a social worker employed by the Department of Social Development. Lutendo suggested that the social worker might be able to mediate some form of reconciliation. This was the intervention Tshifaro desired.

Months later, Tshifaro was still waiting to hear from a social worker. On Tshifaro's behalf, I reached out to Lutendo to ask about the status of this request. After making inquiries with the Department of Social Development, Lutendo explained that no social worker would entertain such a request. Tshifaro had been raped as a minor. In the eyes of the law, she was still a child victim, a status that obligated anyone who learned of her case to immediately report to the police. Recall that failing to meet that obligation is a criminal offense, not just for state service providers, but for anyone who learns of the abuse. While Lutendo and the social workers to whom she first spoke were willing to violate the law by respecting Tshifaro's desire not to report her uncle, organizing a reconciliation with him was a bridge too far. Lutendo intimated that Tshifaro might not have been the first or last of her uncle's victim. Tshifaro was complicit in his subsequent crimes, and by failing to report him to the police, Lutendo felt she was too. Unwilling to participate in the practical criminalization of her uncle's violence, Tshifaro was denied the justice she desired. While Ticktin and Miller worry that medicalizing approaches to sexual

violence fail to position survivors as citizens vis-à-vis the state, South Africa's rape statute required victims assume the position of citizen-complainant in exchange for medical care.

What sort of politics does Tshifaro's sense of injury demand? Tshifaro was not particularly interested in punishing her uncle. She wanted him to recognize what he had done and to be reconnected with family who could assist her navigate life's inevitable hardships. In light of this preference, it is hard not to see Tshifaro's suffering in the context of post-apartheid South Africa's political economy. High rates of unemployment and poverty put a strain on families and communities to provide care for their own. School fees create an insurmountable barrier for some to complete public education. Dependent on one another for labor and resources, families, friends and neighbors struggle to hold one another accountable for violence of the magnitude suffered by Tshifaro. This economic landscape is a result of histories of white minority rule that systematically divested from areas like Venda. There is also a critique of post-apartheid neoliberalism, where policies of privatization and liberalization mean that individuals and their immediate communities are asked to shoulder an ever-greater burden of care, protection and welfare.

It is also hard not to see Tshifaro's troubles through the light of enduring gender inequities. Scholars of sex in South Africa have argued that such economic circumstances make it difficult to fulfill normative gender roles, with interpersonal violence being one result (Campbell, 1992; Hunter, 2010; Walker, 2005b). The particularities of Tshifaro's story lend themselves to this interpretation. As the only male in the household, Tshifaro's uncle claimed a privileged place in the family, even after his behavior was discovered. In her father's house, Tshifaro's status as the daughter of a prior wife made her disposable in a way a son likely wouldn't have been. As a single mother, Tshifaro was responsible for her children in a way that their biological father was not.[193]

These were political registers through which Tshifaro made demands. For example, she appealed to the state for child support grants and complained that these grants were inadequate for covering everyday costs of feeding, clothing and educating her children. Tshifaro also discussed her family's partiality toward her uncle in terms of gender inequality. And yet,

[193] Per section 15 of the Children's Act 38 of 2005, parents are legally responsible for providing financial "maintenance" to their children, but fathers often elude this process and Tshifaro had not considered initiating a maintenance order against him. Tshifaro received monthly child support grants for her children, but found them inadequate for covering everyday costs of feeding, clothing and educating her children.

Tshifaro returned again and again to her extended family as the grounds for political claim-making. As a resident of a village administered by a chief, Tshifaro's citizenship was hyphenated. For this reason, Tshifaro's tenure in her grandmother's home was insecure. The family stand was not technically her grandmother's to leave to Tshifaro. Had her uncle decided to bring her before the chief, he could claim a right to occupy the stand on the basis of primogeniture. No doubt, this was a dispute neither one of them wished to air in the public arena of a tribal council meeting. Leveling a criminal charge against her uncle would have upset the fragile arrangement between them.

What Lutendo took to be a straightforward crime was entangled with unsettled customary claims over resources – not just to Tshifaro's natal home, but to all that her family might have shared with her. Tshifaro described this latter form of harm as a curse that occupied her body but was not confined to it. Tying medical care to criminal reporting is part of a national push to criminalize sexual wrongs. What Tshifaro's story reveals are the uneven consequences of these efforts for residents of the nation's former bantustans.

Criminalizing HIV

In concluding, I want to return to HIV to think through how seropositivity shapes the course of justice for those accused of rape in criminal courts of law. Like sexual violence, HIV mediates the relationship between citizens and the South African state. Since 2003, the Department of Health has made antiretroviral therapy (ART) freely available to all HIV-positive people living in South Africa. As a result, 61% of seropositive adults in 2017 were on antiretrovirals, according to the WHO.[194] In addition to free ART, seropositive South Africans who can provide documentation of compromised immune health are eligible to receive up to R1,780 (the

[194] WHO (2017). HIV Country Profiles: South Africa [World Health Organization HIV Country Intelligence]. Retrieved December 13, 2019, from http://cfs.hivci.org/country-factsheet.html

equivalent of $126) in monthly disability grants for up to one year.[195] Many attribute the stabilization of the epidemic – in the form of reduced incidence – to these policy changes.[196]

These forms of state care were not a foregone conclusion. South Africa's second president, Thabo Mbeki, was deeply skeptical of the Euro-American medical consensus on HIV, its causal relationship to AIDS, and the premium it placed on expensive technical fixes like branded pharmaceuticals. This skepticism animated South Africa's healthcare policy in the decade following the end of apartheid. Mbeki's administration famously endorsed herbal remedies like beetroot and garlic for the treatment of HIV, while rejecting antiretrovirals as poisonous. During this period, parliament contemplated the merits of passing HIV-specific criminal offenses, debating draft bills that would have criminalized the non-disclosure, exposure or transmission of HIV (Chisala, 2008). The rights seropositive people in South Africa have to state care and protection came about after a great deal of successful activism, at home and abroad. For these reasons, the story told about HIV in South Africa is often cautiously optimistic, if not outright celebratory (e.g. Geffen, 2010).

Accessing healthcare entitlements enacts a particular relational claim between South African inhabitants and the government (Biehl, 2015; Biehl et al., 2016). Critical voices, resonating with Mbeki's concerns about the historical legacies of colonialism, highlight how state efforts to locate disease transmission in the choices of self-managing individuals obscure how post-apartheid neoliberal economic reforms have produced conditions of endemic poverty, unemployment and land insecurity, conditions that render much of the population vulnerable to HIV exposure (Benton, 2015; see also Biehl, 2007; Decoteau, 2013b; Fassin, 2007; Hunter, 2010; Nguyen, 2010; Robins, 2010). Less remarked upon, however, are the ways in which state interest in HIV plays out in the criminalization of non-consensual sex.

I have described how talk of the "virgin cleansing myth" framed the harm of rape as uniquely embodied. It further assigned responsibility for sexual violence, as a population-wide phenomenon, to black South African men with faulty beliefs. If seropositive black men were

[195] In order to successfully file a claim, a patient must provide paperwork with a CD4 count of less than 300. CD4 count is a quantitative measure of white blood cells and index of immune strength. In 2019, social grant payments saw an across-the-board increase. R1780 represents the maximum monthly disability payment for the 2019/20 fiscal year.

[196] In the years since ART has been made freely available in South Africa, HIV incidence has dropped precipitously. In 1998, there were 530,000 new infections and 270,000 in 2017 (UNAIDS 2018).

presumed likely to rape young girls, rapists were in turn presumed to be seropositive. Talk of the "virgin cleansing myth" circulated through the Khuḓani Regional Court just as surely as it did at Pinkie's Beauty Salon. In criminal courtrooms, legal practitioners especially drew on the myth to make sense of child rape, regardless of whether there was any evidence to recommend such an interpretation. Such inferences were used to secure convictions and justify lengthier sentences. In this way, the figure of the HIV-positive sex offender – always a black South African – was not simply a vehicle for promoting the reporting of sexual violence; he also justified more punitive approaches to criminal justice.

"How do you know the accused?" Prosecutor Seoka leaned into the microphone without lifting his gaze from the docket spilled open on the dais before him. "I am his nurse," the witness replied from across the room. As she spoke, her eyes briefly landed on the defendant's face, where he sat, hunched over in the accused's dock. After asking about the nurse's qualifications and work experience as a registered nurse employed by the Department of Health, Prosecutor Seoka asked, "And why was the accused seeing you?" "He is HIV positive." Across a series of clipped questions and answers, Prosecutor Seoka elicited the information he wanted to have aired before the court. Prosecutor Seoka handed a document to a court warrant officer, who walked across the courtroom to show it to the nurse. "What is this document?" "This is his file," the nurse replied. With direction from Prosecutor Seoka, she read aloud fields that indicated the accused's HIV positive test result and that since 2013 he had had a prescription for tenofovir, a generic antiretroviral medicine often used as frontline treatment for HIV in Thohoyandou. She confirmed that he filled the script on a monthly basis. Prosecutor Seoka concluded his examination-in-chief by asking, "so this accused is HIV positive?" A bit befuddled, the nurse paused before replying, "that is what his test said."

These proceedings were part of a rape trial carried out across 2017 at the Khuḓani Regional Court in Thohoyandou. The accused in this case, a man in his thirties, was charged with raping a ten-year-old neighbor. The nurse who testified to his seropositive status was the sixth and final witness called on behalf of the state. Unlike the first five witnesses, she provided no evidence to support the rape charge. On these grounds, either the defense or the magistrate could have objected to her testifying. Statute and case law are in agreement that evidence can only be adduced if it is relevant to the charge at hand.[197] The nurse's testimony might also have

[197] See the Criminal Procedure Act, Act 51 of 1977.

been precluded on the basis that it gestured to the accused's sexual history, evidence deemed prejudicial by South Africa's "rape shield" laws.[198] In spite of Magistrate Sinthumule's already overcrowded roll, she resisted giving an *ex temporae* judgment at the conclusion of this case, noting after the adjournment that she preferred to write out her judgment rather than delivering it extemporaneously because "the HIV thing" made the case "complicated."

The nurse made no claim to know why the accused might be motivated to commit rape and Prosecutor Seoka did not pursue this line of questioning with her. Knowing nothing about why the accused was charged, the nurse was in no position to reflect on his motivations. If she had done so, such evidence would be speculation and therefore inadmissible. But this did not prevent court officials from drawing their own conclusions. During an adjournment, while Magistrate Sinthumule updated dates on the court roll from her bench, the Court Preparation Officer and Interpreter chatted about this case. Appalled by the young age of the complainant, they concluded from the accused's seropositive status that he must have been driven to raping the young girl in a bid to expel the virus from his body. I asked them why they would think so. The Court Preparation Officer, a Venda woman who was born and raised in Johannesburg, responded, "here, there are many traditional healers. They tell sick people that they can be cured by having sex with virgins." The two court officials concluded that the accused, being a black man from a rural village, fit the profile of someone who might act on the myth. When Magistrate Sinthumule read her guilty verdict into the record, she made no reference to the "virgin cleansing myth," but it was not impossible that, like the court officials, she inferred from the accused's HIV-positive status a motivation for his crimes.

Would deductions of the sort made by the Court Preparation Officer and Interpreter be made in cases where the accused was white? It seems unlikely. The jurisdiction of the Khuḓani Regional Court is limited to the former bantustan of Venda. Its remit extends to criminal matters in Thohoyandou and the villages that surround it.[199] For this reason, those who appear in its three courtrooms – complainants, accused and witnesses – are almost exclusively black South

[198] Section 227 of the Criminal Procedure Act, which shields a rape complainant from having his or her sexual history interrogated, also applies to the accused. For complainant and defendant alike, Section 227 appears to be observed in the breach. See for example: *Prinsloo v State* (2018), para 33; *S v M* (2002), para 19; *Serathi v S* (2016), para 8; and *S v Katoo* (2004), para 15.

[199] Every other Friday, one of the courtrooms hears civil cases.

Africans.[200] In Chapter 2, I describe how Venda occupies the status of what Edwin Ardener (2012) has described as a "remote area" in the South African imaginary. Its residents are understood to be standard bearers for black culture. More than white South Africans or middle-class, black city-dwellers, those accused of rape in the Khuḓani Regional Court were more likely to be presumed by the court's legal practitioners – several of whom were not themselves Venda – to believe in distinctly African theories of health and healing. In off-handed comments made outside of court proceedings, jurists often remarked on the "culture to which the perpetrator is affiliated" or the "prevailing culture amongst our people" to make sense of wrongdoing. In rape cases with child victims, talk of the myth coupled with popular fears of HIV furnished a ready account of criminal intentionality in ways that disproportionately affected black men from rural areas.

Magistrate Sinthumule did not reference the myth in her verdict. Instead, where the "HIV thing" explicitly made this case "complicated" was in the sentence she handed down. In it, she noted that even though the complainant had not been infected, the accused's seropositivity made for a "worse" form of rape, given that it *exposed* the victim to HIV. Technically, South Africa has no HIV-specific criminal statute, but HIV does appear in South Africa's sentencing statute, the 1997 Criminal Law (Sentencing) Amendment Act. Following a guilty verdict, presiding officers hear additional rounds of testimony in order to tailor a sentence suitable to the unique circumstances of the offense, the complainant, the defendant and the interests of society.[201] Within the limits of legislated sentencing guidelines, presiding officers might increase or decrease the length of a prison term based on new evidence heard during sentencing proceedings.[202] In so doing, they are asked to grade the magnitude of harm, an assessment imagined to be more quantitative than qualitative. South Africa's sentencing law delineates

[200] Across 18 months, I systematically tracked 73 rape trials, which included 85 accuseds and 83 complainants. All were black. Three accused were Zimbabwean nationals and one was Mozambican. The vast majority were Tshivenda speakers though a Xitsonga interpreter was made available in 7 of these trials. During court, I had occasion to observe additional cases that I did not track. In very rare instances, South Asians appeared as complainants in charges concerning robbery. Zimbabwean nationals were sometimes complainants in public violence cases. I did not observe white or coloured South African complainants or accuseds, though a white man appeared as a witness in a fraud case.

[201] *S v. Zinn* 1969 (2) SA 537, 540.

[202] See the "substantial and compelling" provision of Section 51(3), Criminal Law (Sentencing) Amendment Act, Act 105 of 1997.

categories of rape, deemed especially serious, for which life imprisonment is mandated.[203] Included among these aggravated forms of rape is rape "by a person, knowing that he has the acquired immune deficiency syndrome or the human immunodeficiency virus."[204] During sentencing then, jurists are procedurally enjoined to contemplate HIV as constitutive of a "worse" form of sexual offense than others,[205] one for which sentencing statute prescribes the maximum penalty of life imprisonment. Legal scholars distinguish this from an HIV-specific criminal offense on the grounds that serostatus should nevertheless be irrelevant to the charge and the evidentiary burden required to be found guilty of the charge. That is, a person is charged with rape, not rape committed while seropositive. Questions about serostatus may only be raised after a conviction has been secured, as part of a larger inquiry into the severity of the offense carried out during sentencing proceedings.

Regardless of whether evidence concerning serostatus was led, legal practitioners proceeded *as though* those convicted of rape were HIV positive. These conclusions were justified by South Africa's high prevalence rate. Consider the following sentence, handed down by Magistrate Sinthumule in a case where the complainant was of legal majority and the convicted defendant's serostatus was unknown:

> that the offender did not use a condom and as such exposed the complainant to venereal diseases, and given rates of HIV infection, this is also a possibility, though one for which evidence was not brought and which will therefore not be considered…but the fact that he used no condom was aggravating, viewed from the scourge of HIV in this country.

A declaration of this sort was routine in sentences of defendants who had been convicted of rape. In the Khuḓani Regional Court, the "scourge of HIV" justified treating rape in South Africa as "worse" than rape committed in a hypothetical elsewhere, free of the virus. During sentencing proceedings, exposition of the circumstances around the commission of the offense and the wider

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[203] Those sentenced to life face the possibility of parole after twenty-five years.

[204] Section 51(1), read with Schedule 2, Rape, (a)(iv) of the 1997 Criminal Law (Sentencing) Amendment Act, Act 105 of 1997.

[205] For example, *S v Swartz and another* 1999 (2) SACR 380 (C): "not all rapes diminish equal punishment" (at 386b); *S v Abrahams* 2002 (1) SACR 116 (SCA): "some rapes are worse than others" (at 127d); *S v Mahomotsa* 2002 (2) SACR 435 (SCA): "the rapes that we are concerned with her cannot be classified as falling within the worst category of rape" and "there are bound to be some differences in the degree of their seriousness; they will all be serious but some will be more serious than others" (at FN 71). For a critique, see *S v Muller* (2SH98/2005) [2006] ZAGPHC 51 (23 May 2006).

interests of society converged on commonsense perceptions of South Africa's status as a place of exceptional HIV prevalence and risk. Rape without a condom was treated as aggravating because of the possibility that it might result in HIV infection, even in cases such as this one where the serostatus of the convicted defendant was unknown.

In the first paragraph of a criminal sentence judgment, presiding officers rehearse the logic of sentencing in a *pro forma* statement that is reproduced across all such judgments. In her judgments, Magistrate Sinthumule was typical in that she articulated, "the aim [of sentencing] is to individualize the offender and the offence." And yet magistrates in the Khuḓani Regional Court routinely considered population-wide HIV prevalence during sentencing in order to equate the offender with a stock figure of the HIV-positive rapist. In so doing, risk and blame were conflated as a routine matter of sentencing practice.

In the courtroom, HIV is criminalized as a matter of practice, if not in accordance with a HIV-specific statutory offence. Legal practitioners act on a presumed connection between HIV and rape in two key moments during the trial. When magistrates weigh the evidence to determine an accused's conduct, the "virgin cleansing myth" provides a self-evident explanation for why rural black men and especially seropositive men would rape young girls. When magistrates make a sentencing determination, the presumption that seropositive men are rapists and rapists are seropositive justifies categorizing any given act of rape – regardless of whether it was committed by someone with HIV – among the "worst" rapes. This legal designation justifies longer prison sentences.

Conclusion

Through the promise of care through reporting, rape awareness campaigns in South Africa simultaneously frame rape in criminal and medical terms. I have argued that PEP recruited victims of sexual violence into the criminal justice system by linking rape and HIV. But PEP does far more than that. The provision of free prophylaxis to survivors is tremendously important to promoting well-being in the wake of violence that is physically, emotionally and socially traumatic and can have very real long-term health consequences. I have called PEP "free" and it is true that state-run hospitals and clinics do not charge for it, but its provision comes at the cost of submitting to state recognition as a crime victim. The privileges of such recognition accrue only to the "'the victim' produced through occupation of the signs of injury" (Ross, 2003, p. 12).

This was a cost many could not or would not bear. Among those excluded from this therapeutic entitlement were those who had been exposed to HIV through means other than non-consensual sex and were therefore deemed responsible and deserving of infection; those who had experienced non-consensual sex but did not wish to disclose to state functionaries; and those whose social vulnerabiliy meant that their self-disclosures were rejected as fabrications. These exclusions were not incidental, but vital to advancing the project of criminalizing non-consensual sex.

In the last decade, a great deal of scholarship has documented the ways HIV has been criminalized within jurisdictions in the United States, Eastern Europe, and Sub-Saharan Africa (Barré-Sinoussi et al., 2018; Bernard & Cameron, 2016; Hoppe, 2017). In South Africa, the narrative around HIV has been considerably more triumphalist. In the post-apartheid period, HIV has come to inspire a language of rights that has mediated the relationship between citizens and the state through biomedical claim-making (Decoteau, 2013b; Robins, 2010). Activists rightly celebrate the free provision of life-extending medications, which has extended population-wide life expectancy and reduced morbidity associated with opportunistic infections (e.g. Reniers et al., 2017). These are, to be sure, tremendously beneficial developments that promote human health and well-being.

But read alongside efforts to criminalize non-consensual sex, the picture becomes considerably murkier. Between 1995 and 2014, the number of offenders sentenced to life imprisonment increased by 3000% (Jacobson et al., 2017, p. 7). Overcrowding in prisons is rife. In its 2017-18 annual report, the Department of Correctional Services (DCS) reported that 160,583 people were incarcerated in prisons with bed capacity for only 118,723 inmates (DCS, 2018). Of the 160,583, 36% are awaiting trial and had not been convicted. Sexual offences are an important driver of these trends (O'Donovan & Redpath, 2006). As elsewhere, in South Africa, potential citizen-beneficiaries of social welfare are often figured as criminals, warehoused in prisons to serve lengthy sentences (Alexander, 2016; Gilmore, 2007; Super, 2013). Sociologist Loïc Wacquant (2009) describes this as "punishing the poor," a neoliberal withdrawal of popular social and economic protections in favor of the construction of a penal state. What this chapter suggests is that it is *through* such protections – entitlements like post-rape care and antiretrovirals – that criminalization occurs.

CHAPTER 5 – *Mens Daemonica*: Parsing Guilt in and through Occult Violence

Beginning in March 2014, female bodies started appearing in the neighborhood adjacent to the University of Venda campus in Thohoyandou. The corpses showed signs of sexual violence. In the four months that it took for the police to identify and apprehend the man responsible, residents lived in a state of vigilant terror as five victims were raped and killed in the vicinity. Rumors circulated that the women and girls had been dismembered, their limbs, lips and genitals sold for magical purposes. Such speculation arose in no small part because Venda is notorious for its witches and powerful occult practitioners (Commission of Inquiry into Witchcraft Violence & Ritual Murders, 1996; Mavhungu, 2012; Minnaar et al., 1992). The periodic discovery of mutilated bodies stoked anxieties of *u via*, a Tshivenda word that describes the harvesting of body parts for use in witchcraft.[206] In response to the rapes and murders of 2014, the police publicly denied that a serial killer was responsible up until the day Mashudu Mudau,[207] a Univen student, was arrested. On announcing his arrest, the police tried to assure the community: "We now want to put the matter into perspective that none of those murders were ritual-related. No body part whatsoever was removed from the bodies of the deceased and the arrested suspect will be facing charges of murder, rape, robbery and attempted murder."[208] Police

[206] In English, this sometimes gets described as "ritual murder" or "*muti* murder," where *muti* refers to substances with occult efficacy. "Ritual murder" is, of course, an oxymoron, bringing together "ritual" – that is a set of activities carried out by some collective in accordance with a normative script – and "murder" – a crime carried out by an individual against the rules of the state. Most treat "ritual murder" and "*muti* murder" as equivalent English translations of *u via*, but some argue that behind the English language terms there lies an important distinction. For those who insist on this distinction, "ritual murder" refers to a bygone "customary" practice of ostensibly voluntary sacrifice, authorized by a local chief and the family of the condemned and carried out on behalf of the community toward some greater good (good rains or an end to some virulent illness). "*Muti* murder," by contrast, refers to the commodification of body parts for the personal gain of unscrupulous people. The latter understanding has come to apply to *u via* generally and is the subject of the Comaroffs' work (2018, 1999) on "occult economies."

[207] This was a much publicized case, but I use a pseudonym here as I do with other figures in this work.

[208] City Press Author. (2014, July 24). 'Serial killer' student caught with murdered woman's hairpin in his possession. *City Press*. https://www.news24.com/Archives/City-Press/Serial-killer-student-caught-with-murdered-womans-hairpin-in-his-possession-20150430

pronouncements to this effect were meant to locate guilt in the disenchanted body of one man, but they did little to quell local anxieties that more diffuse and mysterious forces were afoot.

Mudau himself affirmed popular suspicions about his crimes. In his sworn affidavit, Mudau claimed he had unwittingly been recruited to participate in Satanic rituals. After receiving a cursed 100 Rand banknote (the equivalent of $8.60 at the time), he told the court he often woke up to find himself in strange locations, having spent the night wandering unconsciously. With the support of his lawyer, who argued it was possible he was sleepwalking, Mudau pleaded not guilty to all 16 charges. Mudau's own admissions before court were that he had been possessed by Satanic forces. The trial, which took place between July 2014 and May 2016, captivated residents of Thohoyandou.[209] The Acting Judge in the matter was not convinced that Mudau had been sleepwalking, nor for that matter that he had been possessed, and Mudau was sentenced to nine life sentences, to be served concurrently, plus an additional fifteen years in prison.

Mudau's possession provokes questions about culpability and justice: What sort of moral blameworthiness does spirit possession imply? How is justice best served when wrongdoing springs from such diffuse and unknowable causes? And how can we make sense of consent in a world of witches? This chapter seeks to answer these questions. Taking Mudau's story as a point of departure, it provides an empirical account of the ambivalent ways state sites of criminal justice grapple with intentionality in South Africa. I use "occult" as an umbrella term for unseen and mysterious powers not obviously subject to positivist verification, a point I elaborate below. As I mean to show, spirit possession is not easily reconciled with legal frameworks for understanding criminal liability. And yet, when imprisoned people are paroled, the state entertains the possibility of bewitchment in public ceremonies of reconciliation.

This chapter proposes *mens daemonica* to describe a state of hijacked selfhood and as an alternative to the *mens rea* that animates criminal jurisprudence in South Africa and beyond. Both are theories of culpability. While the latter seeks the cause of wrongdoing in the authentic will of the liberal subject, *mens daemonica* describes a putatively extra-legal idea of captured volition. Beyond the mind/body dualism presupposed by the law, *mens daemonica* assumes a field of intentional action that extends outside the boundaries of the physical body. While the

[209] My account of the trial is informed by various sources: two interviews with the Acting Judge who presided over the matter (February 9, 2017 and March 24, 2017), newspaper articles that documented the trial, and observations of community members as they responded to Mudau's crimes and the trial.

trial of witches has historically been a customary matter dealt with by "traditional courts," here I want to suggest that *mens daemonica*, as a way of figuring responsibility, is not confined to "customary" institutions. For disputes about sex especially, *mens rea* and *mens daemonica* play out in unexpected ways. This chapter shows that *mens daemonica* impinges on the itinerary of criminal justice at various points from an accused person's arrest through a convicted person's release, while the doctrine of *mens rea* proves an awkward standard for adjudicating the charge of rape in criminal courts.

To be clear, in coining *mens daemonica*, I am not translating South African legal categories into Euro-American ones. I take seriously the lessons of the Gluckman-Bohannan debate, lessons that are not as straightforward as they are sometimes portrayed. Gluckman's penchant for translating the legal categories of the Barotse into his own is often seen as doing violence to local ways of being and doing. For his part, Bohannan resolved that local categories could not be reduced to one-to-one translations, relying instead on untranslated Tiv words elaborated through ethnography. Anthropologists today tend to remember Gluckman as the loser of this debate. But what I'd like to rehabilitate here are the *comparative* goals of Gluckman's ethnography. Treating local categories as fundamentally incommensurable fails to account for how such categories are commensurated in practice, especially under conditions of legal pluralism.[210] What's more, the concept of *mens daemonica* is useful for highlighting the dangers of assuming a "continuity of self" in thinking about different ways of reckoning responsibility (Hill & Irvine, 1993, p. 1).

This chapter concludes with a discussion of justice. I will suggest that *mens daemonica* might be abstracted from local understandings of the occult to inspire an altogether new approach to reckoning wrongdoing, an approach that conceives of culpability beyond the narrow spatial and temporal terms of *mens rea*. In so doing, *mens daemonica* takes seriously the ways in which wrongdoers are also victims and victims may need to understand their suffering beyond a moment's decision-making.

Across this chapter and the next, I show how *mens rea* offers a spatially and temporally narrow view of criminal intent. As opposed to more diachronic evaluations of wrongdoing, *mens rea* condenses fault to a brief moment of conscious decision-making, a theme I explore in greater

[210] Here, I use incommensurability as "a state in which an undistorted translation cannot be produced between two or more denotational texts" (Povinelli, 2001, p. 320).

depth in the next chapter. In this chapter, my elaboration of *mens daemonica* draws attention to how *mens rea* limits fault spatially to the physical body of the wrongdoing person. The public reception of Mudau's crimes reveals that *mens rea* was not the only way of thinking about wrongdoing, intention and personhood. Indeed, even in the space of the court, the putative home of *mens rea*, this narrow view of volition was not always observed with great fidelity.

Shades of Diabolical

"It's been a long time," Solomon told me, by way of greeting. I had not visited the salon in a few weeks. "How is the research?" he asked. "Lately, I have been hearing a lot about people being forced to have sex with a *tokoloshe*," I admitted. A *tokoloshe* is an evil gremlin-like creature, who serves as a witch's familiar. I will return to this being later in the chapter. Hearing my response about the *tokoloshe*, Solomon laughed and told me, "You have been listening to too much Phalaphala FM." Operated by the South African Broadcasting Company, Phalaphala FM is the oldest Tshivenda-language radio station in South Africa. Though widely popular, young people don't think it makes for especially hip listening, as Solomon was intimating. In this case, he was referring to the radio station's late-night and weekend call-in shows during which women often called in to lament the ruination of their love lives by witchcraft.

Community members have a closer look at the *tokoloshe*.

'I killed the Tokoloshe'

Figure 5.1 Image from 8 May 2015 *Limpopo Mirror* article entitled "I killed the tokoloshe"[211]

[211] Tshikhudo, E. (2015, May 8). I killed the Tokoloshe. *Limpopo Mirror*. https://limpopomirror.co.za/articles/news/30741/2015-05-08/i-killed-the-tokoloshe . A week later, the newspaper published a letter from an irate reader about this article: "I am deeply concerned about the article and would like to take the opportunity to clarify and inform people about the so-called strange creature or tokoloshe which the article is about… The animal is neither unknown nor dangerous. The English common name for this animal is greater

Sally arrived with a tray of food. "What are you two talking about?" Solomon nodded his head in Sally's direction, "you should interview Sally. She has a *tokoloshe*." Solomon was joking, but Sally snapped back at him, "I go to church four times a week. If I had one, they would have delivered me. And it is called a 'spiritual husband,'" she added pointedly and for my benefit. "If you are a man, it is called a 'spiritual wife.'" Solomon challenged her, "Which church is this now?" then to me, "she doesn't know what she is talking about!"

When we last met Sally and Solomon in Chapter 3 the two were in a serious romantic relationship and making food-related sex jokes. At this time, two years later, they still saw each other socially in the salon and elsewhere, but they were no longer dating. Though they would occasionally exchange flirtations, their encounters were equally likely to explode into shouting matches of unclear provocation. Solomon was pointing out that Sally's church attendance was a recent phenomenon, and relatively uncharacteristic for Sally, who was at the time attempting to rehablitate her party-girl image.

Sally grabbed my arm, pulling me away from Solomon with affected disgust, "don't listen to him. He doesn't believe in god. He is an adherent of satanism." Solomon shouted after us, "church? and the *tokoloshe*? When the *tokoloshe* has been there since before church? Church! Don't tell me about church!" Solomon was all exasperation. Sally stormed back up to Solomon, "did you say the *tokoloshe* has been there since before church?" "Church! Don't talk to me about church!" Solomon repeated ruefully. Sally retorted, "'In the beginning, there was the word!'" and then louder the second time, 'In the *beginning*, there was the word. And the word was with god,'" and then surprising us all with the accurate reference, "First John!" Sally cited the verse triumphantly. Solomon responded, "and when did the bible get here? And when did *you* start reading the bible?" Sally: "'The word!' 'The word was with…'" Solomon turned on his heel to leave, throwing up a hand in her direction, "crazy!" "You sacrifice with human blood!" Sally screamed after him.

Tokoloshe or spiritual husband? At the heart of this heated exchange was a debate about how externalized evil and extra-human powers should be conceptualized. Solomon was voicing what is sometimes referred to as the "traditionalist" position (e.g. Tebbe, 2007). For him, witchcraft (*vhuloi*) is the idiom by which he understands the occult. The occult specialists he

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galago or greater bushbaby (*Otolemur crassicaudatus*), the latter name stemming from the baby-like calls the animal makes at night. In TshiVenda it is known as zelehani" (Linden, 2015).

goes to for aid are *inyangas* or *sangoma*s, variously defined as herbalists, diviners or traditional healers.[212] For Sally, who was representing the Christian position in this moment, the occult most often takes the form of demonic spirits, Satan being its apotheosis. When she seeks occult remedy, it is to the church that she goes for "deliverance" in the form of prayer.

Theirs is a debate I sidestep in this chapter. For my part, I follow others (Ashforth, 2005; Niehaus, 2013) in using "occult violence" to refer broadly to a universe of mysterious, largely unseen and potentially diabolical forces. In this chapter, "occult" gathers together the distinct fears, evildoers and remedial practices separately endorsed by Sally and Solomon in their quarrel. I justify making broad use of occult on several grounds. With due respect to Sally and Solomon, there is a great deal of slippage in references to evil in the former bantustan of Venda. The distinction between demonic evil, as it is sometimes discussed in Pentecostal or Zionist churches, and witchcraft is not always that well marked (Jeannerat, 2009; Kriel & Kirkaldy, 2009, p. 325; Mavhungu, 2012, p. 30). Both are externalized, often working through material media. While some Christians argue that to worry over witchcraft is to "fail to see the saving power of God" (Baloyi, 2014, p. 4), these terms are mutually intelligible and worried over by practicing Christians and avowed traditionalists alike. Pentecostal pastors (*vhafunzi*) assist their congregants with complaints of externalized evil that include witchcraft (Kiernan, 1997; R. A. van Dijk, 1995). Indeed, some substantiate witchcraft with reference to scripture (Commission of Inquiry into Witchcraft Violence and Ritual Murders, 1996, sec. 9). Some argue that it is possible to become a witch through an encounter with Satan.[213] In practice, then, few would assume the categorically absolute positions that Sally and Solomon did in this argument. Even these two were more flexible than this disagreement would suggest. While Solomon did see church as a suspect colonial institution, he was less sure about Satan. For her part, Sally was not above seeing an *inyanga.* That there were rumors Sally's maternal grandmother was a witch might have inspired her eschewal of witchcraft, if not her newfound piety.

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[212] *Sangomas* and *inyangas* are often described as South African traditional healers. Older ethnographic literature on occult forces in South Africa tends to describe the former as women who receive a calling by the ancestors to practice healing divination and the latter as males who have been taught the medicinal and mystical properties of magical substances (Ashforth, 2005, p. 52). However, these distinctions have become greatly muddied today. While a healer might own one label and not the other, the terms do not seem to map onto discrete domains of practice.

[213] See for example, Ashforth, A. (2018). Witchcraft. In G. Desai & A. Masquelier (Eds.), *Critical Terms for the Study of Africa*. University of Chicago Press: p. 374.

Part of the slippage in addressing the "supernatural"[214] can be explained by uncertainty about the nature of these unseen forces, an uncertainty that is vital to underscore. For my interlocutors, these categories are heuristic abstractions that do not exhaust the unpredictable and unknowable potentials of occult violence. A witch might be capable of anything. From a methodological standpoint, this uncertainty makes "the story" – conveyed through rumor, complaint, hypothetical or confession – a more useful unit of analysis from which to extrapolate what people find plausible about the occult, rather than propositional statements of belief.[215]

In public forums, it is far more common for people to talk about demons and Satan than witches, *muti* and *tokoloshe*, even when the latter is what is at stake. Part of the public commensuration of witchcraft with demonic evil might spring from state regulation of witchcraft. In post-apartheid South Africa, colonial-era law criminalizing witchcraft accusations continues to appear in judiciable statute, though it is rarely enforced.[216] Anthopologist Isak Niehaus (2010) has argued that the post-apartheid state's reluctance to prosecute witches, if not their accusers, has resulted in a general trend to banish witchcraft talk from public and especially state forums. Thus, talk of Satan and demonic spirits at events organized by state agencies has a wider semiotic scope that includes concerns over witchcraft, but gestures to them by means of a publicly acceptable religious register. Preference for religious idioms also indexes class and respectability (e.g. Mayer & Mayer, 1961; Ross, 1999).

There is a rich literature on the occult in Southern Africa.[217] In Tshivenda, some terms

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[214] "Supernatural" does not travel well. It tends to reinforce the idea of that the "natural" world, verifiable by science, is separate from otherworldly or magical realms, that cannot be accounted for. A point I am trying to draw out is that these spheres are not as distinct as they seem.

[215] This is very different than taking the occult as a coherent "system of belief." For an extended discussion on witchcraft and belief, see "On Believing, and Not Believing, In Witchcraft" In Ashforth, A. (2005). *Witchcraft, violence, and democracy in South Africa*. University of Chicago Press: pp. 111-130.For a discussion of the methodological value of stories over belief, see Ashforth, A. (2018). *The Trials of Mrs. K.: Seeking Justice in a World with Witches* (1 edition). University of Chicago Press: appendix 3.

[216] The Witchcraft Suppression Act, Act 3 of 1957 criminalizes witchcraft accusations as well as pretending to have occult powers, both of which implicate concerned South Africans who wish to protect themselves from occult violence.

[217] For a sample of this literature in South Africa, see: Ashforth, A. (2005). *Witchcraft, violence, and democracy in South Africa*. University of Chicago Press; Chavunkuka, G., Hund, J., & Mutwa, C. (Eds.). (2012). *Witchcraft Violence and the South African Law*. Protea Boekhuis; Ludsin, H. (2003). Cultural Denial: What South Africa's Treatment of Witchcraft Says for the Future of Its Customary Law; Mavhungu, K. (2012). *Witchcraft in Post-colonial Africa: Beliefs, techniques and containment strategies*. African Books Collective; *Berkeley Journal of International Law*, *21*(1), 62–110; Niehaus, I., Mohlala, E., & Shokane, K. (Eds.). (2001). *Witchcraft, Power and*

that might be used are *vhuloi* (witchcraft), *muloi* (witch, plural: *vhaloi*), and *mudzia mmbi* (a bad spirit). *Vhaloi* can be male or female. The English "demon" (*dimoni* when Tshivendalized) and "Satan" (*Sathane*) are also sometimes used. The spirits of ancestors have the potential to bring about malady or good fortune. In the pantheon of mysterious power, there is a distinction between *being* an occult evildoer and *doing* magic (Ashforth, 2005, p. 11). Take the example of witchcraft. Witches are broadly understood to have a special competency – sometimes described as hereditary, sometimes learned, sometimes accidental – in the deployment of malevolence. Those who *do* magic are often engaged in many of the same activities that preoccupy witches. Both witches and occult specialists make use of *muti* (a diverse class of material substances with special potency) or harness unseen forces to bring about effects in the world. What distinguishes them is, first, a matter of identity. A witch is an evil being, barely human, while an *inyanga* is a human who manipulates occult powers in service of their clients. And second, they can be distinguished by the nature of the effects they bring into the world. In theory, occult specialists make use of their training in order to help people overcome illness, come upon wealth, protect property, succeed in love and defend against witchcraft – objectives that are putatively benevolent. But this unique expertise is mysterious and suspect. After all, what constitutes malevolence is a matter of perspective.

Consider the *inyanga* who provides a young man with *muti* to secure the favors of a young woman who had earlier spurned him. If this intervention leads to the couple's happiness, is it sinister? Perhaps. If the woman was already married or if her family had higher aspirations for her partnership, these others might recognize her reversal as the result of witchcraft. Also at issue is what might be described as her "authentic" desire, a point I discuss later in the chapter. Men and women both fear having their desires hijacked in this manner. Occult specialists are respected and feared for the ambiguous moral valence of the powers they wield.

Because of the uncertainty surrounding occult violence, modes of spirit possession are innumerable. Nonetheless, there are certain tropes that reoccur in discussions of possession. *U*

Politics: Exploring the Occult in the South African Lowveld. Pluto Press; Niehaus, D. I. (2013). *Witchcraft and a Life in the New South Africa*. Cambridge University Press; And elsewhere on the continent, see: Geschiere, P. (1997). *The Modernity of Witchcraft: Politics and the occult in postcolonial Africa*. University of Virginia Press; Luongo, K. (2011). *Witchcraft and Colonial Rule in Kenya, 1900–1955*. Cambridge University Press; Moore, H., & Sanders, T. (Eds.). (2002). *Magical Interpretations, Material Realities: Modernity, Witchcraft and the Occult in Postcolonial Africa*. Routledge; Tebbe, N. (2007). Witchcraft and Statecraft: Liberal Democracy in Africa. *Georgetown Law Journal*, *96*, 183–236; White, L. (2000). *Speaking with Vampires: Rumor and History in Colonial Africa*. University of California Press.

loya or *u panzhilela* are general terms for bewitchment. *Maṱukwane* are zombies, dead bodies deployed to carry out labor by a witch. A witch might possess a person by tricking them into consuming *tshiliso*, a substance that will transform once ingested into a creature that can assume control over its human host. Alternatively, bewitchment can be achieved by *u doba*, picking up hair, fingernails or bodily secretions for use in targeted *muti* called *tshipfula*. Other forms of violence take the form of visitations from occult creatures such as the *tshivhimbili*, a male witch whose nighttime assaults on female victims ruin their waking lives. We will return to the *tshivimbili* later in the chapter. Though varied, each of these occult techniques troubles the boundedness and impermeability assumed by the concept of *mens rea*.

Scholars raised on scientific positivism have struggled with how to approach witchcraft as an object of knowledge. Lévy-Bruhl's 1910 *How Natives Think* famously dismissed the supernatural as an irrational belief harbored by non-Europeans with a "primitive mentality." In his canonical response, E.E. Evans-Pritchard documented how the Azande dealt with witchcraft in order to make a case for the rational quality of witchcraft belief. Since this debate, academic literature on the subject has tended toward a structural-functionalism that attempts to illustrate how witchcraft and spirit possession "work" for people and communities. In such literature, witchcraft fears reflect the social organization of society (Wilson, 1951), and accusations relieve social tension and produce legalistic order (Malinowski, 1951; Marwick, 1965). Spirit possession provides a permissible idiom for social juniors to air grievances against seniors (Boddy, 1989; Luongo, 2010) or a "means of communication between individual and society about a problem of concern" (Firth, 1967, p. 96). More recently, scholars have argued for understanding the occult as a metaphor for the untenability of life lived under colonialism or racial capitalism, an underlying reality that is at once diffuse, sinister, inexplicable and absurd (Jean Comaroff & Comaroff, 2018, 1999; Ong, 2010; Taussig, 2010 [1980]; White, 2000).

In this chapter, I approach the occult in two ways. First, I am interested in the very real terror of life lived in a world of witches, zombies, vampires and demons. Even as these horrors are embedded in local economies and politics (Geschiere, 1997; Niehaus, 2013; West, 2005), they are lived as a form of material violence that cannot be reduced to metaphor or idiom. Second, I want to understand the nature of accountability in such a world. In the context of legal ethnography, this is not a normative question of how courts of law ought to deal with threats of witchcraft (Ashforth, 2018; Chavunkuka et al., 2012; Geschiere, 2006; Hund, 2000; Mavhungu,

2000). It is rather an epistemological question about how culpability is differently conceptualized in legal doctrine and stories of the occult and how these conceptualizations jostle with one another as complaints of wrongdoing wend their way through the criminal justice system.

Mens Rea and the Embodied Limits of Fault

During my last week of fieldwork in South Africa, Magistrate Sinthumule asked me what I had learned from a year and a half of research in the Khuḓani Regional Court. Overwhelmed by my material and at a loss of how to answer, I sputtered that I had submitted an abstract to present an early version of this chapter, a paper about Mudau and spirit possession in the criminal justice system. She was a bit taken aback and perhaps also disappointed. In my observations of her court, she herself had never mentioned witchcraft. Magistrate Sinthumule was a tough, but exemplary presiding officer who took great pride in her practical and ideological custodianship of South Africa's progressive constitution. She responded, "it is true that some people talk about witchcraft to explain things that are difficult to explain, but that cannot be the basis of intention. Not for the courts. Witchcraft belief is not an excuse. If you start there, there will be no end to it."

Magistrate Sinthumule did not acknowledge witchcraft in her judicial practice. Making witchcraft accusations or acting as though one possesses occult powers are criminal offences.[218] This legislative framework for dealing with witchcraft has its roots in a fundamental tension of British indirect rule: a conflict between liberal moral sensibilities and a calculated (and arguably principled (Mantena, 2010)) tolerance of difference.[219] Post-apartheid, the question of what to do about witches and how to deal with the violence they commit is a live one. Those who suffer the violence of witches typically seek assistance on their own from *inyangas* or *sangomas*. If this intervention doesn't result in remedy, a witch might be taken to appear before the local headman or chief. In traditional courts, confession is a necessary first step toward rehabilitating the witch

[218] Witchcraft Suppression Act, Act 3 of 1957.

[219] South Africa's Witchcraft Suppression Act was modeled off of a 1736 English law which criminalized claiming that one had magical powers.

(Ashforth, 2005, pp. 77–80).[220] Occult specialists and traditional leaders serve those injured by witchcraft when law will not.

But in the last twenty years, a number of provincial and national government commissions have been established to consider the decriminalization of witchcraft accusations and defensive magic and the criminalization of harmful witchcraft practices.[221] The most recent of these efforts was a 2016 discussion paper published by the South African Law Reform Commission.[222] Provoked by calls for reform from women's rights groups, pagan rights groups, and the Traditional Healers Association, the Commission proposed draft language of a "Prohibition of Witchcraft Practices Associated with Witchcraft Beliefs Act" to replace the existing legislative framework (SALRC, 2016). The new act would criminalize "harmful acts of witchcraft," including possession.[223]

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[220] And in this, it is similar to courts of law, where guilty pleas evince remorse and can result in mitigated sentences. For a discussion of how evidentiary standards from European witch trials came to inform the laws of evidence in Euro-American courts of law, see: Ashforth, A. (2018). *The Trials of Mrs. K.: Seeking Justice in a World with Witches* (1 edition). University of Chicago Press: appendix 3; Darr, O. A. (2014). Experiments in the Courtroom: Social Dynamics and Spectacles of Proof in Early Modern English Witch Trials. *Law & Social Inquiry*, *39*(1), 152–175; Shapiro, B. J. (1991). *Beyond Reasonable Doubt and Probable Cause: Historical Perspectives on the Anglo-American Law of Evidence*. University of California Press.

[221] In 1995, what was then Northern Province (today, Limpopo) set up a Commission of Inquiry into how to regulate witchcraft. The Commission was chaired by University of Venda Professor Victor Ralushai (Commission of Inquiry into Witchcraft Violence and Ritual Murders, 1996). In 2007, the legislature of Mpumalanga Province also drafted its own law which would have criminalized the practice of witchcraft, but its efforts were stalled by protests from pagan religious rights groups and traditional healers.

[222] The South African Law Reform Commission is an independent body that advises parliament and provincial legislatures. It was established in 1973 by an act of parliament, the South African Law Reform Commission Act.

[223] "Harmful witchcraft practice" is defined as: ""the practice as understood in traditional African communities through the use of the words ukuthakatha, ukuloya, boloi ubugqwira, which thus involves the intentional or purported use of non-natural or supernatural means (whether that involves the use of physical elements or not) to threaten or to cause:

i. Death or injury to or disease or disability to any person; or

ii. Destruction or loss of or damage to property of any description; or

iii. Utilises belief and particular practices associated with harmful witchcraft to instil psychological distress or terror" (SALRC, 2016, pp. 92–93).

Traditional healing would no longer be criminalized under the law, though the new law would continue to criminalize witchcraft accusations, but a limited subset wherein "the intention is to stigmatise or cause harm (physical or psychological)" (p. 89). "Witch hunts" would also be criminalized by the new act. The discussion paper treads an interesting line with regard to the ontological status of witchcraft. While noting that witchcraft is not subject to "scientific verification," it claims witchcraft as a "cultural belief" that should be protected by the

For now, South African jurisprudence treats the occult as erroneous belief (Ludsin, 2003, p. 91). Magistrate Sinthumule's "There will be no end to it" was an expression of impatience with a defense she worried might absolve too many defendants of punishment. There is case law that recognizes this belief as possible cause for reducing a minimum sentence.[224] Magistrate Sinthumule was neither familiar with such precedent nor was she interested in citing it. In sentencing, she rarely deviated from the prescribed minimum, worried as she was that appellate courts might find ready cause for overturning her sentences. For their parts, prosecutors also demanded the statutorily prescribed minimum sentences, if not longer prison terms. In their sentencing arguments, they extoled the benefits of prison programming meant to change the way convicted people make decisions. For prosecutors and presiding officers, retributive justice did not preclude rehabilitation. Rather, because rehabilitation was staged inside prison walls, rehabilitative justice *justified* punitive forms of long-term incarceration.

Much has been written about the court as a coercive agent of the state, the last bastion of spectacular "sovereign power" (Foucault, 1978). While there is truth in this account, here I highlight how courtroom procedures are volitional procedures, actively attending to and engaging the will of participants. Signatures on police statements, medico-legal documents, and reports of prior convictions legitimate participation in an investigation as *willed*. Testimonies and pleas include verbal confirmation that evidence is given while in one's "sound and sober senses," a phrase drawn from Section 217 of the Criminal Procedure Act of 1977, which deals with the *voluntary* nature of confessions, but is applied more liberally by jurists to discuss all manner of documentary and oral evidence. Critically, what is on trial in a South African court is not simply the criminality of the accused's conduct*,* but the intentions behind those actions.

Presiding officers like Magistrate Sinthumule rely on a framework of liability shot through with a liberal conceptualization of volition, one deeply invested in autonomy, empiricism, and an ethics that localizes morality in the internal life of reasoning individuals. This framework is often reduced to the centuries-old maxim that "*actus non fit reus nisi mens sit rea*" or "the deed does not make a man guilty unless his mind is guilty." To be found guilty of most

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Constitution (p. 68). As a belief that is widely held, furthermore, the harm caused by those who profess to commit acts of witchcraft is undoubtedly real. Nevertheless, the draft language of the bill does not limit itself to those who profess to witchcraft.

[224] See State v Netshiavha 1990 (3) SACR 331 (A) (S. Afr.).

serious crimes,[225] it is necessary, though not sufficient, for the state to prove not just that criminal conduct had been committed (*actus reus*) but that it had been committed with unlawful intention (*mens rea*). Criminal conduct must be a material manifestation of an individual's free and singular will.

Mens rea is comprised by two central elements that are not always explicitly enumerated in court: 1) volition, the ability to do otherwise and 2) knowledge that the conduct was wrongful (not to say illegal or criminal). Either or both may be considered in evaluating *mens rea*, depending on the offense. Foresight about the consequences of one's conduct might be included as a third element for certain types of offenses, referred to as "specific intent" crimes. Typically, statute will explicate what is meant by *mens rea* for specific crimes.

Mens rea partakes of a liberal theory of the person as singular, bounded and self-determining. In his 1938 "Category of the Human Mind" lecture, Marcel Mauss (1985 [1935]: pp. 83-4) pointed out that "person" is a "moral fact," an important legal fiction for attributing blame to a terminal source. Legal persons are morally constituted by a (typically) stable, authentic and unique interiority. Put differently, one's will is defined by the "capacity or potential to enact a 'no,' the potential not to be determined from without, by an external force" (Ahmed, 2014, p. 10). In this way, *mens rea* domesticates intentional action to an individual's bounded body and more specifically to the mind. This notion of culpability is spatially and temporally narrow, directed at the reasoning individual and the moment of decision-making.

Once it has been established that the defendant committed the conduct, there are several legal approaches to refuting *mens rea*. These point the way to how legal epistemologies might think about culpability and the occult together. In a legal framework of liability, voluntariness is grounded in the premise that healthy individuals are self-governing. The notion of voluntariness that comes to bear on criminal conduct concerns the mechanism by which a mental choice compels physical conduct. In criminal prosecutions where conduct is not wholly voluntary, the person is partial or unhealthy for harboring corrupted volition (Foucault, 2004, p. 159). In South African courts, the legal argument of "automatism" evinces non-voluntariness in conduct by claiming that the body was vacated of free will, instead behaving like an automaton.

[225] The exception being offenses tried under strict liability, wherein intention to commit wrongdoing is not necessary to find fault. Different jurisdictions apply strict liability to different offenses, but there is usually an element of recklessness or negligence involved in the harm committed. These typically have lower punishments.

Automatisms are most often medical conditions taken to sever expected connections between body and mind, thereby leading to inauthentic expressoins of self.[226] One commonly known type of automatism is the colloquially described "insanity defense," but other forms of criminal incapacity are recognized in case law.[227] In claiming Mudau had been sleepwalking during his crimes, Mudau's lawyer attempted to lodge an automatism defense.[228] If this defense had been accepted, it would have demonstrated that Mudau was without the requisite *mens rea* and would have led to acquittal.

The means by which automatism is conjured in the courtroom is through expert diagnosis. In Venda, where the vast majority of defendants cannot afford a private attorney or their own experts, these evaluations are carried out by state-appointed professionals. Outside the court, a credentialed physician or psychiatrist assesses whether a given defendant was capable of self-control at the time of the conduct. Assessments are materialist and mechanistic, locating fault in something broken in the matter of the body. Expert evaluations are presented in court in the form of oral or written statements.

Like the vast majority of defendants in Venda, Mudau was represented by an overworked and underpaid public defender, who did not introduce medical evidence to attest to Mudau's sleepwalking. He instead relied on Mudau to make the case for himself during his testimony and reiterated the claim during his closing remarks. But Mudau was an unreliable witness, at one moment affirming his tendency to sleepwalk, while at another alluding to demons. The Acting Judge was ultimately persuaded of pre-meditation by the trophies taken from the victims and found in Mudau's room. To the Judge, the objects indexed an enduring exercise of free will more than a night-time break in self-control and he ruled that Mudau harbored the requisite criminal intent.

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[226] Beyond mental illness and sleepwalking disorders, other examples of automatisms include seizure and hypoglycemia. This is distinct from post-structuralist accounts of involuntary conduct as the inevitable and habitual effect of subjectification (Bourdieu, 1977, p. 94; Foucault, 1977, p. 135).

[227] See the above footnote for examples. This is dealt with in Sections 78 and 79 of the Criminal Procedure Act, Act No. 51 of 1977. According to Section 78(1), the accused person must be capable (a) of appreciating the wrongfulness of his or her act of omission; or (b) of acting in accordance with an appreciation (a) of the wrongfulness of his or her act or omission. Section 78(5)(c) of the Criminal Procedure Act deals with automatisms.

[228] Sleepwalking is recognized as a form of automatism under South African case law. See for example, *S v M* (CC122/2016) [2017] ZAGPPHC 869; 2018 (1) SACR 357 (GP) (5 December 2017).

At the Khuḏani Regional Court, I never observed a lawyer advance an automatism argument, though it was not uncommon for an accused to be referred to a state psychiatrist before entering a plea. The goal of this referral was to determine whether the defendant should be identified as a "state patient," a designation of mental illness that could result in the accused being declared not criminally responsible.[229] In such cases, the criminal charges are dropped and the defendant is committed to a state mental institution, a form of captivity not so dissimilar, and in some instances, indistinguishable from imprisonment.[230]

Besides actually staging witch trials,[231] there are ways the law could procedurally take the occult seriously. In jurisdictions where fears of witchcraft motivate crime, witchcraft is sometimes treated as belief capable of undergirding a sort of "cultural defense." There is no *mens rea* in instances where the criminal conduct is committed voluntarily, but the defendant lacked the awareness that the conduct was wrong, a "mistake of fact."[232] The possibilities for such a defense are delineated for each criminal charge. South Africa is unique in that its legal doctrine takes a strongly subjective view of culpability.[233] Where culpability is concerned, legal

[229] Section 78, Criminal Procedure Act, Act no. 51 of 1977 allows for withdrawal of the criminal charge for psychiatric institutionalization.

[230] I asked a defense attorney who applied to have his client considered a "state patient" about how long he would spend in state care. He laughed, "until the family complains." His remark makes light of what is a broken system. There are limited numbers of psychiatrists qualified to make the "state patient" determination so a referral often introduces delays of several months to the trial, a duration the accused spends in prison. There are an insufficient number of mental hospitals with admitting privileges. In July 2017, this situation resulted in 90 state patients in the Eastern Cape being incarcerated in prison – not a mental hospital (Furlong, 2017).

[231] Another way for the law to take witchcraft seriously would be to stage witch trials (Ashforth, 2018). Ashforth writes approvingly of how this approach was unofficially taken up by one Magistrate First Grade Damson Banda in Malawi, where the law has nothing to say about *actual* witches but criminalizes *pretending* to witchcraft and making witchcraft accusations. While presiding over a case that was putatively about defamation, Magistrate Banda conducted a witch trial at the level of subtext, giving his verdict on what to do with the known witch in the form of advice. Ashforth observes wisdom in Magistrate Banda's course of action, which managed to assuage the security concerns of community members while preventing the sort of vigilantism that results in the death of suspected witches. Recent efforts to reform South Africa's Witchcraft Suppression Act demonstrate popular support for the idea of the state prosecuting harmful forms of witchcraft (SALRC, 2016). The difficulty is in striking a balance between prosecuting real witches to the satisfaction of afflicted communities without persecuting innocent people who have been unjustly accused. Because accusations are disproportionately leveled against elderly women, human rights groups oppose the criminalization of witchcraft *per se*, though the existing legislative framework has done nothing to keep suspected witches safe from non-state violence.

[232] The mistake must concern one of the definitional elements of the crime in question.

subjectivism entails excavation of the actual thought processes of individual defendants, while legal objectivism involves judging intentions and foresight from conclusions about societal norms and universal standards. "Reasonableness" tests fall under the latter and not the former.[234]

Could witchcraft belief be a "mistake of fact"? Legal scholar Robert Seidman proposed such a course in a 1966 article in which he enjoined new post-colonial governors of Africa to refashion the common law of crime in a way that would honor "traditional African culture" (1966, p. 1135). Writing from Ghana (where the judiciary embraced an objectivist view of culpability), Seidman contended that the reasonable African man could not be the same as the reasonable European man: "Witchcraft and magic are tenable hypotheses to explain an adverse and sometimes terrifying environment in the light of limited and ill-organised factual knowledge" (p. 1137). Seidman was principally concerned with those who commit violence to protect themselves from witchcraft assault. Noting that the courts trying such cases had thus far failed to recognize defenses grounded in custom, self-defense, and provocation, Seidman argues for "mistake of fact" as a defense, which might lead to charges of murder being treated as culpable homicide. He specified that such cases should be treated differently than "ritual murders," where the only possible defense for such violence could be rooted in necessity.

In South Africa, the most recent precedent defended in this spirit was in *State v Netshiavha*, a 1987 case tried in the Supreme Court of Venda and then appealed in 1990. Netshiavha was charged with murdering his neighbor, who appeared to him in the dead of night in the shape of a giant bat. Netshiavha, his wife, relatives and several other neighbors all agreed that the neighbor was in a different form when he was killed. After being killed, he slowly returned to human form, a transformation that confirmed the neighbor's status as a witch. Netshiavha was convicted of murder in the Supreme Court of Venda, but appealed to an appellate court that instead found Netshiavha guilty of culpable homicide and sentenced him to time served. Netshiavha's subjective belief in witchcraft meant that the murder was the result of

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[233] This is especially unusual in Anglo-American jurisdictions. C.R. Snyman (2003) traces this doctrine, which most often manifests itself in appellate courts, to a South African legal textbook that was first popularized in the 1950s. The textbook drew heavily from earlier twentieth century German legal positivism that drew a strict line between objective elements of the crime (the act, the definitional elements of the crime, and the unlawfulness) and subjective elements of the crime (culpability).

[234] It has been argued that because of this epistemological orientation, South African courts have more readily accepted intoxication and provocation as defenses (J. Burchell, 2016, p. 349; Snyman, 2003).

negligence, not intention.

Netshiavha is the subject of an article by John and Jean Comaroff (2004), who extol the case as a watershed moment of decolonization, when the courts demonstrated an openness to a "pragmatics of difference" by accepting what was in effect a cultural defense.[235] Typically, liberal universalism grants such legal accommodations to cultural others on condition that they demonstrate authentic subaltern subjectivity. This is adduced through evidence of practical membership in a bounded group, whose behaviors are determined by cultural scripts (Good, 2008; Povinelli, 2002). South Africa follows in Anglo legal traditions for only sparsely entertaining "cultural defenses" (Bennett, 2010; Carstens, 2004). In *Netshiavha*, the presiding officers in both the trial court and the appellate court did not interrogate the veracity of Netshiavha's fear of witchcraft. The cultural beliefs, practices and identities of residents of former bantustans were instead taken for granted.

The Comaroffs' celebration of *Netshiavha* proved premature. Even as *Netshiavha* was originally tried in Venda, few jurists practicing in that area today know of the precedent. For her part, Magistrate Sinthumule had not heard of the case, but was adamant that it was not the sort of case law she would ever entertain. It seems that in spite of the large number of cases of public violence originating with witchcraft accusations, it is very uncommon for *Netshiavha* to be cited as case law.[236]

If not a cultural defense of mistaken fact, a second way courts might grapple with the occult, and specifically the sort of possession Mudau claimed he suffered, would be by admitting spirit possession as a sort of "supernatural automatism" that vacates a person of *mens rea*. Like insanity, the possessed person is without the requisite intention to be held accountable for their criminal conduct. But this is not the seemless commensuration that it appears to be. As I describe below, the sort of existential vulnerability implied by spirit possession is difficult to reconcile

[235] This precedent was also described in the report published by the Ralushai Commission (1996, pp. 191–192); in Niehaus, I. (2012). Witchcraft in the New South Africa: A Critical Overview of the Ralushai Commission Report. In J. Hund (Ed.), *Witchcraft Violence and the South African Law*. Protea Boekhuis: p. 100; and in Tebbe, N. (2007). Witchcraft and Statecraft: Liberal Democracy in Africa. *Georgetown Law Journal*, *96*, 183–236: pp. 212-216.

[236] This observation is based on a search of the judgments archived by the Southern African Legal Information Institute (SAFLII) based at the University of Cape Town. In a search of their database of cases, I found only one reference to *Netshiavha*, in a 1994 case, *S v Mokali and Another* ((94/94) [1994] ZASCA 180 (29 November 1994)), in which an appellate court cited the 1990 precedent in order to reduce a death sentence to 20 years imprisonment. The defendants were charged with murder in a case in which they killed someone suspected of witchcraft.

with the notion of an authentic self that must be made accountable. The potential for spirits, witches and demons to manipulate human action challenges the very basis of *mens rea*: namely that accountability can definitively be located to a terminal source. Critically, in Mudau's case and cases like it,[237] South African courts seem unwilling to countenance the notion that unseen, evil forces are capable of hijacking a human's will in this fashion. Indeed, case law rejects "the devil made me do it" as an automatism defense, seeing in such arguments a flimsy excuse for an ordinary failure to self-govern, in spite of an otherwise healthy capacity for such self-governance.[238]

Whether we frame spirit possession as "supernatural automatism" or witchcraft "belief" as mistaken fact, such legal strategies for admitting the occult's role in attenuating criminal liability do not arise in everyday court practice. Leveling witchcraft accusations and pretending to harbor "supernatural powers" are both criminalized in South Africa, but prosecutors very rarely charge anyone with these offences. Though the courts are filled with cases of neighbors burning down the homes of suspected witches, the defendants are instead charged with a variety of different offences like public violence, damage to property and intent to commit grievous bodily harm. For the audio-recorded posterity of the court, jurists either refrain from addressing occult matters or dismiss the occult as erroneous belief (Ludsin, 2003, p. 91), though not the sort of erroneous belief that should count as a cultural "mistake of fact."

With the microphones on, legal practitioners like Magistrate Sinthumule instead insist that theirs is a world without witches:

Magistrate Makhesha:	I know you are not expected to explain why she would lay a charge, but what went wrong if you both left each other in a happy mood?
Accused:	Maybe it was a bad spirit (*muya mmbi*) going around the country.
Magistrate Makhesha:	In other words, it is difficult to say why.

Here, Magistrate Makhesha was careful to clarify for the record that a response suggestive of non-human volition was meant to be strictly figurative.

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[237] See for example: Broughton, T. (2018, July 27). 'Devil made me do it,' rapist tells court. *TimesLIVE*. https://www.timeslive.co.za/news/south-africa/2018-07-27-devil-made-me-do-it-rapist-tells-court/ ; Rice, C. (2016, August 10). Man who beheaded teen gets 22 years. *IOL*. https://www.iol.co.za/news/south-africa/western-cape/man-who-beheaded-teen-gets-22-years-2055393.

[238] *State v Eadie* (196/2001) [2002] ZASCA 24 (27 March 2002): para 60.

Mistaken fact or supernatural automatism, such framings of the occult do little to shake the hegemony of legal epistemologies grounded in the liberal subject. Both defenses suggest it is possible to isolate witchcraft – either as a form of legally cognizable duress or an earnestly held "cultural belief" – from superordinate modes of discerning culpability. This brings us back to *Netshiavha*. The law's concession to the occult reduced it to a mistaken belief, one for which a man was freed from prison. But this legal remedy was not a happily-ever-after for Netshiavha. As I learned from neighbors of his, Netshiavha was never the same. After being released from prison, he became an alcoholic, troubled by nightmares and strange visions. People in the village where he lived gossiped that Netshiavha's troubles were a result of revenge, effected through evil forces sent by the family of the man he killed. While the appellate court's intervention protected Netshiavha from the heavy hand of the state, it did nothing to protect him from the scourge of witchcraft.

Even as the doctrine of *mens rea* finds its most extensive articulation in the space of the courts, this does not mean it never goes uncontested in this space, nor for that matter elsewhere in the criminal justice system. Off-record, jurists and litigants engaged in practices and discourses that gestured to alternative theories of causality, intentionality and personhood. Defendants commonly procured assistance from occult practitioners, bringing with them to court lip balm containers of potent *muti* meant to secure acquittal should their legal representatives falter. A public defense lawyer based at the Khuḓani Regional Court moonlighted as an *inyanga*, advertising his services for an "offensive charm for court matters" on his Facebook page and directly to his court-appointed clients. Interpreters, clerks and lawyers speculated about litigants and witnesses who were struck by reoccuring ailments that prevent them from testifying. In these ways, disembodied forms of intentionality impinged on the workings of the court, if not also on the persons within it.

"Mistaken Belief" in Rape Trials

Above, I have related the ways South African jurisprudence is concerned with what the self-governing accused intended. This is fundamental to establishing guilt in criminal courts. But in the Khuḓani Regional Court, the intention to commit rape was never deliberated. That is, the question of whether the accused *meant* to rape the complainant, as opposed to simply have sex with her, was not aired. Instead, what prosecutors and defendants debated was *actus reus* and the

intentions of the complainants. With the charge of rape, these "questions of fact" relate to the principle of *mens rea* in ways that are not altogether intuitive. Premised on a bounded and autonomous individual, the *mens rea* standard of criminal liability encounters practical limitations when dealing with sexual intercourse, an act that blurs the social, affective and embodied boundaries of persons. In rape trials, the victim's desires animate both *actus reus* (did the victim *in fact* withhold consent?) as well as *mens rea* (did the perpetrator *believe* he was having sex with someone who was withholding consent?). In this way, arguing that the complainant did in fact consent refutes *both actus reus* and *mens rea*. Proof of *mens rea* in rape trials lies not in the atomized decision-making of the defendant's mind, but in the defendant's intention to have sex *in defiance of the will of the victim* (Westen, 2004).

In the courtroom, non-consent has historically been translated into evidence of active and continuous resistance, an evidentiary bar that is difficult to pass for victims who may be threatened, under duress or physically overpowered. Concerned with winning cases, prosecutors favored complainants whose non-consent was manifested in evidence of obvious bodily injury or overheard screaming. Feminist scholars have documented the violence of this legal process of evincing rape complainants' intentionality inside and outside of courtrooms (Baxi, 2014; Lacey, 1998; Mulla, 2014; Smart, 1989; Temkin, 2002). Today, many jurisdictions, South Africa included, have abandoned the resistance test as a doctrine for proving non-consent,[239] though individual jurists may observe it with more or less fidelity. In the Khuḓani Regional Court, defense lawyers frequently pointed to the absence of resistance, but it was not a line of argumentation magistrates entertained.

Doctrinally, at least, *mens rea* in rape trials is adduced in the decision-making of two discrete individuals: the complainant and the accused. In practice, though, the labors of both the prosecutor and the defense circle around the complainant's intentions. The defendant's decision

[239] There is discretion enough in the criminal justice system that one might imagine the resistance test playing a tacit role in the cases that end up being tried. Police officers make choices about which cases to investigate while prosecutors make choices about which cases to prosecute. In Chapter 1, I describe how the legal standard of resistance continues to animate the work of a Trauma Centre in Thohoyandou. It is hard to know how much attrition is due to stereotyped ideas about "real rape" (Estrich, 1987). That said, the rape cases that appeared on the roll of the Khuḓani Regional Court during the time of my fieldwork reflected diverse experiences of sexual violence and nearly all resulted in conviction. Conversely, in her study of police dockets, Dee Smythe found that South African police officers were undiscriminating in the indifference they showed to investigating rape. Smythe shows that such indifference was just as likely to apply to cases where the victim suffered gratuitous bodily violence as it was to cases of acquaintance rape where such injuries were not documented.

to rape is taken for granted once it is established the sex was without consent. One way to appreciate the subtle distinction between the accused's intentionality, *actus reus* and the principle of *mens rea* in rape trials is to take a brief detour from things paranormal to the Khuḓani Regional Court in 2005, as presided over by one Magistrate Du Toit.

Magistrate Du Toit had been recommended to me by several Venda magistrates who had been his students at the University of the North (now, the University of Limpopo). He was in his mid-seventies when I met him in 2017 and still highly regarded as an expert in Venda customary law. By his own account, he was the first person to hold a doctorate on Venda law and had published numerous Afrikaans language textbooks on Venda customary law. Born on a farm in Venda, Magistrate Du Toit described his family as one of the first Afrikaner "pioneer" families to settle on the fertile banks of the Levubu River.

In his long legal career, Magistrate Du Toit wore many hats. A legal advisor to the apartheid-era Paramount Chief and President of Venda, Patrick Mphephu, a Magistrate in a number of Venda-based Regional Courts, and finally a Professor of Law at the University of the North,[240] when I met Magistrate Du Toit, he had retired to a farm where he raised and sold cattle. I first came across his name in the Thohoyandou High Court archives, where the files for cases tried by the Supreme Court of Venda were housed. His name occupied the "Assessor" field on the front page of many a brown manila folder. Assessors were recruited to advise colonial courts on local custom as part of the larger project of reconciling imperial universalism with native difference.[241]

In the sitting room of his farmhouse, Magistrate Du Toit recalled a rape case he presided over in 2005 in the Khuḓani Regional Court. His was a rare verdict in that Magistrate Du Toit acquitted the accused for lacking *mens rea*, even though he was convinced the complainant had not consented to the sex. The accused was from a family that practiced levirate marriage (when a

[240] The University of the North was later renamed the University of Limpopo.

[241] These figures were experts on customary law and were historically recruited from local African populations. In his excellent *Imperial Justice* (2013), Bonny Ibhawoh describes the role of "native assessors" in the judicial machinations of the British empire. Today, Assessors may be called to testify as expert witnesses on questions of custom, per Section 29(1B)(c), Section 34 and Section 93 of the Magistrates' Courts Act, Act 32 of 1944. Indeed, defense attorneys are enjoined to mention this option to defendants in murder trials. Accuseds standing before the Khuḓani Regional Court never elected to have an Assessor present. One of the Legal Aid Board attorneys told me that he explains the role of the Assessor to his clients in the following way, "You can invite an ordinary person to court to watch the case and advise, but the person won't have any special legal training and the magistrate will be unlikely to listen to him." Today, most jurists don't think Assessors have much of a role to play.

man dies, his brother assumes his conjugal relationship with the widow, fathering children on his dead brother's behalf).[242] The complainant in this case was the wife of the defendant's elder brother, who passed away. The couple had no children together. In accordance with the family's observation of levirate practice and organized with the support of family elders, the defendant forced himself on his brother's widow with a view to providing his dead brother with heirs. She brought a case of rape against him.

Although Magistrate Du Toit presided over the case as a representative of a hybrid Roman-Dutch and Anglo law, the Constitution enjoined him to implement customary law, a task he saw himself uniquely well-suited to accomplishing.[243] For Magistrate Du Toit, the defendant did not have the requisite intention to commit rape. Rather, by Magistrate Du Toit's estimation, the defendant saw himself fulfilling a duty to his family and especially his dead brother. As a result, Magistrate Du Toit acquitted the young man, instructing him to leave his sister-in-law alone going forward.

Magistrate Du Toit saw in the defendant's behavior a genuine misinterpretation of non-consent based on a local understanding of how marriages should be conducted. Recall that one way to successfully deny *mens rea* is to argue that one was not aware of the wrongness of some element of the crime. Recall too that such "mistakes of fact" need not be reasonable. In rape trials, then, to successfully make a "mistake of fact" defense, it must be proven that even though the complainant withheld consent, the defendant earnestly misunderstood the desires of the

[242] Magistrate Du Toit described the man as Lemba, one of the "Lost Tribe of Israel in Southern Africa" (Roux, 2003). The Lemba live in northern South Africa and southern Zimbabwe. Though Tshivenda-speaking, the Venda-Lemba assert a Jewish ancestry originating from Israel. Many Lemba simultaneously identify as Lemba and Venda as well as Jewish and Christian, attending Christian churches while observing distinct practices that bear a resemblance to Semitic practices. But levirate marriages have a history throughout Southern Africa, not just among the Lemba. The word "levirate" comes from the Latin *levir* for "husband's brother." According to colonial government ethnologist N.J. Van Warmelo who did research in Venda in the early twentieth century, this classic form was practiced in Venda, not just by Lemba (van Warmelo & Phophi, 1948, sec. 34). Sons were sometimes also asked to marry the wives of their deceased father if those wives were without children (van Warmelo & Phophi, 1948, sec. 32). There is also record of sororate marriage (van Warmelo & Phophi, 1948, sec. 36).

[243] The status of Magistrate Du Toit's court in this moment is something of an open question. If he was applying customary law, as he was empowered to by the Constitution, was it a customary court? In this scenario, the accused was fulfilling his duty to his brother and the complainant's consent was irrelevant. Or was he instead applying his understanding of custom to the accused's intention, as I have suggested here, as a "cultural defense"? In this latter scenario, the court continued to serve as a Roman-Dutch criminal court, one where cultural difference is recognized, but subordinated to legal logics.

victim or the wrongness of the act.[244] Given the subjectivist approach to culpability, the accused's belief that the victim consented *need not be reasonable* for the *mens rea* requirement to go unmet and for the accused to be acquitted (Burchell, 2016, p. 625). Elsewhere, this subjectivist approach to *mens rea* in rape trials has been described as a "rapist's charter" that draws traction from sexist assumptions that all women are masochistic, their refusal is really a way of playing coy, or that they are mentally disordered (Temkin, 2002, pp. 82–86).[245] From a defendant's perspective, adducing evidence of an unreasonable, though honest mistake about consent seems far easier than definitively establishing that the complainant consented.

In our conversation, Magistrate Du Toit gave no indication of whether he regarded this mistake of fact as reasonable or unreasonable. The subjectivist approach to culpability means that presiding officers need not trouble themselves with whether a mistake is reasonable or not; they are instead tasked with adjudging the sincerity of the mistake. Being a credentialed expert, Magistrate Du Toit was qualified to make determinations about local custom himself. Furthermore, the defendant was "rural," a resident of communal lands administered by a chief, and a speaker of "deep" Tshivenda. As a resident of a former bantustan, his status as a cultural subject was beyond reproach.

Magistrate Du Toit's decision is troubling for a variety of reasons. First, it is hard not to conclude from this verdict that non-consensual sex should not be criminalized if it is reproductive. For Magistrate Du Toit, of foremost importance was the obligation the defendant owed his deceased brother to continue his family line within the normative bounds of procreative marriage. It might be argued that many married men harbor this desire for themselves, but it is against the law to pursue this objective without the consent of your spouse.[246] Magistrate Du Toit's verdict seems to resurrect the notion of conjugal sexual entitlements. Second, as I touch on

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[244] Or in statutory rape cases, wherein both parties give their consent, the mistake of fact might concern the age of the minor.

[245] Legal scholar Jennifer Temkin (2002) was describing a 1976 precendent that influenced the way *mens rea* was interpreted in British rape trials until 2003, when it was amended by legislation. The defendants in the 1976 House of Lords case, *Director of Public Prosecutors v Morgan*, were charged with gang rape. Among the defendants included a man and three colleagues he invited to have sex with his wife. The man warned his friends that his wife would resist them because she liked to have "kinky" sex. Temkin noted of this case "The subjectivists have always insisted that a man who believes that a woman is consenting cannot be guilty of rape" (2002, p. 89). This precedent was overturned by the 2003 Sexual Offences Act.

[246] The Family Violence Act of 1993, Act 133 of 1993.

in the Introduction, the defendant's "cultural defense" promoted a reified notion of culture. Such defenses necessarily blur the lines between preference, prescription and prediction in their underlying theories of culture. Beyond the parties to the case, no assessor was called to speak on behalf of culture. Indeed, none was needed. Instead, Magistrate Du Toit brought his own expertise on local practices of levirate marriage to bear in interpreting the evidence and conferring recognition on litigants as authentic cultural subjects.

Insofar as *Netshiavha* established witchcraft as a cultural belief, we could imagine the occult being used as the basis for a mistaken fact defense in a rape trial. How might this work in practice? In Chapter 3, I described the role of deception in finding willing sexual partners. A peculiar genre of such deceptions involves men who present themselves as healing prophets capable of effecting therapy through curative sex acts. Take Granny Nemauluma, a blind woman in her mid-eighties who brought a charge of sexual assault against a neighbor. Her case played out in the Khuḓani Regional Court over the course of a year and three months. Granny Nemauluma testified that one winter afternoon, a man approached her where she sat in her yard. She did not recognize him. He claimed to be there to check her electricity meter on behalf of Eskom, the national electricity utility. He called himself Taki. After the normal greetings, she went inside to retrieve the receipts for her recent electricity payments. Granny Nemauluma described being startled when the young man from Eskom followed her inside. In Venda, the home is a place of great intimacy and it is generally considered forward or rude to enter an acquaintance's home.[247] It is especially inappropriate when the caller is of the opposite sex.

It was winter at the time and Granny Nemauluma was bundled in layers of petticoats, towels and sweaters. She had been wearing a beanie hat, and Taki pulled it off her. Startled, she asked, "Are you a person?" He replied, "I am healing you, Grandmother. I am a prophet. Your body doesn't have enough water." He began to take off her sweaters and the towel she had tied around her chest. He instructed her to stretch her legs out straight before her. She told him that she wouldn't do it. "I must heal you all over," Taki responded. Granny Nemauluma recoiled, "Where else would you heal me?" "All over." Then he commanded her to remove her undergarments. She began shouting for help. He pulled at her clothes, and she tried to fend him off. At that moment, Granny Nemauluma's grandson arrived. The grandson recognized "Taki"

[247] The same does not go for someone's yard.

immediately as a neighbor with a different name and demanded to know what was happening. The neighbor ran off.

Sexual violence conforms to social scripts (Marcus, 1992) and this one, albeit uncommon, script: a man approaches a woman, introduces himself as a healing prophet, claims he can see she is bewitched, takes her to secluded place to treat her, and penetrates her.[248] Such self-representations have purchase in a context where illness, misfortune and uncertainty about the magical arts are all pervasive. While the neighbor who assaulted Granny Nemauluma claimed her body suffered a lack of water, other complainants were told that their wombs harbored dangerous eggs or sperm that needed to be removed. In those cases that have been prosecuted, targets of this performance do not realize that the treatment includes intercourse until it is too late.[249]

South African jurisprudence treats this gambit as a unique subset of "coercive circumstances,"[250] specifically "a sexual act committed under false pretences or by fraudulent means" wherein the victim consents to something that isn't sex.[251] This deception is so common that legal textbooks in South Africa give it as a paradigmatic example of consent acquired through fraudulent means.[252] In trial courts that have dealt with such cases, non-consent is established where the complainant thought that she was agreeing to an occult intervention that would not involve sex. In cases where the complainant agrees to intercourse that will purportedly result in a therapeutic outcome, the courts would find that the complainant consented.

But let's imagine a scenario where a "prophet" is confident of his occult abilities and the

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[248] In all cases that I am aware of this, this figure is a man and his victims are women.

[249] One of the more famous cases is: *S v Nitito* (123/11) [2011] ZASCA 198 (23 November 2011). In it, one complainant learned that she had been tricked after hearing a radio bulletin about a man masquerading as a prophet (para. 12). In *State v S Lotter and Others*, a female accused described being bewitched and remedied by a second accused through sexual intercourse. He went on to convince her to participate in the murder of her parents, also in order to stave off occult malevolence ([CC43/09] 13 March 2012).

[250] See for example: *S v Mogale* (SS 36/2009) [2011] ZAGPJHC 57 (18 March 2011).

[251] See section 1(3)(c), Sexual Offences Act, Act 32 of 2007. The full text reads: "where the sexual act is committed under false pretences or by fraudulent means, including where B is led to believe by A that— "(i) B is committing such a sexual act with a particular person who is in fact a different person; or (ii) such a sexual act is something other than that act…"

[252] See for example, Anders, P. C., & Ellson, S. E. (1915). *The Criminal Law of South Africa*. W.E. Hortor & Co., Limited; and Burchell, J. (2016). *Principles of Criminal Law* (Fifth Edition). Juta and Company Ltd.

healing properties of his therapy. The "patient" agrees to treatment, not knowing it will involve penetration. Through the eyes of the courts, this is an act of non-consensual sex. But what of the accused who genuinely understands himself as a prophet and the insertion of his penis into a vagina as a palliative procedure? Following precedent, a court should take such forms of occult intervention as erroneous belief. Given the relevance of such belief to the intentions of the accused, the accused's occupation is the stuff of a mistaken fact defense. The question of the reasonableness of this belief is irrelevant to ascertaining *mens rea*. Instead, the test for determining *mens rea* would be whether the accused *honestly* holds the belief. Such a scenario has not surfaced in South Africa's courts. Instead, the men charged with such deceptions deny ever having misrepresented themselves.[253]

In spite of feminist concerns about the availability of the mistaken fact defense (Illsey, 2008; Temkin, 2002), it does not appear to be in heavy usage among those accused of rape.[254] Magistrate Du Toit's verdict aside, it is vanishingly rare for the accused's intentionality to be the basis of the defense in rape cases.[255] In cases where it was impossible to deny that sex had occurred between the accused and the complainant, the defense advocates struck out to prove that the complainant consented (not that the accused believed that the complainant consented). When I raised the possibility of a mistaken fact defense with lawyers at the Khuḓani Regional Court, they noted that there was no evidentiary difference between making such an argument and claiming that consent was actually conferred, and they preferred to make the "stronger" refutation of the criminal conduct. They also surmised that no presiding officer, least of all Magistrate Sinthumule, would accept such a far-fetched defense. Where criminal sex is concerned, courts do not devote much time to *mens rea*.

The above thought exercise – in which a practicing prophet is prosecuted for "sexual healing" – is not as improbable as it seems. South Africa is full of occult specialists who profess

[253] But to claim oneself as an honest prophet would be an admission of guilt in terms of the Witchcraft Suppression Act.

[254] A SAFLII search came up with no results. In *The Principles of Criminal Law* (2016), Jonathan Burchell's authoritative textbook used to train jurists in South Africa, the account of the subjective view of *mens rea* in rape trials is bolstered by references to cases from Canada and the United Kingdom. Not one South African precedent is cited to illustrate how a mistake of fact defense works in practice.

[255] I have not come across this in the Khuḓani Regional Court, through a SAFLII search and it doesn't appear in legal scholarship on sexual offences (e.g. Artz & Smythe, 2008b; J. Burchell, 2016).

to being able to remedy bewitchment. And as we will see, sex often features in stories of the occult, both as vectors of bewitchment and as a means of banishing occupying forces of evil.

Mens Daemonica and the Itineraries of Guilt

Mens daemonica offers an alternative to the *mens rea* of criminal law. They both answer the *why* question, but with different orientations toward intentionality (Evans-Pritchard, 1976; Mills, 2013, pp. 26–30). In Thohoyandou, the omnipresent possibility of bewitchment means that the human self is not necessarily sovereign over its body or the actions it takes. Such lapses of volition are not attributed to defects in the internal matter of the body, but to intrusions from without. "Hijacking" is an apt metaphor that helpfully evokes the relevant spatial and temporal limits of such captivity (Ashforth, 2005, p. 227). Taking *mens daemonica* as a regime for discerning guilt, fault can be disembodied, resting neither in the physical human frame nor the bounded mind, but ranging as a sort of traveling relation. As we will see, the path through South Africa's criminal justice system involves encounters with the concept of *mens daemonica*, even as it draws from a different notion of personhood than that which animates *mens rea.*

As Mudau's defense reveals, automatism is one way legal practitioners attempted to reconcile *mens rea* with spirit possession in the courtroom. But bewitchment as bewitchment (as opposed to bewitchment as sleepwalking or insanity) is not so easily reconciled with *mens rea*. Where people live under the threat of spirit possession, assigning blame is complicated by the fact that transgressions can have a complex etiology impossible to circumscribe in the intentions of one individual. The possibility of spirit possession arises from a different configuration of persons, intentional action, and relations than that presupposed by *mens rea* (see also Englund, 1996; Mills, 2013).

Existential vulnerability is a necessary corollary of the relational composition of personhood (Ashforth, 2005, p. 86; Englund, 1996).[256] Relational personhood is not given, so much as it is a normative accomplishment. At stake in projects of personhood is the completion of meaningful social actions, actions that are exposed to the conscious and unconscious incursions of others (Mills, 2013). Such actions might include crafting a flawless pot (Evans-Pritchard, 1976 [1937]), passing a driver's test or preparing a pot of *vhuswa* with the right

[256] Indeed, the etymology of "precarity" can be traced through ideas of radical dependency (Peacock, 2016).

consistency.[257] Mundane activities of this sort are central to maintaining everyday relationships with family, friends, patrons and clients. What might be described as "supernatural forces" intervene in the successful completion of such actions in ways that undermine or advance projects of personhood. Put differently, the occult is an aporia of relational personhood "before which the subject's own identity begins to dissolve" (Bubandt, 2014, p. 6).

Even as the court rejected Mudau's story, his account – rehearsed in the local newspaper and on radio broadcasts – effectively adduced *mens daemonica* for a broader public of Thohoyandou residents. On the one hand, the nature of his crimes (not just the number of his victims, but their ages) was suggestive of occult involvement. On the other hand, the mechanism by which he claimed to be possessed seemed plausible. Sleep loomed large in how he explained his behavior. Among those for whom witchcraft is an everyday matter of life and death, it is well known that during sleep, one occupies a heightened state of vulnerability to outside forces.[258] In sleep, one can access the wisdom of ancestors, but is also helpless against assault by or conscription with malevolent forces. In contrast to Euro-American psychoanalytic traditions, dreams are not the gurgling assemblages of the unconscious, but a ground for reconfiguring relationships with the human and the non-human world. As such, they have important consequences for projects of relational personhood, a point I return to later in the chapter. Mudau's story taps into tropes of witchcraft possession. Since his incarceration, rumors continue to circulate about Mudau's possession. "I have a friend who is a guard in Matatshe Prison," one police officer told me, a year after Mudau had been imprisoned there. "He told me that Mudau is still moving around his cell at night. He is still having those demons."

Assigning blame in a world of occult forces is complicated by the fact that transgressions can have a complex etiology impossible to circumscribe in the intentions of one individual. Not long after Mudau was arrested, I was seated in court with a number of lawyers and clerks one morning between hearings. One of the defense advocates began relating how the ambitions of a talented cousin had been thwarted shortly after he was bewitched. The story provoked a lengthy

[257] *Vhuswa* is the Tshivenda term for a cornmeal porridge that is a staple in much of Sub-Saharan Africa. It is referred to as "pap" by English speakers in South Africa.

[258] Sleep is an important feature of witchcraft violence in South Africa (Ashforth, 2005, p. 225; Berglund, 1976, p. 98). Nils Bubandt (2014, Chapter 5) provides a lengthy discussion on sleep and witchcraft violation in his account of witchcraft in Indonesia, as does Adam Ashforth (2018) in Malawi, who describes a "porousness between sleeping and waking realities."

exchange between Tshepo, a Court Preparation Officer, and me. With Mudau in mind, I asked Tshepo about the role of witchcraft in criminal activity. He agreed that it was a big problem. He offered the following troubling hypothetical, "A man rapes my daughter. I take him to court, but he is acquitted and then set free. Then I," he makes an explanatory hand motion, as though he is feeling the contours of a ball, a pantomime of *muti* preparation, "and then he rapes many girls. Then they come and kill him."

I asked for clarification, "you perform witchcraft to make him rape *more*?"

"Yes! That way he will get caught, and they will kill him."

"What? With *vimba*?"

"Yes! *Vimba*! The man will be," he whistled and ran a finger across his neck. Earlier, Tshepo and I had a lengthy discussion of the merits of *vimba*. *Vimba*, literally translated as "help me" or "get him," was a synecdoche for "mob justice." That June and July, *vimba* received a great deal of coverage in the local newspapers in the wake of a spat of vigilante killings. Tshepo, like many others, was of the opinion that "*vimba* really works."

I then asked about Mudau. "Do you remember the Univen rapist and murderer? The one who killed those five women last winter? What you're saying reminds me of what he was saying."

"Yes, that's right! The way he committed those crimes. It has got to be something else." The conversation was cut short by a Warrant Officer's announcement that we should all rise for Magistrate Makhesha.

In her work on traditional courts in rural KwaZulu-Natal, Sindiso Mnisi Weeks (2017) contends that behind any one grievance, there is one or many other grievances that emerge during the dispute resolution process. Tshepo's hypothetical points to a slightly different interpretation. His is an argument about the diffuse quality of culpability. The use of *muti* in his example served as a mode of redress, and indeed it was not uncommon for healers to be consulted to this end. Tshepo framed the father's approach to redress as a response to the failure of the courts to provide justice, a critique that was shared more broadly with the South African public (Buur & Jensen, 2004; Oomen, 2004; Steinberg, 2000), but was all the more striking for coming from a public official. Spirit possession was a means to secure the ultimate retribution, in this example, the death of the culprit identified by the father. In Tshepo's hypothetical, the status of the violence committed under the thrall of witchcraft was ambivalent: at once criminal, but

also retributive, a form of punishment sought by the aggrieved father on behalf of his daughter and enacted through the bodies of other girls. And what if the families of the new victims consult their own *inyanga* and deploy their own forms of retribution? Recall Magistrate Sinthumule's qualms with admitting the occult into legal reasoning: "If you start there, there will be no end to it."

That projects of relational personhood depend on relations with others exposes them to frustration and even catastrophe. This is not always a result of malice. A witch does not always know that they are a witch. Witchcraft is not always the result of conscious practice. *Mens daemonica* brings into the same frame the unpredictability of occult violence and the essential vulnerability of the person, and in so doing, reveals that witchcraft is not merely a "simplistic" story told to impute responsibility (c.f. Tilly, 2008, pp. 23–24). Nor is it an arboreal chain of ever more distal causes of harm (c.f. Evans-Pritchard, 1976). Rather, the occult culpability implied by *mens daemonica* is rhizomatic (Deleuze & Guattari, 1987), a messy multiplicity of open and dynamic connections.

Was Mudau a perpetrator, a victim or both? *Mens daemonica* implies a dark intimacy with the occult that does not necessarily absolve the afflicted of blame, a point made clear by Tshepo's hypothetical. Even as many understood Mudau to be the victim of an occult assault, Mudau's bail proceedings saw huge crowds turn out to demand he be denied bail. His sentencing to the maximum penalty under South African law, life imprisonment, was widely celebrated. Even among those who agreed that Mudau was under the sway of sinister forces, he was seen to be at fault for entertaining such forces. Some argued that the murders might be a form of punishment *against Mudau*, a curse laid on him for harms he had committed against another woman, with the intended result of the curse being Mudau's imprisonment or death by mob attack. The authenticity of his will while committing these actions was irrelevant.

In this way, *mens daemonica* is distinguished from what I have been calling a "supernatural automatism," the notion of which is still invested in the distinction between mind and body. Automatism as legal defense implies that the defendant has suffered a temporary break from what is his or her authentic and singular will, a will contained by the body. If the boundaries of intentional action lie beyond the corporeal edges of the human form, *mens daemonica* is always a latent potentiality. The point is not that humans are always interfering with humans through the indeterminate medium of witchcraft; the point is that human

intentionality is not always and possibly never strictly human. This uncertainty is inimical to the workings of the courts, tasked with fabricating a singular and definitive narrative of fault from evidence. By contrast, uncertainty around the machinations of occult interference should be thought of as practiced *unknowing*, an ignorance that is also an assertion of one's innocence (Last, 1981; McNeill, 2011).

In a world of occult violence, the lines between victim and perpetrator, between being *bewitched* and *being a witch* are always indistinct.[259] This has important implications for assigning blame, resolving disputes and reconciling parties. Even as occult violence accrues through the conscious and unconscious contributions of subjects, culpability doesn't reside with single individuals in any straightforward way. Rather, it is distributed, extending through humans, objects and unseen forces, changing as it moves, in ways that are impossible to map. As a regime for theorizing fault, then, *mens daemonica* cautions against treating perpetrators of violence as strictly malicious wrongdoers. Instead, perpetrators are embedded in thickets of sociality within larger moral economies, connected to and alienated from others in ways that also make them victims.

Occult Coercion

I have argued that during the criminal prosecution of rape, legal practitioners devote little attention to what the accused willed. In practice, criminal liability is located narrowly in the intentions of the complainant, not the accused who is criminally liable. Insofar as *mens daemonica* implies volitional vulnerability, both partners may succumb to otherworldly hijacking. Just as a cursed banknote can cause someone to commit a criminal act of sex, so too can magic transform refusal into consent and even enthusiastic "wanting it" (MacKinnon, 2005, p. 244). In Chapter 3, I delve into the notion of relational personhood and its achievement by way of marriage, conjugal sexual relations and reproduction. The occult is every bit a part of this broader moral landscape of sexuality, kinship and belonging (see also Niehaus, 2002). In this section, I show that supernatural coercion is a feared form of sexual violation and social estrangement, even when its victims do not necessarily experience it as such. Occult coercion points to forms of sexual wrongdoing that are distinctly disembodied.

[259] See also Ashforth, A. (2000). *Madumo, a man bewitched*. University of Chicago Press.

The ways in which sexual desires can be manufactured, amplified and manipulated are innumerable. *Muti* can be used to cultivate love, promote fertility or secure the fidelity of someone who is otherwise likely to stray. Public walls and electricity polls are crowded with paper flyers advertising such services. Where there is jealousy, there is witchcraft, and jealousy is at home in sexual relations as surely as love is. Curses and spells also bring about polluting sex acts between siblings or between children and parents. They can block phone calls from ardant young suitors proposing love.

The figure of the *tshivhimbili* is illustrative of the complexity that characterizes the intersection of *mens daemonica*, sex and projects of personhood. As the above exchange between Sally and Solomon suggests, Christians prefer "*munna wa muya*," or spiritual husband, over "*tshivhimbili*." The *tshivhimbili* is by most accounts a male witch who makes use of occult forces to have sex with women in their sleep.[260] He does so by entering her dreams or manifesting himself as a *tokoloshe*, an evil gremlin-like creature, who enters the woman's physical bed to have sex with her sleeping body. In the waking world, the *tshivhimbili*'s nighttime visitations sow seeds of discord between the woman and her real husband with the inevitable result being divorce. Sometimes the husband of the afflicted woman will feel the presence of another being in the bed with them, a *tokoloshe* or a snake. Or if the *tshivhimbili*'s target is without a boyfriend or husband, the unfortunate woman loses interest in human men. In this way, the *tshivhimbili* thwarts the prospects of full personhood for the woman, who is presumably single and childless and will remain so after he has targeted her.

How is culpability discerned in such cases? *U vhimbila* (the nominalized verb form of *tshivhimbili*) provides a window into how people attempt to commensurate *mens daemonica* and *mens rea* outside state sites of criminal justice. Joseph and Esther were a pastor and wife team who operated Living Light Worship Church, a small Pentecostal church in a village just outside of Thohoyandou. While they had big aspirations for their church, their congregants' contributions were not such that either could quit their day job, which was teaching at an agricultural sciences secondary school. I attended their church over several weekends and interviewed them both to discuss sexual violence amongst their congregation. They emphasized

[260] In most accounts, the *tshivhimbili* is reckoned to be a man and his victim is female (see also Mavhungu, 2012, p. 32). A number of interlocutors noted that the *tshivhimbili* could be a woman, but that it was less common. Tshivenda dictionaries specify a male agent (Van Warmelo, 1989, p. 432). There are similar "incubus" figures throughout the world.

the problem of otherworldly forms of sexual coercion, of which the *tshivhimbili* was a part. "Most parishioners are shy about it, but they come seeking prayers. The *tokoloshe* causes many problems. It is when we start praying for them, that the spirit will reveal itself as a spiritual husband. Then we will ask her about what happens when she sleeps."

Pastor Joseph had proven successful at driving out such malign spirits. He held irregular Tuesday prayer meetings at his church, attended by congregants with especially vexing problems, who needed more personalized attention and prayer from the pastor. Overwhelmingly women, some suffered some form of possession. During one such prayer meeting, a dozen women and several children slowly filled the plastic chairs in the front of the church. After Pastor Joseph had me introduce myself to the audience, I took a seat in the front row. Gospel music played loudly from two large speakers on either side of the stage. Most of the women were on their feet, dancing and clapping their hands along with the music. After some introductory welcomes, Pastor Joseph invited congregants who were suffering misfortunes to step forward. As Pastor Joseph and Esther moved through the crowd, some mentioned problems with jobs, some with cheating husbands. Pastor Joseph laid his hands on their heads, praying for each one. He arrived at a woman in her fifties. When he placed his hands on her head, she convulsed violently, knees shuddering. Esther came to assist Pastor Joseph in propping up the woman and drawing her to the stage at the front of the church. "It is a bad spirit!" Pastor Joseph diagnosed. "The holy spirit has seen the truth." The woman knelt on a mat on the stage, speaking in tongues. Pastor Joseph demanded that the spirit reveal itself: "confess!" Through the afflicted woman, the spirit spoke, "I am a spiritual husband. This woman is mine." The woman was thrashing up and down now. With Esther gripping her arms from behind, Pastor Joseph placed both hands on her head and commanded the spirit to leave the woman. The woman continued to writhe and shout. Pastor Joseph and Esther were joined by the other congregants in shouting over and over again, "get out from her! get out from her!" The woman collapsed, apparently rid of the spirit that had possessed her.

Later, Pastor Joseph would explain that he had first been approached by the possessed woman's husband. They had been experiencing marital problems that could not be accounted for. Pastor Joseph told me he worried a great deal about the *tshivhimbili*. "They ruin their victims lives," he explained. "The wife will no longer want to sleep with her husband. Then there is chaos sown in the family. Always, there will be fighting, they will be hurting each other. The

woman will refuse sex because in her dreams, she will be having sex and will be satisfied like normal." Recall that there are legislative protections of the right to refuse sex within marriage. For Pastor Joseph and some of his congregants, overindulgence of this right is evidence that one is the victim of a sinister, otherworldly transgression, a dream-state courtship that has the potential to ruin one's waking marriage and destroy one's human family.

I often raised the question of whether what the *tshivhimbili* does amounts to rape. There was no definitive consensus. Human rights activists, including several TVEP employees, were most insistent on the point that *u vhimbila* was the same as rape. But others were less certain. One *inyanga* noted that the *tshivhimbili* does not commit rape because he does not leave behind evidence that can be detected by the police. For this woman, rape was defined as an object of criminal justice and legal epistemology. It does not exist outside state forms of regulation and protection. Still others disagreed with her empirical assessment. They insisted that the *tshivhimbili* ejaculates, leaving wetness on his victim's body and in her bed sheets. There was further speculation about the possibility that *u vhimbila* might result in HIV infection (see also Ashforth 2018).

Joseph was insistent that the *tshivhimbili*'s escapades did *not* amount to rape. "It is not rape because the person will be enjoying it too. It does not fall under rape." Esther intervened and asked, "what about children?" "There," he conceded, "yes, with children, *that* is rape." For Joseph and Esther, children represented a moral limit: it couldn't matter if a child enjoyed having sex with the *tshivhimbili*. "Does it happen often? That the *tshivhimbili* goes after children?" Esther agreed. "Yes, you can see it physically, that they are no longer virgins. The mother will say of her child, 'but no one was with her. I am with the child the whole day and I know there was no one with her.' You will ask the child and the child won't tell you who did it. It is then that we pray for them." Pastor Joseph added, "We had someone in church who was in grade 4 or 5 who had a spiritual husband. A *tokoloshe* was sleeping with her. The teachers could see the child was abused, but the child said there was no one. The child came to the church and we prayed and the *tokoloshe* left her."

I asked the obvious question: "how can you know the difference between a child who is being abused by her uncle, for example, but being threatened not to speak, versus one who has a *tokoloshe*." Esther's reply was evasive. "If the child is being abused at home, she will live in fear. Some children will tell their mothers that their step-father is abusing them. But because of

poverty, such mothers will tell their children that they are lying because she needs her husband's financial support. If the abuser is a relative, they will say 'it is our culture' – don't talk about it. They want to protect the person, not the child. A woman who is married to a second husband will be protecting her husband."

Not sure that I had been understood, I tried again, "Yes, there are those cases of rape. But how can you tell when it is a spiritual husband and when it is the husband of the mother?" Again, Esther was evasive, "if there is a step-father, living with a woman and her child, that is real. The man staying with the child of the late husband, that is real. You can also tell in the classroom. Those who experience rape do not speak. Like during Life Orientation, when you talk about sex, they will look down. You can tell as a teacher." Amidst her other duties, Esther was responsible for teaching Life Orientation, a standard part of public school curriculum that included modules on coping with emotions, self-confidence, managing relations, as well as sex education. "Also, there will be boys who are molested by grown women who give them money and they will say they are tired. These children will be lonely. You could call a learner over and ask her what is happening, but she won't admit it. They don't want to admit anything or to talk about it. It is because of poverty, because girls enter relations of unwanted sex because of poverty and because sugar daddies offer them money." I continued to press the issue, "but 'being tired' – is that not also similar to what happens with the victim of the *tshivhimbili*?"

Somewhat impatient, Pastor Joseph interrupted the conversation Esther and I were having about corporeal violence. He pointed at their church, which we could see from where we were seated in their family yard. "When we pray for them, the holy spirit reveals those problems for what they are. Then, after counseling, you tell them what happened during prayer. There must be a confession before deliverance," by which he meant that it is the bad spirit confessing and being delivered from the person possessed. During "counseling," Pastor Joseph would inform the congregant of what the spirit had divulged. Rape stories, like any other, conform to genres (Mulla, 2014). In her answer, Esther was rehearsing explanatory tropes of how young children come to be sexually abused and how others come to learn about it. For his part, Joseph distinguished victims of the crime of rape from victims of occult forms of sexual coercion through recourse to divine intervention, perpetrator confession (be it a human or demon) and sometimes a combination of the two.

Pastor Joseph might have read in my face that his response troubled me. He continued,

"Things of the spirit are more complicated and more dangerous. They destroy the good life of people. A physical rape – maybe a woman experiences that once. But spiritual husbands, that is everyday. The problem with a spiritual husband is that you enjoy it. But when you are possessed, you will never get the good things that were meant for you." It was clear that Pastor Joseph saw occult coercion as an exceptional sort of violence for its capacity to unravel the fabric of the conjugal home. Pastor Joseph saw the home as a life-affirming site for projects of personhood, the sanctity of which is threatened from without. His comment about rape being experienced once suggests he is less attuned to how more mundane forms of domestic violence also imperil safety, well-being and self-fulfillment.

Many theorists worry that occult violence serves as an authorized idiom by which victims may disclose otherwise stigmatized "real" violations and thus obscure very human crimes (Luongo, 2010; Reis, 2013). Alternatively, scholars view reports of occult coercion as thinly veiled "cries for help" that precipitate intervention in potentially abusive, but nonetheless normative relationships between humans (for example, a spousal relationship or that between a step-father and step-child) (Booth, 1992; Roberts, 2005). Along these lines, some see in reports of occult coercion "weapons of the weak" (Scott, 1987). Niehaus, for example, contends that the sexuality of evil occasions an inversion of everyday power relations: "In witchcraft, socially subordinate persons perpetrated [occult acts of] sexual violence as an act of revenge against those who were more influential than they" (Niehaus, 2002, p. 284).

Sitting in churches where congregants were exorcised of such demons, listening to pastors and traditional healers discuss the frequency of diabolically secured consent, I worried that tales of the *tshivhimbili* or other spirits discouraged more mundane help-seeking and in so doing enabled embodied abuses between people. I was especially worried about rumors of children who were visited by spiritual husbands. Adam Ashforth (2018) deals with this topic as it relates to children at length. He offers a biomedical and social account for why Malawian children testified to consorting with witches while they slept. He points out that young children are prone to "night terrors." Given the stories that adults around them tell about witches, it is no wonder their dreams take this particular shape. In so doing, Ashforth assures his readers that children's reports of late-night consorting with demons are not real. But to Pastor Joseph's point, taking seriously witchcraft as a form of violence, as those who worry about witches do, means recognizing *u tshimbila* as a superlative form of assault in its own right. To claim that one's child

has been visited by a spiritual husband or a *tshivhimbili* is in no way a diminution of abuse suffered.

Pastor Joseph's comments get at one of the more insidious elements of such spirits. Namely, that his victims are happy, content and sexually satisfied after their dream encounters. *Willing* has been so thoroughly externalized in these cases that the afflicted has no wish to be released from the *tshivimbili's* hold. Indeed, it is possible for the dreamlovers to have dream children, wholly obviating the need for projects of personhood in the waking world. But the pleasures the *tshivhimbili* offers are ephemeral, and the *tshivhimbili's* inamorata suffers without the true satisfaction that comes from marriage with a human husband. *Mens daemonica* highlights the limits of the notions of willing and autonomy in a world with others, some of whom do terrible things. In such instances of occult coercion, the occult is neither the cause of wrongdoing nor the punishment for it, but the plane upon which a transgression can occur. The occult makes it difficult to discern whether *any* given act of sex is consensual sex.

Imagine fitful nights, stirred by the irregular rasping sounds of what might just be tree branches scraping against a corrugated metal roof in the wind, but could also be the start of a ruinous visit from a witch's familiar. It is deeply horrifying to live with the menace of witchcraft, knowing that one's self is exposed to the onslaught of sinister others. Philosopher Jay Bernstein (2015, p. 127) offers some insights into what he describes as an experience of dispossession in which "the *mineness* of my body is undone, and further, that this has something to do with a *border* violation." For Bernstein, the erosion of confidence in the boundary between self and other produces "categorical helplessness" (p. 120) and a totalizing distrust in the world. But Bernstein is not commenting on the everyday possibility of occult coercion. Writing from the United States, Bernstein is remarking on what makes for paradigmatic moral injury: a "violative undoing of the bounded self [that] constitutes *a central aspect of rape*" (p. 12, emphasis mine).

Mens daemonica is not so incomprehensible to liberal theories of rape after all. Bernstein contends that after rape, it becomes impossible not to recognize one's radical dependence on the world, a dependence that rape reveals for what it really is: "existential helplessness" and vulnerability (2015, p. 13). Even among South African jurists who vigorously rejected witchcraft and demonic possession as backward superstition, the impact of the criminal act of rape was described in terms that bear striking resonance with the undoing of self implied by *mens daemonica*: "Sexual violence... is the single greatest threat to the self-determination of South

African women"[261] and "an invasion of the most private and intimate zone of a woman [that] strikes at the core of her personhood and dignity."[262] In the Khuḓani Regional Court, this language was included in the scripted portion of guilty verdicts read at the end of rape trials. Rape can be framed as "a fate worse than death," as it often is in statute and case law, because it makes it hard to believe in the world as imagined through the lens of liberalism.

Rape is a uniquely moral injury because it exposes the dependent nature of human existence. In this way, the dark side of relational personhood, radical vulnerability, is the unworlding nightmare of the liberal subject. Autonomy turns out to be a fragile conceit. I draw this comparison not to diminish the gravity with which we understand rape. On the contrary, bringing rape and occult coercion into the same frame brings one a little closer to understanding the existential uncertainty and fear that arises in a world with witches, a world where violence is arbitrary, diffuse and while not obviously material in its operation, devastatingly material in its effect. What's more it raises questions about how to justly deal with such machinations of power in sex, a point I return to in the conclusion of this chapter.

Exorcising Spirits, Liberating the Soul

It was October 2017, and we were piling out of the Thohoyandou Victim Empowerment Programme's (TVEP) van into the church parking lot. The three NGO officials and I were there to attend a public Victim-Offender Dialog, organized by the Department of Correctional Services in consultation with TVEP and other local NGOs. "Are you afraid?" I did not immediately understand what the young social worker meant by her question. Then I recalled her warnings before we got into the van. She had described Victim Offender Dialogs as precarious acts of diplomacy. "If the community is not prepared properly, they will attack all those prisoners. And the people protecting them. It is very dangerous." This social worker was worried about *vimba*.

In this final ethnographic moment, I will bring you into the space of a Pentecostal church which hosted a Victim Offender Dialog. Victim Offender Dialogs are state functions, funded and organized by the Department of Correctional Services. The Dialogs bring together victims and

[261] *Carmichle v Minister of Safety and Security (Centre for Applied Legal Intervening)* 2001 (4) SA 938 (CC) (2002 (1) SACR 79) para 45. This case and the one noted *Vilakazi v The State* (2008) were routinely cited by magistrates in the Khuḓani Regional Court in their verdicts.

[262] *Vilakazi v The State* (576/07) [2008] ZASCA 87 (2 September 2008) para 1.

offenders to give a public accounting of the crime followed by the offender's apology and the victim's forgiveness. They are the culmination of meetings held in private between imprisoned persons, victims, and prison social workers. These meetings are a part of the parole process, but the public Dialogs are held when funding is available for them and with parolees and victims who agreed to participate. The goal of these Dialogs is to "to return the prisoners back to the people they have offended to live in harmony."[263] They are attended by family members of victims and offenders, neighbors, traditional leaders, government officials, journalists, and interested community members. In the former bantustan of Venda, these Dialogs are routinely staged in Pentecostal churches. Neither strictly "customary," nor strictly "legal," such Dialogs occasion a moment where those who enact criminal justice attempt to reconcile *mens daemonica* and *mens rea*.

Figure 5.2 Corrections officials distribute pillows made by convicted offenders at the Victim Offender Dialog, photo taken by author

In spite of the social worker's fears of *vimba*, participants and audience members were calmly taking their seats in the Pentecostal church that was hosting the event. Under the theme of "Forgiveness Liberates the Soul," this Dialog had drawn an audience of roughly 300 family members, neighbors, traditional leaders, government officials, journalists, and interested community members. Also in attendance were 100 prisoners in orange jumpsuits, chaperoned to the event by a cadre of uniformed warrant officers. Before this assembly, victims told harrowing stories of violence and loss. The audience responded with gasps, and less often, laughter.

[263] In this way, the Dialogs fit uncomfortably within the legacy of South Africa's Truth and Reconciliation Commission, offering restorative justice as an afterthought to more punitive forms of redress, namely long-term incarceration. Kelly Gillespie (2008, p. 69) has referred to similar moralistic programming run out of the Department of Correctional Services as "superficial idealism" that justifies mass incarceration.

Dignitaries seated in front snapped cell phone photos of victim-offender dyads, rapidly posted and circulated on social media or saved for official documentations of the event.

If entry into the criminal justice system was marked by concerns with *mens rea*, exit from it was marked by a celebration of the withdrawal of what I have been calling *mens daemonica*. Throughout the day, rehabilitation and absolution were spoken of in Pentecostal idioms and criminality as the work of Satan, evil spirits, and demons. In addition to a lengthy welcome given by the Bishop of the hosting church, the day was presided over by two Corrections officials who were both also pastors. Corrections officials liberally cited scripture throughout the event. Chapter 5 of the Book of Mark, the most detailed biblical reference to demonic possession, was read aloud. In it, Jesus comes upon a man possessed by an "unclean spirit" and banishes the spirits from him. This is the passage best known for the verse: "My name is Legion: for we are many." The role of church, as it was discussed during the Dialog, was not in morally rehabilitating the immortal soul of the sinner – an idea that is present in mainline Protestant churches. Instead, evil was described as invasive and external, banished by way of church attendance, prayer and God's love.

For their part, prisoners and parolees declared that their crimes had been committed while possessed by evil spirits and that finding church had purged such spirits from them. A few mentioned their attendance at prison trainings and workshops or consultations with prison social workers, but these stories of rehabilitation were roundly rebuked by the Acting Commissioner of the Department of Correctional Services, who had travelled almost 1900 kilometers from the Western Cape to attend the Dialog. At the close of the day, she had this to say to the audience:

> The offenders cannot come here and present trophies. Those men are telling us about the programs they have gone through, the trophies. The victims cannot hear that. I, as a victim, have to turn my scars into stars. The perpetrator is just saying 'I love these social workers.' We don't want to hear that 'you have turned me into the great person I am today.'

It is remarkable that such a prominent figure in the Department of Corrections Services would chide offenders for publicly commending the department on its rehabilitative work. Her comments stood in stark contrast to the Department's policy papers, which claim rehabilitation of prisoners as its central mission. She worried that such an account undermined the goal of reintegrating offenders into hometowns and villages among neighbors who still remembered

what they did and had not forgiven. The possibility of *vimba* loomed large, even at that state-organized event.

Mens rea and liberal ideas of personhood are not simply procedural strategies for assigning blame. Rather, they shape ideologies of justice. In this moment, the Acting Commissioner of the Department of Correctional Services refused a *mens rea* account of rehabilitation. The doctrine of *mens rea* faults the individual for willfully making a bad decision. This model of rehabilitation treats offenders as moral (if errant) persons, possessing autonomous wills that are nevertheless rational and therefore can *learn* to self-legislate. South Africa's post-apartheid carceral turn has been moralized by policymakers who point to the rehabilitative work of prison-based life skills workshops, psychosocial counseling and vocational training (Alexander, 2016; Gillespie, 2008; Super, 2011). The goal of such programs is to teach them to think differently (e.g. Jordaan et al., 2018), a practice of rehabilitation that devolves from a particular theory of the criminal person as one who harbors an internal mental fault namely, *mens rea*. And yet rhetoric about the transformative potential of prison programming did not feature at the Victim Offender Dialog. Indeed, it was actively rejected. For those who would become neighbors to parolees, there was skeptism toward the idea that state social services could effect a transformation of *mens rea*.

It is a far more straightforward thing to purge a person of invasive malign forces. Powerful *inyangas* withdraw the evils powers from witches who confess. The Holy Spirit works through pastors to exorcise possessed congregants. Exorcising an offender of *mens daemonica*, on the other hand, was at once more plausible and politic for Corrections officials trying to pitch parolees as persons ready to return to their homes.

Mens daemonica involved victims in the process of reintegration in a way that *mens rea* could not. Inside the church, before a cadre of pastors and prophets, victims were explicitly asked to draw from their faith and demonstrate grace. They were given a platform to enact righteousness and devotion as Christians. And the rewards for their forgiveness were transcendent. As one Corrections official put it: "Because you have come here and forgiven, …God will share with you what is on His plate." For some victims, the intrusion of occult malevolence explained not just their damaged relationships with offenders, but a lifetime of suffering since. One victim-offender dyad stood out. To loud gasps from the audience, the offender, the brother of the victim, told the story of how he raped his sister repeatedly when she

was 14 years old, and he, 16. When the now adult sister stood before the audience, she laid blame on the devil:

> I cannot blame him. But I felt the pain and that I was nothing in this life. I thank God for grace. When I say that I don't blame him, I mean things happen for a reason. The devil wanted to destroy my destiny. The two of us, we were intelligent. We knew a lot at school. The devil destroyed our destiny so we can't blame my brother. It was not the only wrong in my life. It was very miserable. I am a mother of three and I have lived through a lot and if I started explaining it, it would take all day. It was the devil…The devil was preventing me from being what I was supposed to be, but now I am an evangelist. [To her brother:] When you get out of prison, we are going far…When you blame the sinner, the devil is behind that person. To my parents and mother, whatever is within your heart which is not good, in the name of Jesus, you are the first who must show unity. When he comes out, don't be biased. We will forgive him. … We will work as evangelists together.

Assigning blame reconfigures relationships (Tilly, 2008, pp. 12–13). For this woman and her brother, evoking demons laid the foundation for repairing their family. She hoped that through church work, they could together confront the devil, who was ultimately responsible for ruining both their lives.

Perhaps more importantly, though, *mens daemonica*, as a mode of reckoning blame, conferred transcendental meaning to her experience of rape. When she said "things happen for a reason," she was not deploying that idiomatic expression that suggests one calamity sets off a chain of events with undiscernable, but fortuitous results. Rather, she was ascribing demonic intentionality to a life of misfortune and thwarted promise. She located her childhood experience of rape at the hands of her brother as an important milestone in that sequence of events. What followed was violence, misery, abandonment. In her speech, she claimed her brother's parole and her own act of forgiveness as a radical shift in the course of what was a bleak and unhappy existence. Demonic violence was a central "plot device" for organizing the story of her life.[264] For being limited to the moment of decision-making, *mens rea* would have done nothing to support the structure of her diachronic narrative.

[264] Drawing from the work of philosopher Paul Ricœur, anthropologist Cheryl Mattingly (1994) takes up the notion of *emplotment* to explain how actors, during the course of everyday actions, confer coherent meaning to a succession of events. Emplotment is a useful way of thinking about the sister's public act of forgiveness.

Conclusion

This chapter explores spirit possession as a window into an ethical regime of culpability other than *mens rea*, the legal standard for attributing "mental fault." *Mens daemonica* gets mobilized, not just in churches and public gathering spots like salons, but in spaces of state authority, including in courtrooms. In Department of Correctional Service's Victim Offender Dialogs, *mens daemonica* was the preferred means of framing parolees' culpability before an audience of victims and neighbors. Through ethnographic inquiry into relational personhood, this chapter explores the limits of the mind/body dualism in reckoning blameworthiness for sexual wrongdoing. In so doing, it argues that *mens rea* is a spatially narrow way of conceptualizing blame. In the next chapter, I turn to biographic evaluations of fault that arise in response to the sexual violence of university students. The attention paid to life experience on university campuses and traditional courts suggest that *mens rea* is temporally circumscribed as well.

Evans-Pritchard's (1937) *Witchcraft, Oracles and Magic Among the Azande* is a canonical text in anthropology. By outlining the internal logic of witchcraft belief in exquisite detail, Evans-Pritchard is often seen as dealing a definitive blow to earlier anthropological scholarship that cast doubt on the capacity of non-Europeans for rational thought. But a corollary lesson of *Witchcraft, Oracles and Magic* is often lost,

> that *all* popular, everyday human thought is profoundly inconsistent and imbued with nonlogical sentiments…that all popular systems of thought, including our own Western thinking, work for people because they are inconsistent, compartmentalized, and imbued with circular thinking" (Beidelman, 1997, p. 583).

In concluding, I want to draw attention to the inconsistencies of *mens rea*. In a moment when incarceration is ascendant as a strategy of governance there is need to radically rethink how we assign blame and enable justice.

I have argued that the prevalence of witchcraft in Venda makes it a place where wrongdoing has a complex etiology that confounds the task of tracking ill will to a single terminus. But this is not a provincial observation. Rather, transgression is always, everywhere overdetermined by factors economic, political and social, by forces seen and unseen, by willful and willed subjects, by histories of colonialism and "economies of abandonment" (Povinelli, 2011). *Mens daemonica* neither denies violence nor demands its accounting in individual bodies. The possibility of spirit possession loosens an act of wrongdoing from the wrongdoer, implicating powers beyond the space-time of the moment of transgression. In this way, *mens*

daemonica suggests new ways of thinking about fault as distributed but also intentional, while suggesting a theory of justice in which wrongdoers are also victims and victims reconcile with wrongdoers in meaningful narratives of redemption. Might approaching wrongdoers as if they might also be victims bring us closer toward a horizon of justice? What sorts of remedy become possible when responsibility is presumed to be qualified, distributed and relational? *Mens daemonica* might help us think toward a more equitable, compassionate and redemptive regime for redressing wrongdoing.

CHAPTER 6 – Promising Biographies: Adjudicating Sexual Wrongdoing on Campus

The University of Venda sprawls across a campus of cobblestone walks, grassy lawns and redbrick lecture halls in the heart of Thohoyandou. Disciplinary inquiries at Univen, as it is affectionately called, are held at its Legal Services offices, located in a low concrete building perched atop a steep hill overlooking the university's other administrative buildings. The only building at the end of a pockmarked dirt road one car's width, Legal Services bore no signage declaring its work. Seen from below, students slowly picking their way up the hill to disciplinary hearings were unmistakeable. One did not come upon Legal Services by accident.

On an overcast morning in November, I sat with a Legal Services officer in his crowded office. Advocate Mmbara was responsible for organizing disciplinary proceedings between students. A tall man with a ready smile, he was referred to as Musanda by coworkers, in amiable deference to his surname, which marked him as a member of a royal clan. In his narrow office, stacks of paper crowded his desk and bulged out of a metal filing cabinet behind him. When a dispute between students warranted serious intervention, the matter was referred to Advocate Mmbara's office.

I had come to inquire about how Univen handled complaints of sexual violence between students. "Does the University have an official policy for dealing with sexual misconduct?" I asked. "We don't, unfortunately. Those only apply to regional courts. Here, we don't deal with criminals; we deal with students. Every University has its own disciplinary code, but you are not forced to follow it. You see them as people who don't have criminal minds. They have educational desires." In these remarks, Advocate Mmbara was channeling "the student," as a discursive object. Of course, Univen students commit crimes. Advocate Mmbara was well aware of the infamous Mashudu Mudau, the Univen honors student I discussed in the last chapter, who claimed spirits had possessed him when he raped and murdered five girls and women. He had also been personally involved in shepherding two complaints of sexual misconduct through the campus disciplinary process. I would learn that in his brief and vague response, Advocate Mmbara had revealed a great deal about how sexual wrongdoing is addressed on campus. A criminal defense lawyer by training, Advocate Mmbara juxtaposed the university's activities

with those of the regional court. To my mind, his use of "criminal minds" seemed like a reference to *mens rea*, the legal doctrine for evaluating culpability. And the figure of "the criminal" loomed large in how he made sense of sexual misconduct on campus. In the absence of an explicit policy toward sexual violence, Univen channeled grievances about sex through their normal disciplinary apparatus, all the while weighing these complaints against the criminal category of rape.

This chapter presents three women's stories of sexual wrongdoing in order to get at the question of how imaginaries of criminal justice shape the way sexual misconduct is handled on Univen's campus. I show that discipline on campus was enacted through select criminal procedures, standards and conventions. These stories reveal that this form of criminal disciplining offered little recourse for sexual wrongs that did not fit neatly into the criminal category of "rape." What's more, for those who counted themselves victims of rape, the disciplinary process did nothing to satisfy their need for justice. Instead, their complaints were treated as of apiece with minor infractions like cheating.

I situate university disciplinary inquiries within a larger political economy of higher learning in South Africa, by which I mean how tertiary schooling is funded and what sort of investment it is imagined to be. These economies leave women who are enrolled at universities structurally vulnerable to sexual obligation of the sort described in Chapter 3. In South Africa, as elsewhere, to be a university student is to be indebted. In an attempt to stay on top of tuition, fees, room and board, students rely on one another. When resources flow from male students to female students, there is a presumption of sexual indebtedness. The intimacies that arise from such exchanges are often reluctant, if not non-consensual. Unwanted sex that happens in the context of such exchanges is often not called "rape," not by those who acquiesce to it, nor by those who might arbitrate such complaints.

Moreover, disciplinary officers like Advocate Mmbara extended solicitude to male university students accused of sexual misconduct on the grounds that the latter were promising aspirants to the elusive goals of full-time employment and family provider. This made students categorically distinct from "the criminal," a discursive figure at the center of a "crisis of masculinity," the likes of which is said to fuel South Africa's "rape crisis" (e.g. L. Walker, 2005a). Young men at Univen were overwhelmingly Venda in ethnicity. Hailing from poor and working class backgrounds, they defied tremendous odds to complete secondary school and

secure university admission. They achieved their successes through the material investments of others, and as they proceeded through schooling, they carried with them the hopes of families, friends and neighbors. The leniency granted male university students was motivated by a sense that they were occupants of political, economic and social peripheries on their way to securing a promising future. They were expected to one day distribute the rewards of this future, and in so doing, inhabit an idealized masculinity.

Analytically, this chapter foregrounds a working tension between diachronic notions of moral personhood and the synchronic idea of *mens rea*. The latter is ostensibly vital to determining criminal intent and thus legal culpability. In Chapter 5, I discussed *mens rea* alongside concerns of spirit possession to show how *mens rea* posits a *spatially* parochial theory of volition, circumscribed by the physical frame of the body. Here, I consider *mens rea* alongside moral personhood to argue that the former is likewise *temporally* parochial. *Mens rea* asks jurists to deliberate on a moment of decision-making at the expense of a more biographic evaluation of the person. Moral personhood, by contrast, is constituted by the sum of meaningful social actions taken across a life course. This chapter argues that even though Univen's disciplinary process was conducted through criminal conventions of law, *mens rea* was subordinated to moral personhood as a standard for ascertaining guilt in cases involving sex.

In many ways, what I document here is hardly unique to the University of Venda. Around the world, one can find numerous high-profile stories of university students who commit sexual violence and escape institutional punishment.[265] In the critical coverage of such cases, what lenient disciplinarians see as promise is cast as privilege, a multitudinous privilege comprised of whiteness, wealth and masculinity. The promise of these defendants, if we can call it that, is to reproduce privilege. But such an elision is not as possible at the University of Venda. Founded in 1982 to serve the needs of the former bantustan of Venda, Univen is a nationally ranked tertiary institution, but it is by no means elite. Students accused of sexual misconduct have male privilege, but they do not have racial or class privilege. Unlike internationally renowned universities in South Africa like the University of the Witwatersrand or the University of Cape

[265] See for example, Gollom, M. (2016, June 8). *"Six months? Really?": Legal experts weigh in on sentence in Stanford sex assault case*. CBC. https://www.cbc.ca/news/world/stanford-sexual-assault-case-brock-turner-sentence-judge-1.3620631; Izadi, E. (2015, May 19). Columbia student protesting campus rape carries mattress during commencement. *Washington Post*; Walker, P. (2007, April 12). Rape case revealed prejudice against the privileged. *The Guardian*. https://www.theguardian.com/news/blog/2007/apr/12/dukeuniversity.

Town, the student body at Univen is black and continues to have an enrolment drawn from the Venda minority ethnic group. In the villages Univen students call home, school attainment is low and most adults do not have stable full-time employment. The promise of these students – far more fragile, far more uncertain – is social mobility. In both instances, the promised future comes at the expense of the justice young women seek.

Ndiafhi

I met Ndiafhi when she was a Masters student at the University of Venda. By then, she had lived on campus for four years, but the story she related to me was about her arrival on campus. As a new student, Ndiafhi had not been allocated housing. She had grown up in her grandmother's home in a village more than 100 kilometers away with limited public transport, too far to commute daily. Her mother worked in Gauteng, but her wages were already stretched to maintain Ndiafhi's grandmother and younger sibilings. Bursaries that cover the cost of higher education, room and board are available through the Department of Education, Science and Technology and through private entities, but they are limited in number and difficult to get. Ndiafhi had applied for such funding, but had not yet received news about whether she would be awarded one for her studies. While she waited for news about her bursary, she was on her own, without lodging or the funds to pay for everyday expenses.

Unable to afford accommodation off campus, Ndiafhi took to spending brief stints with friends. It was at this stage that she met Ronewa, a third year student who offered to assist Ndiafhi in navigating the university's bureaucracy. When it became clear that Ndiafhi had not been awarded a state scholarship with which to cover her everyday living expenses, Ronewa offered to accommodate her. Ndiafhi had been incredulous. "You? Accommodate me?" she asked him. "Yes, you will stay with me." Ndiafhi was suspicious. She told me she gave him a look that telegraphed *heh*? A look that Ronewa registered. He responded with a laugh and said, "no, don't worry. It is nothing like that. It is just me, accommodating you." Ndiafhi figured that this might be a short-term solution. As a third year student, Ronewa had been allocated a single room. His family was not affluent, but he received a bursary and his family was able to cover his basic necessities. If she lived with him, she wouldn't have to worry about rent or meals. Ndiafhi agreed to stay with Ronewa.

For those first few weeks, Ronewa had been true to his word, and they had shared the cramped room platonically. At the end of the month, Ronewa had received his allowance from his parents and asked Ndiafhi to come up with a list of groceries that he would get for them. She hadn't thought much of it at the time, but when he left for ShopRite with her list, he told her, "Don't worry, baby. I will take care of you." He came back with cake. She hadn't requested it, but he remembered that she liked it. That night, he made a great show of preparing her dinner and presenting her with the cake. Over dessert, he kissed her. After a few weeks of kissing, they started having sex. From then on, by all appearances, they became a cohabiting couple. Ndiafhi's friends referred to Ronewa as her man, and they lived like this for two years.

From the beginning, it wasn't what Ndiafhi wanted. She had been afraid to reject that first kiss. She imagined the practical consequences. No doubt, Ronewa would become angry, perhaps kick her out of his room. Or worse. It was already after dark. Where would she go that night? And the one after? She worried about her safety in the surrounding neighborhood, which had a reputation for violent crime. Being kicked out of Ronewa's room posed two immediate threats to her security: exposure to the sinister vagaries of nighttime Thohoyandou and material deprivations, the withdrawal of a comfortable bed, a shower, laundry, regular meals. In the long-term, such insecurity would imperil her chances at completing her bachelors. Putting aside these anxieties, Ndiafhi also felt genuinely grateful to Ronewa. The dinner and cake had been a sweet gesture. He *was* paying for her meals and accommodation. He had oriented her on campus, introduced her to his circle of friends. She would never have chosen him, but she felt a sense of debt.

It was a sense of debt Ronewa did nothing to diminish. Ronewa often reminded Ndiafhi of what she "owed" him. The relationship became emotionally and physically abusive. Ronewa was jealous of the attention Ndiafhi paid other men. On one occasion, he slapped her when he thought she was cheating on him with a classmate. On another, he slapped her when she wanted to go home to visit her relatives. "Don't forget," he told her, "You belong to me." She didn't tell anyone when the relationship became abusive, hiding it from her family and friends. Reporting him would imperil her free accommodation, her free meals, "all the benefits that came with the relationship."

When Ndiafhi became a third year student, she was finally assigned her own room on campus and awarded a bursary. She promptly moved out and ended her relationship with

Ronewa. With the bursary, she could finally afford the cost of room and board. It looked abrupt to her friends, who had assumed her relationship with Ronewa was of her own choosing, but she had always been a reluctant partner. Ndiafhi's story is not uncommon. As I will show, it offers a window into how a broader political economy structures more mundane forms of sexual harm on campus.

The number of students enrolled in tertiary schools in South Africa has more than doubled since 1994. This is a result of a surge of enrolment among the country's non-white populations, for whom many of the formal hurdles to higher education were removed. This increased enrolment is in keeping with the redistributive goals the post-apartheid government had for tertiary institutions imagined as gateways to upward mobility. But between 2000 and 2011, the share of state funding that comprised total university income declined from 49% to 40% (Hodes, 2017, p. 140). As a result of this shortfall, universities increased tuition and fees (Bronkhorst & Michael, 2017; Hodes, 2017). The government provides means-tested scholarships and loans directly to university students, but the budget allocated for the purpose had not kept apace with the rising costs of schooling and the increased needs of ever-larger student bodies. Universities that administer state funding are often late in distributing student stipends. Private banks did not issue low-interest student loans in South Africa.

Poor students at under-resourced universities are disproportionately affected by these funding issues. Those who can afford to do so seek well-maintained, privately managed facilities near campus. For the vast majority who cannot afford this option, university-subsidized dormitories are an alternative that is in short supply. A 2010 ministerial commission on the subject found that only 1 in 5 students at South African universities were officially allocated space in university dorms and that only 5% of first-year students, those who are the least savvy about how life at university works, were housed in university residences.

Students have responded by subletting space. As a result, university residence halls are overcrowded. As of 2017, Univen had residential space for some 2,200 students in on-campus dormitories and another 1,400 students could be accommodated in university-accredited housing off-campus. Some 10,000 students went without official housing. Additional residences were under construction, but progress was slow and halting, with contractors abandoning work mid-

project due to under-budgeting.[266] At Univen, dormitory rooms meant for two occupants often housed twice that. While "squatting," as it was described, was technically against Univen school policy, hostel blocks meant to house 63 students ended up with as many as 200 students living inside (Govender, 2017). In the face of serious housing scarcity, students lucky enough to be allocated a room in a university residence hall subdivided it, renting out floor space for R400 a month (around $33) to others.

Beginning in October 2015, students mobilized around the hashtag #FeesMustFall, organizing to stop the rising costs of tuition and housing shortages.[267] Ignited by an announced 10% increase in tuition at the University of the Witwatersrand, the movement has received much attention for its demands for fee-free education. In a few short weeks, #FeesMustFall succeeded at compelling then-President Jacob Zuma to agree that the next year would see a zero percent increase of school fees. After forming a commission to consider the matter, Zuma announced in December 2017 that at the beginning of 2018 free higher education would be provided to all new first year students from families earning less than R350,000 per year (roughly $26,000 a year).[268] For this reason, some declared that the movement's "…demands were largely won" (Bond, 2016, p. 193). The government committed to resolving nationwide student housing shortages through "public-private partnerships," a favorite policy prescription in post-apartheid South Africa. Less a novel policy resolution than established practice, outsourcing the construction of new student residences had not improved the quantity or quality of housing stock before Zuma's December 2017 announcement, nor has it been effective since.[269]

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[266] Building began in 2015, but work was still incomplete as of 2019. Delays were due in part to contractors abandoning the project due to underbudgeting.

[267] From 2015 through 2020 (the time of this writing), college campuses in South Africa were literally and figuratively ablaze with debates about the capacity of higher education to address lingering social equalities. This movement often worked alongside demands to decolonize the university by dismantling colonial iconography and Eurocentric curricula that continued to celebrate empire on campus.

[268] No policy responses were suggested to address existing student debt of more than R9 billion, nor was there mention of decolonizing curricula (Mphalele, 2019).

[269] In February 2019, the parliamentary Committee on Higher Education and Training was convened to hear concerns from student leaders about housing. The response from Committee chairperson Connie September was to reiterate: "Regarding accommodation, the committee believes that the private sector should play a meaningful role to complement what government is doing to provide funding" (Mphalele, 2019). See also: Ntshingila, O. (2016). #Outsourcingmustfall through the eyes of workers. In S. Booysen, L. Hewlett, G. Godsell, R. Chikane, S. Mpofu-Walsh, O. Ntshingila, R. Lepere, S. Mofoko, A. Nase, & D. Everatt (Eds.), *Fees Must Fall: Student Revolt, Decolonisation and Governance in South Africa* (pp. 74–84). Wits University Press.

#FeesMustFall has illuminated the ways South Africa's institutions of higher education continue to perpetuate racial and income inequality. In coverage of the movement, housing tends to be subordinated to those complaints more legible as issues of class and race (e.g. enrolment demographics, tuition hikes and scholarship availability). Attending to the movement's unmet demands for housing security on campus helps clarify one way universities structure sexual violence between students.

College campuses in South Africa gather together young people from different economic backgrounds and charge them sums that only a fraction can pay out of pocket. Tertiary institutions are often situated in urban areas where the cost of living is expensive. For these reasons, university settings are places of indebtedness that implicate students and their families in relations of obligation (Zaloom, 2019). But it also makes universities places of credit. Less well-off students draw from the resources of better-situated peers. These transfers do not necessarily happen across class. Even as credit has become increasingly financialized in the last two decades, the poor continue to be lenders of first resort to the poor (James, 2014). In Chapter 3, I described the role of economic transaction in legitimating sexual relationships. When material aid moves from male students to female students, there is often a presumption of sexual indebtedness. This predicament was so common that counselors at Univen's Student Counseling and Career Development Unit had a name for it: "forced consensual" relationships.

Like many of her classmates, Ndiafhi came to Univen from a municipality with an adult unemployment rate of 37.1% and an average annual household income of R51,429 ($3393). This is almost half the national average income of R103,204.[270] Ndiafhi's arrival at university already defied the odds of the under-resourced and overburdened fee-free schools where she was prepared, a public school system where only one in five students successfully completed secondary school and fewer than 5% of all adults over the age of 20 went on to earn a tertiary qualification.[271] With every hope that a university degree was a first step toward escaping the

[270] These statistics are based on the 2011 census and aggregated by Statistics South Africa: http://www.statssa.gov.za/?page_id=964. To my knowledge, more recent municipal-level data are not yet available. However, research on economic class stratification at the provincial level suggests that Limpopo has the smallest percentage of middle class and affluent, as compared with other provinces (Zizzamia et al., 2019, p. 30). Post-apartheid, income inequality in South Africa continues to be organized around race (Seekings & Nattrass, 2016)

[271] Also, based on the 2011 census and aggregated by Statistics South Africa: http://www.statssa.gov.za/?page_id=964. 21.8% of those over the age of 20 had earned their matric, and only 4.4% of all those over the age of 20 had a tertiary qualification.

tyranny of these statistics, Ndiafhi arrived on campus to confront an array of new expenses with little in her pockets.

Economic disparities between students are less marked at Univen than at elite institutions of higher learning elsewhere in South Africa. Nevertheless, there are those who had more luck than Ndiafhi in calling upon extended families to shoulder the R600 or so a month it would take to live in inexpensive accommodation off-campus. In the first weeks of registration, before meeting Ronewa, Ndiafhi had requested assistance from better-situated friends to house her for brief stints while she waited for news of her bursary. Ronewa likewise was in a financially more secure position than Ndiafhi. Not only did he receive a small monthly allowance from his family, but as a more senior student, he was the recipient of his own bursary and had been allocated one of a few single on-campus dorm rooms. This relatively fortunate position enabled him to offer Ndiafhi room and board. Suspicious of what might come of accepting this offer, but having no other alternative means to continue her studies, Ndiafhi moved in with Ronewa.

A possible legal interpretation of this moment is that Ronewa's economic status vis-à-vis Ndiafhi constituted coercive circumstances, making the entirety of their sexual relationship rape. This is not the way Ndiafhi herself framed it. In the Introduce, I described the process by which indeterminate grievances "ripen" into recognizable injuries as one of "naming, blaming and claiming" (Felstiner et al., 1980). Using this heuristic, Ndiafhi neither "named" what happened to her as rape nor did she "blame" Ronewa. With Ronewa, she "felt she had to." Not because "symbolic violence" had robbed her of her capacity to imagine herself as the bearer of rights. Ndiafhi was an honors student of social work and had been trained in lay counseling on matters of gendered violence. She readily assessed Ronewa's non-sexual physical violence as abusive and had sought support from friends around this violence. But where her sexual relationship was concerned, Ndiafhi resisted localizing her unhappiness in the person of Ronewa. Nor did she situate her relationship in terms of gendered power relations. She instead insisted that she had wished she had received her bursary earlier. Ronewa wasn't to blame. Univen was. The government student financial aid scheme was. After all, it was difficult decisions like Ndiafhi's that enabled both institutions to claim they were serving the educational aims of social mobility.

I began fieldwork by asking about "unwanted sex (*vhudzekani ndisa funi*)." In attempting to get at sexual transgression beyond "rape" (*reipa, binya* or *tshipha*), "unwanted sex" was an admittedly awkward formulation that was often met with confusion. But these blundering

attempts at translation did occasion several responses along the lines of: "do you mean what happens to young women at Univen?" Stories such as Ndiafhi's were circulated not to raise awareness about campus rape culture or to stoke anxieties that the campus was the sort of place where "anything could happen to a student" (Doyle, 2015, p. 16), but to highlight the reluctant intimacies arising from structural problems that the university had not solved. Poor and working-class university women are structurally vulnerable to agreeing to sex they don't particularly want to have in order to manage the high fees and living expenses characteristic of higher education. This is sex that they themselves do not consider rape. For Ndiafhi, the solution to the problem of this "unwanted sex" was not to better equip the criminal justice system to recognize and punish instances of "forced consensual" sex between economically unequal dyads. Rather, the solution lay in thinking about how housing reforms might intervene in economies of intimacy on campus. Doing so would reveal the ways #FeesMustFall is a pressing matter of gender-based violence.

At Univen, this form of sexual wrongdoing was a "public secret" (Baxi, 2014; Mookherjee, 2006)[272] that largely went unaddressed by the university's administration.[273] It was not linked to larger structural problems of higher education, but neither did it trouble those who mediated and adjudicated disputes between individual students on campus. Instead, conventions from criminal law were applied in order to categorize student behavior as sexual misconduct. In the remainder of this chapter, I turn to the Maintenance and Legal Services departments at Univen, where complaints of sexual violence were lodged with the university.

Mulalo

Mulalo was a second year student at Univen. In late January, she was registered at Univen, but didn't have anywhere to live. As we saw with Ndiafhi's story, it was a common predicament among Univen students. When Mulalo learned from a friend that a space had become available in his dorm room, she jumped at the opportunity. The room was meant for two people, but had been outfitted by the students to accommodate three with the addition of a slim foam mattress on

[272] Pratiksha Baxi's *Public Secrets of Law* and Nayanika Mookherjee's "'Remembering to Forget'" piece make use of Michael Taussig's (1999) notion of "public secrecy" in order to explore how sexual violence, its legal and political afterlives do and do not get spoken about.

[273] An exception is Univen's office of counseling. Though understaffed, they would field survivors in need of counseling, often after being referred by Maintenance officials who did not otherwise act on the complaints.

the floor and a curtain subdividing the space. Mulalo would occupy the third spot. On her first night in the dorm room, she met the second roommate, Rolivhuwa. That night, the three roommates discussed the practicalities of sharing the space. Arrayed around a television, eating from styrofoam takeaway containers, the atmosphere was relaxed and non-confrontational. It was not the only two-person room to lodge three students in that residence hall, and splitting rent three ways would reduce expenses for them all. That night, they slept in the dorm room without incident.

The next day, the third roommate, Mulalo's friend, left campus to spend the weekend at his family's home nearby, leaving Mulalo and Rolivhuwa to occupy their newly shared quarters. Alone in the room together, he started making advances. She denied him, but he persisted, becoming more physically aggressive. Taking a different tack, Mulalo told him, "I don't trust you and I don't trust myself. Go find condoms." She had not said it aloud, but the suggestion about condoms was meant to remind Rolivhuwa about the possibility of HIV infection. He agreed to find condoms, leaving her alone in the room, but locking her inside. With Rolivhuwa gone, Mulalo made her escape by leaping out the window. Having grown suspicious of her request, Rolivhuwa returned just in time to see her jump. The dorm room was on the second story and Mulalo was not badly injured from the fall.

Security is privatized on Univen's campus. Limping, Mulalo found a campus security guard. She explained the situation and why she felt in danger. In the Khuḓani Regional Court, where this case was eventaully heard, Mulalo described the response of the guard: "At first, he was not accepting what I was saying. He kept asking me, 'but you were sharing a room with him?'" Eventually, she managed to convince the guard to assist her, but by the time they got to the dorm room, Rolivhuwa was gone. Mulalo was taken to the local hospital where she received care for minor injuries from her fall.

Having reported the case to campus security, Mulalo opened a formal complaint with "Maintenance,"[274] a campus analog to the police and the frontline of Univen's disciplinary apparatus. Maintenance was tasked with investigating student misconduct and informally settling

[274] Maintenance handles a variety of issues related to student well-being. I am interested in those officials and practices that sit under the "Department of Protection Services," which is broadly tasked with the safety and security of students. I use "Maintenance" throughout because neither students nor administrators refer to these activities by anything else. The typical sort of dispute that Maintenance settles on its own involves fighting. In citing interviews with officials who fall under Maintenance I am intentionally vague about their job titles. There are few full-time employees involved in the work of the department and describing job titles would risk disclosing their identities.

quarrels between students. They did so from Univen's Facilities and Maintenance buildings, a rectangular complex entered on foot through a revolving-door turnstile and by car through a boom gate. Adjacent to the boom gate, Maintenance's Control Room registered disputes between students and produced evidence of wrongdoing.[275] In the front office of the Control Room, security guards asked students to reduce their complaints into writing or communicated with security guards posted elsewhere on campus via two-way radio. In the back office, accessed only by fingerprint scan, private contractors observed real-time footage, projected onto 16 flat screen monitors, from nearly 300 cameras posted throughout campus. University officials were very proud of this system. The cameras surveilled lecture halls, the library, cafeterias, and public spaces inside residence halls. When the cameras detected motion, they swung wildly to capture it, recording students as they stepped into and out of frame. Using CCTV footage, Maintenance officials were able to identify those responsible for stealing tablets, cell phones and even desktop computers from the university's computer labs. Maintenance's reliance on this system had important implications for the dress of sexual wrongdoing on campus. After all, evidence procedurally conditions the recognition of injury (L. S. Jain, 2006). The cameras were not posted in dorm rooms. Nor did they have night vision to monitor unlit public areas after dark. As such, sexual wrongdoing that happened in private spaces occupies a blind spot of the CCTV system. It would not have aided Mulalo in establishing her account.[276]

In parallel with her efforts to press the case through the university's disciplinary process, Mulalo sought assistance through the criminal justice system. I first came upon her case in the latter forum, where I observed the criminal trial against Rolivhuwa in the Khuḓani Regional Court during the second half of 2017. I would later learn more about the incident during the course of interviews with Univen staff involved in the campus disciplinary process.

Mulalo's ordeal fits within broader tropes of sexual violence on campus. Univen administrators came to expect rumors and complaints of rape following January registration, when incoming freshmen scrambled to find lodging on or near campus. The archetypal situation, recounted on the university's radio station and between students and staff, circulated as allegory:

[275] Maintenance officials lamented that they could not collect DNA or take fingerprints.

[276] What happened between Rolivhuwa and Mulalo assault preceded the installation of the cameras, but because of when and where the assault and Mulalo's escape took place, it would not have been recorded by Univen's cameras.

male upperclassmen ensnare newly enrolled female students into coercive sexual situations with the promise of accommodation. Ndaifhi's tale also fits within this genre.

Mulalo's complaint to Maintenance was taken seriously enough for it to be escalated to Legal Services, where a disciplinary committee was organized to hold an inquiry. If Maintenance was an analog of the police, the university's Legal Services, comprised of practicing lawyers, operated disciplinary committees like courts of law. Disciplinary inquiries happen in the Legal Services building around a long wooden table. The process is remarkably similar to a criminal trial. There were three parties to a disciplinary committee (often referred to simply as "the DC"): a "chairperson" who adjudicated the way a judge would; a "pro forma prosecutor," who drew up and attempted to prove the charges against the respondent on behalf of the complainant; and the respondent, who was entitled to legal representation. The disciplinary committee produced charges, plea statements and admissions; called witnesses to give evidence and cross-examination; issued verdicts; and produced documentary and audio-recordings in English.

But Mulalo stopped communicating with Legal Services, and an inquiry was never held. Before the first scheduled hearing, Mulalo was caught cheating on an exam. Her cheating had come to the attention of Legal Services as a matter of disciplinary concern. Advocate Mmbara, who was representing her interests in the grievance proceedings against Rolivhuwa, had been the one to confront Mulalo about her cheating. He told me that he assured her that they wouldn't trouble her about the cheating, that the important matter was the sexual offense, but "she decided to disappear." After that conversation, she stopped answering his calls and wouldn't show up to any meetings.

Knowing that Mulalo was pushing forward with criminal charges, Advocate Mmbara reasoned that if Rolivhuwa was convicted in the Khuḓani Regional Court, the university disciplinary process would be moot anyway. Advocate Mmbara ceded the matter to the relevant state jurisdiction. But in the Khuḓani Regional Court, Rolivhuwa's lawyer claimed that the reason a university disciplinary committee never met to discuss the matter was because they believed the case had no merit. If Univen had surmised that Mulalo's accusations were baseless, the lawyer argued, surely Magistrate Sinthumule should come to the same conclusion. Rolivhuwa's lawyer attempted to leverage the work of an alternative jurisdiction in the space of the court as evidence. I did not get the opportunity to see how the court adjudicated Mulalo's

case. It was transferred to the Thohoyandou High Court as part of an administrative reallocation of cases meant to reduce the Khuḓani Regional Court's backlog.

Univen has no prescribed punishment for sexual misconduct. In conversations with Legal Services officials, they said temporary suspension or expulsion was likely, but it would depend on the nature of the assault. The punishment for cheating can lead to suspension for a period of 18 to 24 months. That Mulalo was confronted with a charge of cheating during her university grievance process is suggestive of the symmetry with which minor student misconduct and sexual wrongdoing were treated. Had Mulalo proceeded with her complaint against Rolivhuwa through the university process, there is a strong possibility Mulalo and Rolivhuwa would have received the same punishment from Legal Services – her for cheating, him for sexual misconduct.

When I first met him in his Legal Services office, Advocate Mmbara recalled for me the "one case [of sexual assault] I can think of." I recognized it immediately as Mulalo's. Eyes on his computer screen, Advocate Mmbara was distracted as he spoke with me, "So I should think, to the gentleman, he felt that maybe it is because 'we are meant to be together today.' He tried his luck until that lady said to him, 'you don't have protection. We need to be protected. Go find the condoms.' So at first the gentleman relaxed a bit. He let her free. A few seconds later, he realized she was lying. He locked the door, but at that moment, she jumped through the window."

In his account of the encounter between Rolivhuwa and Mulalo, Advocate Mmbara makes no mention of violence or force. Instead, Rolivhuwa was just a "gentleman" who had the romantic notion that fate had meant for the two to be together and so he "tried his luck." Any man might try his luck. The incident only becomes sensible as a criminal act of sexual violence when Advocate Mmbara mentions the locked door and Mulalo's dramatic escape. For Advocate Mmbara, recall, students are "people who don't have criminal minds. They have educational desires."

Grace

On a rainy afternoon in November, a sign taped to the outside door of Legal Services warned visitors that the "Disciplinary Committee is in session." Inside, Grace, Elios, Chairperson Ramaano, Prosecutor Mulaudzi, Defense Advocate Liphadzi, an interpreter and myself took up

seats around the long wooden table, squeezed in on all sides by an oversized photocopying machine and a three-piece leather living room set. It was 3 pm. Proceedings had been delayed until late afternoon because batteries were needed for one of the audio-recording devices.

I learned about this disciplinary inquiry from Advocate Mmbara. Earlier in the day, I spoke with him about how cases of sexual violence on campus were remedied. It was then that he told me about how rare such complaints were. As I was packing up my things, he mentioned Grace's case as an afterthought. "The disciplinary committee is meeting this afternoon. A gentleman student who was armed with a knife accidentally cut another student."

Grace and Elios were Univen students, respectively, the complainant and respondent in a complaint of sexual wrongdoing that was variously defined during the course of its on-campus adjudication. It took three months for the original incident to make its way from Maintenance to Legal Services and another six months for the first meeting of the disciplinary committee. By the time of this disciplinary inquiry, Grace and Elios were both in the final year of their studies. Advocate Liphadzi had been hired to represent Elios from a private legal firm. Though no one present spoke English as a first language, the inquiry was primarily conducted in English with the interpreter translating each statement into Tshivenda and Siswati. Siswati was for Grace's benefit, as she was raised in a Siswati-speaking area of Mpumalanga.

Legal Services officials administering inquiries like this one insisted that this was the basis for important differences between what they do and what one would see in court. "The court is too scary. We sit around the table together. You [students] are allowed to laugh. No one comes cuffed," one Legal Services official told me. In a courtroom, authority is spatially organized with the judge presiding from an elevated bench, lawyers seated immediately below her, and behind them, the accused confined in a dock. Parties to a Univen disciplinary committee take seats at the same table.[277] Legal Services officials have more casual and cordial exchanges with student-disputants. On the day of Elios's inquiry, for example, Prosecutor Mulaudzi and Advocate Mmbara shared their takeaway lunch with Grace before the proceedings, while Chairperson Ramaano gave Elios a lift into town after them.

Still, this amiable informality belies the amount of fear such inquiries could provoke. Occupying the same table, Elios and Grace sat across from each other, a distance of no more

[277] The spatial-material organization of the dispute process is important to the phenomenology of justice (Rossner et al., 2017).

than three feet. In criminal courts, prosecutors may apply to have complainants testify via closed caption television. This option is reserved for when the face to face encounter between complainant and accused would prove traumatizing, and is often used in rape trials. This shared proximity with one's assailant can be retraumatizing (Cadwallader, 2016; Cahill, 2000; Koss, 2000). For most of the inquiry, Grace and Elios had their heads turned downward, avoiding eye contact. Grace only raised her head to stare at Elios in disbelief when he pleaded "not guilty," averting her gaze while doing so.

Elios's disciplinary inquiry unfolded the way a criminal trial would. Prosecutor Mulaudzi began by announcing that they were "on record," a reference to the two audiorecording devices and video-camera attachment affixed to the prosecutor's cell phone. Chairperson Ramaano announced the names of the parties in attendance, the date and the identification numbers of the students. Prosecutor Mulaudzi then asked the chairperson if he might "put the charges to the respondent," to which the chairperson agreed. Four copies of the charge sheet had been handed out to the chairperson, the prosecutor, the defense lawyer, and the interpreter. From the charge sheet, Prosecutor Mulaudzi read aloud five charges in English, descriptions of Elios's alleged behavior which were linked to three forms of misconduct detailed in the handbook of "Student Regulations" distributed to first year students during their orientation.[278] The other officials followed along with the text. The following is taken from my field notes:

> Prosecutor Mulaudzi began by presenting Elios with the "five counts": "Count 1, that on or around [the date of the assault], at or near the university D block at or around 3 am, you have pointed Ms Grace Dlamini, a University of Venda student, with a knife, demanding and forcing to have sexual intercourse with her, without her giving you permission to do so. This you did whilst at all material times you knew or ought to have known that it was wrong to do so." After Prosecutor Mulaudzi read the count in English, the interpreter translated each into Tshivenda and Siswati. The remaining four counts followed a similar formula. Count 2 was "forcefully kissing" Grace; Count 3 was "touching her private parts"; Count 4 "forced her to touch your private parts"; and Count 5 "stabbed her on her hand with a knife".
>
> After disarticulating the assault into its component wrongs, Prosecutor Mulaudzi continued by citing the relevant "common law statutes" from the University of Venda's Student Regulations. Only three forms of misconduct were mentioned: First, "conduct[ing] himself/herself in a manner which is or may be detrimental to the good name of the university or to the maintenance of order or discipline at the University";

[278] Part 2.1d of 1.3 General Regulations of the student code.

> second, "kill[ing], assault[ing] or injur[ing] a fellow student or staff member"; and third, "found in unlawful possession of a fire-arm or any dangerous weapon."
>
> After Prosecutor Mulaudzi finished reading the charge sheet, Chairperson Ramaano asked Elios if he understood the charges. He said that he had. The Chairperson asked Elios in English, "then we will hear your pleas. To the first count of pointing a knife and demanding sex, how do you plead?" The interpreter asked the question in Tshivenda and Elios replied back in Tshivenda, "I don't know about that crime," understood as a plea of not guilty. This continued for counts 2, 3 and 4, of which Elios claimed he had no knowledge. When Chairperson Ramaano arrived at Count 5, the charge of stabbing Grace, Elios replied, "I plead guilty to that one because she was injured by the knife in my possession." In his response, Elios left it unclear as to how her hand was injured by the knife. Chairperson Ramaano asked him to clarify, "are you pleading guilty to stabbing her?" Elios quickly glanced at his lawyer before responding in English, "I plead not guilty. The knife cut her while we were busy struggling."

I have quoted my field notes at length to draw attention to a discrepancy that I only recognized as important later that evening, while typing up my notes from the inquiry. "The charge" is a legal convention comprised of two linked elements: the specific description of what the defendant is accused of doing and a reference to the statute most applicable to the conduct. On the charge sheets prepared by state public prosecutors, they are written together, conduct corresponding with statutory offense. Prosecutor Mulaudzi split the charges, first reading five actions of which Elios was accused and then listing three "statutes" that Elios's conduct violated. Here, "statutes" referred to the student code of conduct. Reading the charges in this way obscured what was an ill-fitting correspondence between action and category of transgression, an ill-fit that announces itself by the numerical discrepancy between action (five) and statute (three).

None of the cited statutes made mention of sex. This was not because the Student Regulations didn't make provision for sexual wrongdoing. Under Part 2.1d(x) of 1.3 General Regulations, the following is listed as a form of student misconduct: "A student should be guilty of misconduct if he/she…(x) Sexually assaults or harasses students, staff or member of the public." Though Maintenance and Legal Services officials described this incident in written documents and casual conversation as "attempted rape," Elios's conduct was not linked to this type of misconduct in the charge sheet.

How then did Legal Services categorize Elios's actions? Consider Count 1, "demanding and forcing to have sexual intercourse with her." With what statute might this correspond? Of the three categories of student misconduct Prosecutor Mulaudzi listed, it would seem that the

second, “kill[ing], assault[ing] or injur[ing] a fellow student or staff member” is the best fit. The same can be said for the remaining counts, Count 2 “forcefully kissing”, Count 3 “touching her private parts”, Count 4 “forced her to touch your private parts,” and Count 5 stabbing. As they told me later, this was not exactly how Prosecutor Mulaudzi or Advocate Mmbara, who drew up the charges, envisioned the link between action and statute. Rather, they saw “kill[ing], assault[ing] or injur[ing]” applying only to Count 5 “stabbing.”

If not “kill[ing], assault[ing] or injur[ing]”, how did Legal Services officials understand Counts 1 through 4? In other words, how did Legal Services officials understand those counts that would be sensible as sexual offences under South African law? These counts did not obviously run afoul of the third statute referenced, the prohibition against carrying a firearm or any dangerous weapon. Instead, the brevity of the list of statutory misconduct seems to suggest that the four counts of sexual wrongdoing fall under the first statute referenced, “conduct[ing] himself/herself in a manner which is or may be detrimental to the good name of the university or to the maintenance of order or discipline at the University,” a trivial form of transgression applicable to cheating.

I will return to the implications of this charge sheet shortly, but for now, let’s return to the disciplinary inquiry. After hearing Elios’s pleas, Prosecutor Mulaudzi introduced his first witness, Grace. Chairperson Ramaano initiated her examination-in-chief by swearing her in, “do you object to taking the oath?” The meaning of “oath” was not immediately clear to Grace. After some back and forth between Grace and the interpreter in Siswati, Grace agreed to the oath with “so help me god.” Chairperson Ramaano confirmed with Prosecutor Mulaudzi, “she is sworn in.”

Grace testified in English, with the interpreter interrupting the flow of her narrative to interject Tshivenda translations on behalf of Elios. Prodded along with the occasional question from Prosecutor Mulaudzi, Grace described the night Elios attacked her. The following is her account. She was on her way to an all-night prayer meeting on campus in the early hours of the morning. Elios approached her, claiming he needed directions to the Facilities and Maintenance buildings. She indicated the way he would need to take, but he demanded she accompany him to his destination. Given the early hour, Grace was instantly suspicious of his intentions. She did not want to leave the relative safety of the grassy, well-lit area where they stood with this perfect stranger. She took a step back, but Elios drew a knife. He pointed it at her and told her, “I am going to sleep with you or kill you.” Elios grabbed her, grasping at her chest and genitals while

trying to pull her toward a nearby building. She screamed and tried to get away. During the tussle, Grace's hand was sliced by the knife Elios carried. On seeing a security guard, she screamed for help, but the guard responded with disbelief, saying, "you have just been standing there with him." It took her screaming at a second guard to finally receive aid.

After being chased down by the initially dilatory security guards, Elios was found with a knife. Grace finished her testimony by noting wryly that the morning of the assault, while Maintenance officials had taken statements from both of them, he had begged her for forgiveness. "He was asking for forgiveness. And now he is denying what he did. As a Christian, I was saying I would forgive him, but the laws are something else." Before the inquiry, Grace had made similar remarks to me over the lunch we shared with Legal Services staff. In parallel to the Univen disciplinary process, Grace was pursuing a case against Elios through the criminal justice system, but the trial had not started and she was not sure of the status of her case. She and her family had always attended church, but she became more deeply involved in the last year, after learning about the teachings of a U.S. American prophet. Her Christianity framed her thinking about Elios's violence. She regarded his assault as criminal. But Grace saw the Christian injunction to forgive as fundamentally at odds with the citizen's responsibility to participate in the state's prosecution of crime, especially when the wrongdoer apologizes. Elios's brazen denial of what he did, even as he admitted that he had cut her while they were struggling, rendered moot his earlier apology.

After Grace completed her testimony, Elios's legal representative took up the cross-examination. Employed at a private law firm, Advocate Liphadzi worked through the majority of his caseload in Thohoyandou's criminal courts. He drew from these experiences to mount a defense of Elios. His strategy, a common one in the Khuḓani Regional Court, was to highlight discrepancies between the original written statement made by Grace for Maintenance and her oral testimony during that day's inquiry in the Legal Services office. Advocate Liphadzi noted that Grace had not written that Elios had forced her to kiss him in her written statement, but had during the testimony. She had not written that Elios had grabbed her with such force that she lost buttons from her blouse, but had during her testimony. She had written that he forced her to touch his penis, but she had not mentioned that during her testimony. Advocate Liphadzi claimed these omissions as contradictions that were evidence that Grace was lying. Asked to explain the differences, Grace noted that she had never written a statement before: "I don't know how to

write a statement. It is only when I came here that I was told I must say everything point by point. At Maintenance, they just told me to write." She hadn't known the level of detail required of her. Advocate Liphadzi threw back at her, "why didn't you write a supplementary statement to correct the first?" Grace replied, "I wasn't told about that." What Advocate Liphadzi called discrepant omissions, Grace insisted were details she had not known to delve into or had been too circumspect to mention. Advocate Liphadzi continued to badger her on these differences until she fell silent. Later, chairperson, prosecutor and defense would all talk about how damning this silence was.

In the early hours of the morning, after being attacked at knifepoint, Grace provided campus security guards with a written version of what happened to her. She did not know that the statement she completed at Maintenance later would be treated as though it carried the heft of a police statement, which is what Advocate Liphadzi had in mind with this line of questioning. The police statement is a legal document that should provide an accurate and exhaustive account of an incident. In courts of law, defense lawyers frequently draw on contradictions and discrepancies between police statements and oral testimony in order to cast doubt on the complainant's version of events. But the police statement is a flawed form of evidence. In the aftermath of a crime, a witness may be ill equipped to recount each element of what happened in its entirety. In South Africa, a country with eleven official languages, police statements are translated and written in English by intake officers who are not necessarily fluent in English.[279] During fieldwork, I had occasion to report a crime of theft. I was given a single sheet of paper to document what happened. When I objected that I would need more paper, I was told to be concise and make do with the one sheet. Intake officers do not necessarily treat the document with the reverence shown by lawyers further on in the criminal justice system.

These problems are widely appreciated by legal practitioners. At the Khuḓani Regional Court, the admissibility of a police statement hinges on whether the intake officer followed proper procedure. Before a statement is entered into evidence, Magistrate Sinthumule would

[279] A witness typically gives an oral statement to a police officer in their first language. Under ideal circumstances, as a witness narrates the incident, the officer should translate and document their statement in English, word for word. After doing so, the officer must read the statement aloud to the witness, back-translating the written English into the witness's first language. If they agree that it is a faithful rendition of their experience, they will then sign the statement, confirming both that the statement was read back to them and that they affirm its contents. This is a serious task of translation, even for those who are bilingual, but the average intake officer has limited proficiency in English and often is hasty in statement-taking.

insist that the witness whose statement was taken confirm that the intake officer carried out a word-for-word translation of Tshivenda into English and then read back the translated English version into Tshivenda. Witnesses rarely answer these questions in the affirmative, and as a result, police statements are rarely admitted into evidence.[280] Prosecutor Mathebula once admitted to me he never bothered to read statements for the cases he was prosecuting on the grounds that they stood on such flimsy evidentiary footing. He then rattled off the precedents he regularly cited to exclude police statements.[281] This is all to say that Advocate Liphadzi demanded fidelity to idealized legal standards of truth-telling that even those who work in the criminal justice system do not observe. Where prosecutors in the Khuḓani Regional Court would have moved to exclude such evidence, Prosecutor Mulaudzi, whose office was responsible for instructing Grace on disciplinary procedure, did nothing to shield her from this line of questioning. Prosecutor Mulaudzi's re-examination was an anemic effort in which he repeated each of the written omissions raised by Advocate Liphadzi and asked Grace to agree that their absence from her statement did not mean she was not telling the truth now.

After Grace's testimony, Prosecutor Mulaudzi asked Chairperson Ramaano for a postponement so that he could call additional witnesses. They agreed to postpone the next hearing until the new year. It was 4:30 pm and all assembled were ready to adjourn the inquiry and go home for the day. Elios left the building first. After conferring with Advocate Mmbara for several minutes, Grace also left. With complainant and respondent both gone, Prosecutor Mulaudzi and Advocate Liphadzi gossiped about the student disputants. Advocate Liphadzi complained that Elios had given him a string of bad cell phone numbers. "These clients!" he shook his head, exasperated.

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[280] The defense attorney has recourse to contest the admissibility of statements by applying to hold a "trial within a trial." This course of action requires that the statement-taking officer be brought before the court and questioned by the defense and the prosecution to ascertain whether proper protocol was followed. Such applications were rare at the Khuḓani Regional Court.

[281] "The purpose of a police statement is to obtain details of an alleged offence enabling a decision whether or not to institute a prosecution. The police statement of a witness is not intended to be a precursor to that witness' evidence in court; such statements are usually taken down in a language other than the mother tongue of the deponent or the officer recording same. The contents of the statements do not resemble the *ipse dixit* of the later evidence of the witness and therefore constitutes a mere summary of events. The statement is not taken down whilst the witness is under cross-examination, therefore explaining why it is not surprising that oral evidence would often differ from that contained in a statement" (e.g. *State v Ngwane and Another*, 2015, para. 114).

Prosecutor Mulaudzi commiserated with a remark about Grace's cross-examination, "how could she just not answer like that? It was so suspicious!" Advocate Liphadzi agreed, "she is not making it easy for you." Prosecutor Mulaudzi countered, "that's nothing!" From a manila folder, he retrieved a stapled photocopy of a handwritten document. He read aloud from the English-language statement Elios gave to Maintenance that early morning almost nine months ago:

> 'There are a high rate of thieves so I came out with my kitchen knife because I live at [a neighboring village] and it is far away. I found it easier to take my university card and pass through campus. On my way, I met one of the students who is a female. I failed to propose her because she was alone.'

Advocate Liphadzi, laughed, "No, no no, 'I failed to propose her'…?" Advocate Liphadzi suggested that the English document left some ambiguity about whether Elios had meant that he refrained from proposing love to her, or whether his love proposal had been unsuccessful. Prosecutor Mulaudzi repeated with emphasis, "'*I failed.*'" Then he resumed reading from the statement,

> To be honest, my intention was not to rob her, or take something from her, or even to hurt her. My intention was just to let her be with me by that moment, by herself. Not by force, but she refused, therefore I started threatening her with that kitchen knife and she screamed. And then security police came along. And by that time I was running away to throw the knife away and I just hid until they came and arrested me and took me to the police station. For the above mentioned, I am going down on my knees to apologize to the innocent young lady and also to the university. It won't happen again because I am now a churchgoer.

Prosecutor Mulaudzi shook the statement in the air, "wait to see when your client testifies." With no sense of irony, Advocate Liphadzi replied, "hey, those statements don't mean anything!"

Several days later, I met with Prosecutor Mulaudzi to talk with him about how Legal Services addresses disputes between students about sexual wrongdoing. His office was crowded with leather furniture and a heavy wooden desk. I occupied the chair immediately in front of his desk, a low seating chair that positioned my clavicle a few inches above the level of Prosecutor Mulaudzi's desktop. A tall man, he regarded me from considerable elevation. The effect was intimidating, and I imagined students who were represented by him in disciplinary inquiries might find him unapproachable.

I asked him about the similarities between the proceedings I observed the week prior and criminal prosecutions. He agreed that they follow the same process: "But here, we evaluate

evidence based on a 'balance of probabilities.' The moment the prosecutor closes his case, the respondent must respond to the chairperson so he can gauge. The moment it is 51 / 49, then 51 is the winner." "Balance of probabilities" is the civil standard for evaluating evidence,[282] a lower standard than "beyond a reasonable doubt," used in criminal trials. In South Africa and beyond, victims of sexual violence turn to civil jurisdictions because the burden of proof makes for less punishing forms of questioning (Jacobs, 2020; Tuerkheimer, 2019). But Advocate Liphadzi, practiced as he was in criminal law, did not spare Grace the experience of a more adversarial cross-examination.

I wanted Prosecutor Mulaudzi to explain the situation with the charge sheet, which had the words "attempted rape" in the title, but excluded reference to the section of Univen's code of conduct that describes sexual misconduct. This is important because in courts of law, procedural rules limit the presiding officer to judge only on the charges brought before them.[283] If officials in Univen's Legal Services were faithful to their legal training, Elios would not be reprimanded for sexual misconduct given the charges on his charge sheet. I thought it was possible that it was an error, but Prosecutor Mulaudzi confirmed that it was intentional, "It is *really* 'attempted rape.' But you can't have that charge. That is why the counts are written so specifically. That is why it is says, pointing of knife, kissing, touching." I asked for clarity, "why can't it be 'attempted rape'?" "We thought it was serious to write the counts action by action, instead of 'attempted rape.' With 'attempted rape,' you lose the full description of what happened. Even where there are policies, they are really just guidelines. All offenses fall under common law" by which he meant the Student Regulations. "Charges are put such that they can be proved. And in this case, you wouldn't say 'attempted rape' anyway because the student was only forcing her to go somewhere." Given the statement they had from Elios, this did not seem an insurmountable evidentiary hurdle, especially given the lower burden of proof Legal Services claimed to be using. I asked him about this, "it wouldn't be possible to prove your case with a 'preponderance of evidence' standard?" "No. When they were found, they were still just wrestling." He added that his case was based purely on documentary and oral evidence because the university's

[282] In the United States, this gets called "preponderance of evidence." This is why the students who were accused were called "respondents" during the disciplinary inquiries. This is the name given the person accused of committing wrongdoing in civil jurisdictions.

[283] This can include the exact charge or related "competent verdicts."

surveillance cameras had not been able to clearly capture the altercation, which happened in relative darkness.

Still confused about the charge sheet, I asked, "then why not use sexual assault, which is in the Student Regulations? He was kissing and touching her." Prosecutor Mulaudzi conceded that sexual misconduct should have been included in the charges, but abrogated responsibility, "Those charges were actually written by Advocate Mmbara and I don't think he gave them too much thought." The matter of the charge sheet was settled there, but as Advocate Mmbara's line supervisor, Prosecutor Mulaudzi signed off on the document and might have advised revisions. As Advocate Mmbara told me the week prior, those who administer discipline on campus have considerable discretion in how they do so: Univen has its "own disciplinary code, but you are not forced to follow it."

At the time of my fieldwork's completion, the disciplinary committee into Elios's behavior had not met again. Over telephone, Prosecutor Mulaudzi confirmed that no movement had occurred in the eighteen months after this hearing. Elios had stopped answering his cell phone. He had not seemed optimistic about the case during our conversation. Grace herself had testified that the wound inflicted by Elios had been an accident, a point Advocate Liphadzi had made sure to underscore during his cross-examination. So much for the second charge of "kill[ing], assault[ing] or injur[ing]." Concerning the third count of "unlawful possession of a fire-arm or any dangerous weapon," the Prosecutor did not think the Chairperson would find Elios guilty. After all, he had been carrying a kitchen knife, and "Students are allowed to have kitchen knives." If the disciplinary inquiry were to resume, this left Chairperson Ramaano with the charge of "conduct [] which is or may be detrimental to the good name of the university or to the maintenance of order or discipline at the University." If Elios's conduct was petty, as it was being treated, there was no especial urgency to wrapping up the inquiry into his behavior. Elios and Grace were scheduled to graduate six months from the first inquiry. In all likelihood, they have done so without any progress on this complaint.

Promising Biographies

> "Here, we don't deal with criminals, we deal with students. Every University has its own disciplinary code, but you are not forced to follow it. You see them as people who don't have criminal minds. They have educational desires."
>
> Advocate Mmbara

> "I don't want to deal with criminals anymore. I prefer the situation here at Univen. They are not violent. They are here for their degrees. They don't want criminal records. It is all easy things like slapping and cheating. You can't avoid those things."
>
> A Maintenance official with a background in law enforcement

> "Rape is very rare. Students will come to report and say, 'I was in love with this guy, but we broke up and now I don't want him in my room anymore, but he is forcing himself in. There are those cases. But some, we don't report because we sit with them and tell them the consequences. 'You were once in love. Can you ruin his future?' Sometimes, I will give the girls my cell phone number to call if the boy is forcing himself into her place."
>
> A Maintenance official

Mulalo and Grace both pursued remedy on campus in tandem with criminal prosecutions. They did so because both regarded what happened as attempted rape. And yet, even among university administrators who were persuaded by their narratives, their complaints were not taken seriously in practice. Mulalo's complaint was abandoned when she was accused of cheating. If Mulalo had decided to persist with Legal Services, she might have faced an outcome similar to Grace's: a disciplinary finding that her experience of attempted rape was of apiece with her cheating. On the one hand, those Legal Services officials who represented Grace and Mulalo's interests in the disciplinary process were convinced that an act of rape had been attempted. On the other, they were not convinced that the male students who perpetrated these acts could be called rapists. This did not prevent Univen's disciplinarians from assisting Grace and Mulalo to file criminal charges with the police. But where their own procedures were concerned, procedures that conformed very closely to criminal practice, the student-respondents accused of sexual wrongdoing were "people who don't have criminal minds." For the trained lawyers who staffed the university's disciplinary apparatus, to say that one is without a "criminal mind" is to reject *mens rea*, the legal basis of culpability first discussed in Chapter 5 and a necessary element of establishing that a crime has been committed. An act of rape with no perpetrator – rape without a rapist – is not a crime. And so even when these administrators were confronted with complaints of rape they themselves found credible, they insisted there were no student rapists.

The finding that Univen students who commit rape – or attempt to – are treated leniently by the university is not altogether surprising. In a society so riven by social inequalities, this outcome is overdetermined. At universities in South Africa as elsewhere, affluent, well-connected young men get away with violence. Family wealth and racial privilege can be traded

for solicitude at universities, just as surely as in other jurisdictions. For their part, Rolivhuwa and Elios were able to afford the services of private counsel, making them slightly better off than the average accused who appeared before the Khuḓani Regional Court, represented by public defenders. That said, Elios likely changed legal representatives because of non-payment of his bills.[284] Nevertheless, the delays caused by changing lawyers may have been sufficient to put off Legal Services long enough that he could graduate without repercussion.

Another way of interpreting lenience toward young college men is as license toward young college women. South Africa's college campuses have seen waves of protests challenging sexism and "rape culture." Female victims of sexual violence confront unjust suspicions that they are lodging false accusations,[285] especially in the context of financial exchanges. They are blamed for failing to comport with normative enactments of gender of the sorts I discuss in Chapter 2. For example, the way the young woman was dressed or whether she was drinking at the time may implicitly or explicitly used to judge the credibility of a complaint. Remember that the Univen security guards who registered both Mulalo and Grace's complaints questioned their legitimacy. The guards saw the women willingly share space with the men they accused and wondered if they might not have agreed to sex. In Mulalo's case, "'but you were sharing a room with him?'" In Grace's, "'you have just been standing there with him.'" In the guards' comments, we saw the presumption that a woman "asks for it" when she doesn't vociferously preempt a man's advances.

Some of the hesitation of Maintenance and Legal Services officials to "prosecute" instances of sexual misconduct likely springs from such attitudes. But I want to focus on an additional possibility that relates to how culpability is understood. Advocate Mmbara referred to students as a category characterized by the absence of criminal intent. But, in principle at least, legal interrogations of criminal intent are not substantiated through reference to stock figures. They require forensic assessments of the unique mental state of those who commit criminal conduct, at the time the conduct was committed. In this way, *mens rea* is a spatially and temporally narrow standard for evaluating guilt. When claiming a categorical

[284] In the Khuḓani Regional Court, this was a common cause of delays.

[285] A great deal of scholarship has revealed the depth of suspicion cast on largely female survivors who report experiences of rape and sexual assault in South Africa (du Plessis et al., 2009; N J Christofides, 2006; Gqola, 2016; Thornberry, 2015) and elsewhere (e.g. Baxi, 2014; Estrich, 1987; Mulla, 2014; Temkin, 2002).

incommensurability between the figure of the student and the figure of the criminal, campus administrators were not thinking with *mens rea*; they were applying a diachronic understanding of culpability rooted in a biographical evaluation of moral personhood. Those who are accepted into university have already demonstrated themselves to be on a trajectory that is incompatible with criminality.

Schooling has long been associated with respectability in Southern Africa. In the early 19th century, European missionaries founded many of today's oldest tertiary institutions, where the curriculum included instruction in Christian virtues. Then, as now, education conferred elite status. In 1961, Philip Mayer observed a distinction between what he referred to as "Schools," mission-educated black people who practiced Christianity, and "Reds," tradition-bound ancestor-worshippers (Mayer & Mayer, 1961). The distinction was a moral one about how best to live with others in the world.

Beyond social clout, tertiary education can pave the way out of poverty and lead to intergenerational social mobility (Biyase & Zwane, 2017; Louw et al., 2007), even as university credentials are no longer the guarantee to middle class status they once were (Cole & Lukose, 2011). A 2013 study suggests that unemployment of colleges graduates is lower than 6%, compared with national formal unemployment rate of 27.5% and an estimated youth unemployment of 50 percent (van Broekhuizen and van der Berg 2013). Of course, enrolment itself arises from privilege, but survey research suggests education may have an independent effect. The National Income Dynamics Study, run out of the University of Cape Town, has been following 28,000 South Africans longitudinally since 2008. In a 2019 report, they find that households are 72% less likely to persist in poverty when the household head has completed tertiary education and 99.1% less likely to become impoverished (Zizzamia et al., 2019, p. 20), an estimation that holds constant the effects of age, gender, race, prior employment status and household composition.

While South Africa has seen tremendous absolute gains in primary, secondary and post-secondary school enrolment and completion since 1996, overall educational attainment continues to be quite low (Statistics South Africa, 2017a). Statistics South Africa estimates that in 2016 the mean number of schooling years among 15 to 34 year olds was 10.5 years (ibid, p. 69). Only 12.1% of South Africans aged 25 to 64 attained some level of post-secondary qualification (ibid, p. 16). Post-apartheid higher education continues to be marred by racial and income inequality.

Compare 9.1% of black South Africans with post-secondary qualifications to 38.3% of white South Africans aged 25 to 64 (ibid, p. 16). These disparities are starkest in the nation's top universities. While 8.1% of the nation's population is white, 26.7% of students enrolled at the University of Cape Town on a full-time basis in 2017 were white and 17.8% at the University of Witwatersrand.[286] Compounding issues of racial inequality, the considerable expense associated with higher education means that tertiary qualifications most often accrue to young people from the wealthiest backgrounds.

In a country where few students complete secondary school and fewer still continue their studies at the tertiary level, those students who go on to varsity are widely celebrated for embodying an elusive future tense, a potentiality that flouts the grim statistics of persistent racialized income inequality. In Thohoyandou and its surrounding environs, families anxiously await the results of the annual matriculation examinations, the test administered to twelfth grade students in order to graduate from secondary school and to qualify for admission into the country's universities. Every January, the local newspaper, the *Limpopo Mirror*, publishes results of the exam, praising the accomplishments of students who had scored high distinctions. In a Thohoyandou ShopRite, the likeness of a student who earned the highest matric score in Limpopo province was emblazoned on a cake in the display case of a local ShopRite.

In Limpopo Province, the 2019 pass-rate for the matric was 73.2% and only 27% of all test-takers received a bachelors qualification, the minimum requirement needed to be admitted to a degree-conferring tertiary institution. These numbers place Limpopo at the bottom of the rankings for all nine provinces. Many students drop out before twelfth grade and do not take the examination. Nevertheless, a handful of under-resourced schools located in the former bantustan of Venda outperform their more affluent counterparts in the province year after year.[287]

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[286] The figure for the overall white population was taken from the 2016 Statistics South Africa Community Survey report, which sampled a population of South African residents. The next true census, where census takers will attempt to reach every resident, will be held in 2021. The 2011 census found that 8.8% of South African residents were white (StatsSA, 2017, p. 21). Data concerning the University of Cape Town and Witwatersrand were taken from the Higher Education Data Analyser (HEDA) (2018) Student FTE Enrolments by Institution and Calendar Year for 2017. Available at: http://www.heda.co.za/pds. Accessed 9 June 2018.

[287] See van Zyl, A. (2019, January 11). Which of the Vhembe Schools are really 2018's best? *Limpopo Mirror*, 6; and *Gradesmatch Career Guidance App. Match your marks to qualifications, institutions, careers, and bursaries*. (n.d.). Gradesmatch. Retrieved April 29, 2020, from https://www.gradesmatch.co.za/register/matric. For more on underesourcing Fairhurst, J., & Nembudani, M. (2014). Government policy, demography and primary school enrolment in Vhembe District, Limpopo, South Africa. *Education as Change*, *18*(1), 151–161.

The University of Venda is understood to serve as a bridge to middle class status.[288] Univen confers certificates, diplomas, bachelors, masters and doctoral degrees. Its admissions requirements are relatively low, but the institution is one of twenty-six public universities in the country and one of two in the province. Unlike more expensive and well-resourced universities in South Africa, 99.8% of students enrolled in Univen on a full-time basis were black, according to a 2017 study.[289] Due to its history as a bantustan institution, Univen continues to enroll a disproportionate share of Tshivenda-speaking students who hail from rural communal areas where residents support themselves through a mix of irregular piecework, micro-enterprises (like hawking) and social grants (especially child support grants and old age pensions) (Cousins, 2009, p. 8; Lehohla & Shabalala, 2014; Seekings & Nattrass, 2005, p. 337).

Young men enrolled at Univen were understood to have propelled themselves along a signal trajectory toward successful career, normative family and prosperity. This made them potentially attractive partners. Early one Sunday morning, I set out to attend a meeting of a local tribal council. As I rolled the gate to my residence closed behind me, I was surprised to be greeted by a familiar voice. It was Sally. Messy hair, heels in one hand, purse in another, she was coming from the dirt road that marked the start of the communal village directly adjacent to my municipally administered location. At the time, Sally rented her own room in a compound located in the opposite direction. I laughed as I returned her greeting. "Where are you from?" I asked her playfully. All demure, Sally replied innocently, "Sonia, it is Sunday. I am going to church."

We were heading in the same direction, and I fell in step beside her. "But where are you *from*?" She enthused, "his name is Faranani. I am in love. He is broke, but he is a Univen student. He will go far. I am telling you. He will go far. I see a wedding in our future." Sally had only just met Faranani, but she was convinced that he would make good husband material. On our walk, she gushed about how handsome he was. He was Christian. Nodding her head in the direction of the village from which she came, she lamented his poverty, which would normally

[288] Relatively affluent people living in Venda, like full-time employees at the Khuḓani Regional Court, were more likely to send their children to affluent universities outside of the province.

[289] Higher Education Data Analyser (HEDA) (2018) Student FTE Enrolments by Institution and Calendar Year for 2017. Available at: http://www.heda.co.za/pds. Accessed 9 June 2018.

be a deal breaker, but he was only three months out from graduating. After that, she was sure he would get a high-paying job and would be able to secure their future.[290]

Sally was wont to fall in love quickly and to project a shared life course into the distant future. Faranani's university enrolment was central to her vision of this future. As it turned out, Faranani *was* employed after graduating and the two were married in the next year. Having returned from fieldwork by then, I learned from mutual friends that Sally's family had been merciless in their demands for *lobola* and Faranani's parents had had to borrow extensively from extended family and friends.

Sally shared a popular imaginary of a male university graduate's biography. After graduating, he would get a job; build a brick and mortar home for natal family; pay school fees for younger siblings and relatives; betroth a woman, commit to *lobola* payments to her family; have children; ensure wife and children lived in a well-appointed home. In Chapter 3, I described what is sometimes referred to as a "crisis in social reproduction," a wide scale inability to realize such goals due to economic precarity. Pervasive unemployment and underemployment undermine the completion of activities that are constitutive of moral personhood. Insofar as tertiary education is envisioned as a path to economic security, those who tread that path are on their way to becoming moral persons.

For Univen students in particular, this trajectory is an upward one. These students partook in a biography that was elusive, and to some extent, illusory. In an area where so few continue their education beyond secondary school, Faranani had already defied tremendous odds. Family, friends, neighbors and romantic prospects like Sally celebrated this achievement as a potential source of future employment and income.

University administrators were disinclined to interrupt this trajectory. A Maintenance official explained the hesitation to deal too harshly with university students,

> "we think of their future. They managed to go to school so they are going to make South Africa a good place so let's then make it easier for them. Go wherever they want to go instead of putting fingerprints on their future. And students from Univen, more especially in this area where it's even more rural – we uplift their status. Even in the community

[290] For a male perspective on this, see Adam Ashforth's *Madumo* (2000, pp. 229–232), in which the titular figure, Madumo, asks to borrow money in order to enroll in a distance-learning tertiary program. With no intention to graduate, Madumo sought to enroll in one course in order to obtain a student card. Ashforth writes, "It might not get him a degree or a job, but if only he had such a thing, he might at least persuade a woman that there was some point to being his girlfriend" (p. 232).

> where I stay, when we count, you normally say, 'this one is in the university,' the university is uplifting his status. Because we are in a rural area whereby to find someone who is in the university level in a village of maybe 1000 to 2000 residents, you will find it's 2 or 1. Or you might count 3, 4 villages whereby there are no students who went to the university."

This presumptive biography – from a rural village with few graduates to leaders of the nation – was what was at the core of the contention that university students are not criminals.

Culpability in these instances is measured against a biography: a past of obstacles and bad odds; a present of financial hardship and academic trials; and a future as a breadwinner and community leader. For their achievements, university students have demonstrated that they are "willing to will" (Ahmed, 2014, p. 30) and as such, they occupy a temporality that exceeds the moment of criminal intent. Univen administrators involved in disciplinary activities weighed blameworthiness against a diachrony of fragile life chances. This way of reckoning culpability has in view moral persons, not discrete acts. Students are types of people whose history of surmounting challenges makes them categorically different than criminals. In this view of culpability, criminals are not simply individuals who happen to have committed an act that is criminalized. The act is evidence of a thoroughly spoiled subjectivity.[291]

This is a very different way of understanding culpability than the doctrine of *mens rea* enjoins. The time horizon of *mens rea* is the moment a decision is made to engage in criminal conduct. In the Khuḓani Regional Court, the generalization that university students are not criminals should bear no legal weight in assessments of culpability. All the same, biographical thinking makes its way into the court during sentencing, when presiding officers are asked to consider the broader impacts of incarcerating a given individual. Few university students ever stood between Magistrate Sinthumule. This alone is suggestive of lenience toward university students farther upstream in the criminal justice process. Thohoyandou jurists referred to Magistrate Sinthumule's as "the guilty court," not just for the proportion of guilty verdicts she

[291] Foucault (2004 [1975], p. 17) spoke of this figure as an uncanny double that stalks any given accused: "A certain character has appeared who has been offered up, so to speak, to the judicial system: a man who is incapable of integrating himself in the world, who loves disorder, commits extravagant or extraordinary acts, hates morality, who denies its laws and is capable of resorting to crime. So that, when all is said and done, the person who will be convicted is not the actual accomplice in the murder in question, but this character who cannot integrate himself, loves disorder, and commits acts that go as far as crime."

issued but also for the lengthy prison sentences she handed down.[292] In my time observing her court, three university students stood before her charged with rape. Rolivhuwa was one, but his case was transferred to a different court. The other two university students were found guilty, but during sentencing, Magistrate Sinthumule took the unusual step to deviate from the statutorily prescribed minimum sentence. For one, a sentence of life was reduced to ten years; for the other, a sentence of ten years was reduced to seven.

This was not her usual practice. Struck by these verdicts, I asked her about her reasoning. Magistrate Sinthumule explained:

> You have gone to the universities. Sometimes children there, they act out of impulse. I was supposed to sentence him to life, but young men and young women, sometimes they find themselves in a compromising situation wherein another one fails to take a proper decision. Not to say that that person, he is criminal, that he is a hard core criminal – but we will never know, sometimes it can start there – but I still think that between that age, between 17 and 21 – we should give them that kind of understanding. Because on that case, I think it was just boyish. But I think what he did, it was incorrect.

Magistrate Sinthumule's comments about the case suggest that it was not university enrolment per se, but youthfulness that she found sympathetic. At that age, sexual wrongdoing is "boyish," "incorrect." It happens when "one fails to take a proper decision," a comment that evokes a moment of bad intention, the *mens rea* standard. In practice, however, youthfulness outside the academy did not move Magistrate Sinthumule in the same way. I observed her preside over two different trials of similarly aged offenders who had not completed secondary school, and in these, Sinthumule imposed the prescribed minimum sentences.[293] Young men who did not attend university were denied both youthfulness and lenience.[294]

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[292] I observed 65 cases of sexual offences presided over by Magistrate Sinthumule. Of these, I only saw the conclusions of 12. Of these 9 resulted in conviction, a conviction rate of 75%. The National Prosecuting Authority (NPA) reports that the conviction rate for all cases taken to trial in the 2017-2018 fiscal year was 81% (NPA, 2019, p. 34). It is unlikely Magistrate Sinthumule's court was much different than others. Note that there is substantial attrition between when a case is opened at a police station and when it is taken to court. The NPA has a conviction target, and control prosecutors select cases to prosecute on the basis of which can be won. A baseline study of the specialized Thuthuzela-Sexual Offences Courts, carried out in 2016 by USAID, found that from start to finish, 14.7% of sexual offences cases that went through this channel of the criminal justice system resulted in conviction.

[293] This was in keeping with South African case law, which finds youthfulness to be a mitigating factor in sentencing, but not, *on its own*, sufficient to constitute "substantial and compelling circumstances." This was a principle that Sinthumule herself was wont to recite in her sentencing judgments.

[294] As Judge Mocumie (2009, para. 16) put it in a Free State appeals case involving two 21 year olds and 17 year old: "The appellants were not as youthful as portrayed. Their conduct on the day in question distinguished them from their peers who should be dealt with more leniently. At that time of the morning they were at a tavern; they had

Constituencies of Male Students

Even as university enrolment is admired as an achievement arising from an individual's commitment and hard work, tertiary students are not self-made. Behind each university student is a constituency that offered material and moral support to qualify him for a shot at a degree. Whole communities are involved in preparing twelfth graders for matric at the end of the year. In the location where I lived, the local civic association organized volunteers to tutor secondary school students in advance of matric. Radio stations aired segments targeting secondary school students with tips for answering questions and reminders to study on a daily basis. Uncles and aunts pooled together money to send students to winter schools. And constituents of these university students, of whom family were forefront, expected to see their patronage reciprocated.

In the novel, *This Book Betrays My Brother* (2012), South African writer, Kagiso Lesego Molope, poignantly lays out the stakes for when a young man, who has achieved success through socially sanctioned channels like school and sport, is accused of rape. Talented, charming, and handsome, Basi is the adored only son of his upwardly mobile nuclear family. His sister, Naledi, narrates the story of how she observed him raping a neighbor and the fallout of the neighbor's reporting: "[T]he integrity of our family was being questioned. Certainly, Basi alone represented our family. He was the son. The bearer of the torch that was our family name. He alone would carry it into another generation, while I was bound to drop it like a careless child with buttery hands. It had always seemed to me to be an accusation that Basi would *marry* someone while I would *get married*" (2012, p. 158). Beyond reputation, Basi's obligation to his family is also material. He will one day support his parents in their old age.

What Molope so vividly captures is how such allegations threaten the fabric of the accused's family. That Basi's behavior is inextricably bound with the future of his family is signaled by Naledi's discursive shift from his family's threatened reputation to the distant prospect of Basi one day marrying. As the only son in a patrilineal family, Basi was responsible for reproducing the family. And his natal family would share in his life successes. This made it especially important for this family to shore up support for him and for Naledi, who knew that Basi had committed rape, to fall in line. When kinship is organized along the patriline, sons enact

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been drinking; they engaged themselves in criminal activities of serious nature that can hardly be committed by law-abiding and respectful youth."

their family's futures. The capacity to provide for one's natal family, not just one's conjugal family, is a masculine ideal. The promising futures of sons are owed first to their parents.

Attention to constituency reveals how the figure of the promising student is gendered male. The educational careers of women do not enjoy the same constituencies. Daughters are expected to marry and move from their natal homes to live with yet unknown affines. This does not mean they do not share their earnings with their natal kin. They certainly do. But claims to a daughter's earnings and labor become more tenuous when she marries. This social organization of the family is underwritten by suspicions that a female breadwinner is out to subvert gender roles (Abrahams et al., 1999; Hunter, 2010). It is worried, with some justification, that women who are financially independent will upset gender hierarchies in the home or forgo marital life altogether. What's more, women with tertiary qualifications make less than two thirds what their male counterparts earn.[295] A practical consequence of gender inequality in employment and income earnings is that educated women will have less to distribute to their kin.

Basi was expected to have a prosperous career, which would in turn nurture new constituencies. In Chapter 3, I described how a man's ability to offer material support can facilitate consent to sex. Women like Sally sought relationships with university students because they hoped to share in these futures. In other words, male university students are able to transact on a future of wealth to secure consent to sex in the present. The presumption that young men at university are readily able to find willing partners discredits the charge of rape. Naledi narrates her neighbors' talk about the allegations against Basi: "'Who is she to be raped by Basi?' someone had said" (2012, p. 184). The whole township shares in disbelief, rallying around Basi in support.

Instead, the characters in Molope's novel locate criminality in a group of young, unemployed drop-outs, who sit outside the township grocery, drinking beer all day. From their perch on the stoep [stoop],[296] these delinquents shout out obscenities to passing girls and women, sometimes even threatening "'this one just needs to be raped. That will fix her'" (ibid, p. 161). These men serve as a foil for Basi. Naledi tells herself, "*But my brother is not one of those guys*"

[295] According to a report by Statistics South Africa, the average real monthly earnings of women with tertiary qualifications was R17,410 as compared with R27,607 for men (Maluleke, 2019, p. 126).

[296] Afrikaans for porch or stoop, "stoep" has more broadly been absorbed into the South African vernacular.

(ibid, p. 162), referring to the men on the stoep. If the unemployed drunkards make for credible rapists, the high-achieving young student, who helps in his family's business could not.

Masculinity in South Africa is often said to be in crisis.[297] Discourses of crisis localize criminality to a particular constellation of men: poor, black, young men. As occupants of political, economic and social peripheries, young black men have been deprived the rewards promised by the democratic moment at the same time that the new Constitution has called for a reconfiguration of South African society around principles of gender equality. Denied patriarchal privilege and fulfilling livelihoods, such men are said to be united by profound feelings of powerlessness, emasculation and indignity. Steeped in a "culture of criminality" (Steinberg, 2000, p. 7), they aspire to new ideals of masculinity grounded in courage, tenacity and respect. The means by which such virtues are enacted is through casual banditry, homosocial violence, and sexual conquest. This "crisis of masculinity" is inexorably linked to an epidemic of sexual violence: "increased sexual violence could usefully be understood as one indicator of South Africa's crisis of sex post-1994 – more specifically as a barometer of the 'crisis of masculinity' and the extent to which masculinities are in disarray" (L. Walker, 2005a, p. 166).

The incongruity of student criminality was asserted with reference to young "men in crisis," whose shared biography of school attrition, unemployment, and social estangement was constitutive of criminality as such. Both the high-achieving student and the young man in crisis are poor and black. But the student purchases the benefit of the doubt at the expense of other

[297] The literature on crisis masculinities, both as a social fact and an influential discourse, is extensive. See for example: Breckenridge, K. (1998). The allure of violence: Men, race and masculinity on the South African goldmines, 1900–1950. *Journal of Southern African Studies*, *24*(4), 669–693; Buiten, D., & Naidoo, K. (2013). Constructions and representations of masculinity in South Africa's tabloid press: Reflections on discursive tensions in the Sunday Sun. *Communicatio*, *39*(2), 194–209; Campbell, C. (1992). Learning to Kill? Masculinity, the Family and Violence in Natal. *Journal of Southern African Studies*, *18*(3), 614–628; Decoteau, C. L. (2013). The Crisis of Liberation Masculinity, Neoliberalism, and HIV/AIDS in Postapartheid South Africa. *Men and Masculinities*, *16*(2), 139–159; Diouf, M. (2003). Engaging Postcolonial Cultures: African Youth and Public Space. *African Studies Review*, *46*(1), 1–12; Hamber, B. (2010). Masculinity and Transition: Crisis or Confusion in South Africa? *Journal of Peacebuilding & Development*, *5*(3), 75–88; Jensen, S. (2008). Policing Nkomazi: Crime, masculinity and generational conflicts. In D. Pratten & A. Sen (Eds.), *Global Vigilantes* (pp. 44–65). Columbia University Press; Jewkes, R., Morrell, R., Sikweyiya, Y., Dunkle, K., & Penn-Kekana, L. (2012). Men, Prostitution and the Provider Role: Understanding the Intersections of Economic Exchange, Sex, Crime and Violence in South Africa. *PLOS ONE*, *7*(7), e40821. https://doi.org/10.1371/journal.pone.0040821; Morrell, R., Jewkes, R., & Lindegger, G. (2012). Hegemonic Masculinity/Masculinities in South Africa Culture, Power, and Gender Politics. *Men and Masculinities*, *15*(1), 11–30; Walker, L. (2005). Men behaving differently: South African men since 1994. *Culture, Health & Sexuality*, *7*(3), 225–238; Xaba, T. (2001). Masculinity and its Malcontents: The Confrontation between 'Struggle Masculinity' and 'Post-Struggle Masculinity' (1990–1997). In R. Morrell (Ed.), *Changing Men in Southern Africa* (pp. 105–124). Zed Books.

young black men who have not been as fortunate. The man in crisis has endured repeated disappointments in education, employment, courtship. He is unlikely to have completed his schooling. He is unable to secure stable employment. He is a net drain on his family's finances, enjoying free food and lodging into adulthood while drinking away the money he chances upon. He does not participate in normative forms of association like church, civic groups or traditional leadership structures. In short, the young man in crisis has a particular life history, one marked by exclusion from institutions that are held up as emblematic of authentic and ethical community. Young men like Basi, by contrast, cannot be criminals because they have demonstrated commitment to normative ideals of masculinity: hard work on behalf of his family, community and future.

Conclusion

This chapter provides an empirical account of sexual wrongdoing between students at the University of Venda and how it was and was not addressed. University attendance is a considerable expense for most students. Lines of debt and credit tie students to their families and neighbors back home but also to other students on campus. A sense of sexual indebtedness can lead women to enter into long-term relationships that they do not desire. This form of unwanted sex is common in institutions of higher education in South Africa.

Forms of unwanted sex that were experienced as criminal, by contrast, were rarely treated as such. Staffed by former members of law enforcement and practicing lawyers, the university's disciplinary apparatus practiced dispute resolution on terms similar to those of the criminal justice system. Nevertheless, it treated students as incapable of criminal conduct. During university proceedings, trained jurists, who putatively subscribed to the legal doctrine of *mens rea*, subordinated synchronic evaluations of wrongdoing to more biographic evaluations of the person. The student's personal history of hard work, in willful defiance of the odds, was thought to condition a prosperous future which these dispute specialists were reluctant to obstruct.

Where matters of social justice are concerned, this has two practical consequences. First, complaints against students were less likely to be taken seriously, and victims were less likely to achieve the sort of redress they sought. As I have shown, the sexual wrongdoing of young students was less likely to be redressed. For his sympathetic biography, the student's violence was less legible as criminal. Eighteen months after she was first assaulted, the disciplinary

inquiry into Elios's attempted rape of Grace had not been concluded. More to the point, Prosecutor Mulaudzi did not expect Mpho would be punished. There is no recourse for the more common and insidious form of "unwanted sex," wherein young men "try their luck" with less well off women who they have offered free housing. To the extent that this dynamic emerges as students cope with the university's long-standing housing shortage, sexual wrongs are institutionalized on campus.

Second, the special dispensations enjoyed by male university students reinforced the criminalization of less educated and unemployed young men. "He is just a student," the refrain rehearsed by dispute specialists on campus and in courtrooms, shifted attention away from *mens reas* to biography. Such remarks were made of young black men from poor or working class backgrounds in a former South African bantustan. Not just an assertion of unique potential, though, "he is just a student" was a claim for privilege built on the disavowal of other biographies, biographies associated with masculinity in crisis. The young male student deserved special consideration because he was *not* a drop-out, he was *not* alienated from his family, he would *not* be unemployed. The criminality of the student's foil was presumed. When classes of people are criminalized in this manner, "recuperating social value always requires the devaluation of the other Other" (Cacho, 2012, p. 17). The university student's innocence was rendered self-evident by the growing number of young black men in South Africa without occupation, against which he was recognized as exception.

CHAPTER 7 – Conclusion

Righting Sexual Wrong advances three arguments. First, it finds that sexual harm inhabits victims in diverse ways that cannot be reduced to the criminal definition of rape. In their accounts of sexual wrongdoing, survivors do not privilege concerns about autonomy, coercion or force. Rather, injury was formulated in terms of intergenerational misfortune, infidelity, the embodied sense of exposure, and the unpredictable violence of witchcraft. Recognizing this multiplicity invites a more expansive understanding of the lived experience of gender violence.

Second, I find that practices of remedy shape how sexual wrongdoing is personally and socially recognized as a category of transgression. Put differently, justice comes to be embodied through social orchestrations of harm. While much scholarship on legal pluralism presupposes injured parties who "shop" for forums that will provide them with the outcomes they desire, my work instead suggests that the nature of sexual wrongdoing emerges through practices of remedy. Because such practices continue to be racialized in post-apartheid South Africa, help-seeking is implicated in the reproduction of racial and ethnic inequalities.

Third, I find that different categories of sexual wrongdoing are not spatialized in straightforward ways. Witchcraft afflicts the courts just as surely as conventions of Roman-Dutch law are used to adjudicate claims on college campuses. National campaigns to criminalize non-consensual sex are put into practice by local brokers who deploy alternative understandings of sexual wrongdoing to recruit complainants to the criminal justice system. As such, the task of criminalization is uneven and contradictory.

When I started working in the field of gender-based violence in South Africa, I was struck by a repeated charge of misrecognition: "they don't know they have been raped." On its own, "they don't know they have been raped" is a bald statement about false consciousness, but was all the more troubling for its underlying racial, ethnic and class politics. The charge came from well-meaning elites – many of whom were white – about rural Venda women. "They don't know they have been raped" arises from concerns that the former bantustan is a place of concentrated illiberal culture, one that effectively vacates women of volition. This is not just cultural essentialism. Women living in former bantustans contend with sexual wrongdoing while

being disproportionately burdened by racial, ethnic, customary and economic inequalities. For these multi-faced conditions of inequality, women living in former bantustans are seen as ur-victims (Mohanty et al., 1991) and their participation in sex is seen as never authentically willed. What is being essentialized, then, is inequality.

Righting Sexual Wrongs takes on a critical challenge posed to feminism: how do we draw attention to sexual wrongs as issues of gender justice without essentializing victimization as primary to a universal femininity? Framed as competing commitments to equality and difference (MacKinnon, 1988; Pateman, 1990; Scott, 1996), the practical conundrum lies in securing legal protections without inscribing into the law "woman" as a class inherently vulnerable to sexual predation (Basu, 2011; Menon, 2004). What's more, politicizing sexual violence through a politics that claims women as an abstract class – either biological or social – erases important differences between women (Crenshaw, 1991). These differences cannot simply be reduced to quantitative assessments of oppression (i.e. all women are vulnerable but poor, black, queer, formerly colonized women have it that much worse).

Righting Sexual Wrongs chronicles one course of action through this dilemma: by universalizing rape as a category of wrongdoing, criminalization deploys the power of the state to punish and deter those individuals who exploit the structural vulnerability of women. The violence of this protection ostensibly triggers meteorological changes to culture (MacKinnon, 2017): equality that asserts itself through recognition of social difference. In South Africa, lengthy prison terms for those convicted of sexual offences have been an important driver of post-apartheid mass incarceration.[298] Victims of rape confront a duty to the state and their fellow citizens to enroll in the criminal justice system as complainants. This strategy does not simply reproduce "woman" as woundable and wounded; it reproduces other sorts of differences in similar terms. For example, the cowed and cowardly Venda or the HIV seropositive black man as rapist. Criminal justice in South Africa increasingly comes at the expense of the sorts of entitlements – social welfare, housing security, childcare, counseling – desired by those who experience other sorts of sexual wrongs (Alexander, 2016; Super, 2013).[299] In this, South Africa

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[299] Investments in criminal justice over social welfare has been documented extensively elsewhere as well: Cacho, L. M. (2012). *Social Death: Racialized Rightlessness and the Criminalization of the Unprotected*. NYU Press; Simon, J. (2007). *Governing Through Crime: How the War on Crime Transformed American Democracy and*

follows patterns of mass incarceration found elsewhere (Gilmore, 2007; Simon, 2007; Wacquant, 2009). More to the point, criminalization has not produced the sense of security that is its aim.

A different course through this dilemma is to reject difference, and for our specific purposes, gendered vulnerabilities. In a controversial essay, Sharon Marcus (1992) suggests that rape can be prevented when individual women refuse to participate in it. It is worth quoting at length:

> To take male violence or female vulnerability as the first and last instances in any explanation of rape is to make the identities of rapist and raped preexist the rape itself. If we eschew this view and consider rape as a scripted interaction in which one person auditions for the role of rapist and strives to maneuver another person into the role of victim, we can see rape as a *process* of sexist gendering which we can attempt to disrupt…The rapist does not simply *have* the power to rape; the social script and the extent to which that script succeeds in soliciting its target's participation help to create the rapist's power. (1992, p. 391)

Vulnerability is not inevitable, Marcus insists. The problem is (in part) women who assume it is. One solution lies with women, who as a class of potential victims need to stop passively submitting to rape. It is a troubling argument, one that bears a striking resemblance to the discredited "submissive rape" theory advanced by managers of TVEP. More moderately formulated versions of this argument concern the cultivation of sexual agency or sexual autonomy among young people, especially through sex education (Alcoff, 2018; J. Fischel, 2016; Hirsch & Khan, 2020).

The tension in how difference and equality play out in politics is not just a matter of feminism nor is it strictly an issue about sexual violence. Political movements of all stripes organize in and through the abstract classes that they are simultaneously trying to oppose. Resistance speaks the discourse of power. The question is how to politically challenge social categories that can inhibit human happiness, but that we nonetheless inhabit and that nonetheless give our lives meaning (Mahmood, 2005). I suggest that the answer does not lie in treating isolated acts of wrongdoing as the ground for untangling societal inequities. This latter approach animates the criminalization of sexual wrongdoing, but also characterizes practices that are cast as alternatives to criminal justice.

Created a Culture of Fear (1 edition). Oxford University Press; Wacquant, L. (2009). *Punishing the Poor: The Neoliberal Government of Social Insecurity* (First edition, paperback issue edition). Duke University Press Books.

In the aftermath of apartheid, the Truth and Reconciliation Commission (TRC) attempted to reconcile victims of political violence and their assailants as part of a project of national unity. A "transitional justice" approach, the TRC involved public acts of testimony, apology, forgiveness, and reparation. Those who confessed participation in "gross human rights violations" were granted amnesty from criminal and civil prosecution. While generally considered a success, the TRC has its detractors, who argue that the process failed to indict some of the worst perpetrators of violence and left most victims without recognition or restitution (Kesselring, 2016).

The TRC was a practical enactment of a constitutional commitment to *ubuntu.* The postamble of the Interim Constitution reads:

> The adoption of this Constitution lays the secure foundation for the people of South Africa to transcend the divisions and strife of the past, which generated gross violations of human rights, the transgression of humanitarian principles in violent conflicts and a legacy of hatred, fear, guilt and revenge.
>
> These can now be addressed on the basis that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, *a need for ubuntu but not for victimisation*. (emphasis mine, RSA, 1993, Chapter 15).

Neither the interim Constitution nor the final Constitution defines *ubuntu*, but it comes from the Nguni word for "humanity" and encapsulates the South African maxim "a person is a person because of other people" (Cornell & Muvangua, 2012). This is not just figurative. *Ubuntu* gets at the notion of "relational personhood" discussed throughout this dissertation. It implies radical interconnection, interconnection that is not always, unequivocally salutary. In my discussion of *mens daemonica*, I described how this notion of personhood renders its subjects especially prone to occult menace.

This is not how South Africa's courts have made use of *ubuntu.* In its first decision, a landmark case that found the death penalty unconstitutional, the Constitutional Court interpreted the "need for *ubuntu*" clause of the interim constitution:

> It is a culture which places some emphasis on communality and on the interdependence of the members of a community. It recognises a person's status as a human being, entitled to unconditional respect, dignity, value and acceptance from the members of the community such person happens to be part of. It also entails the converse, however. The person has a corresponding duty to give the same respect, dignity, value and acceptance to each member of that community. More importantly, it regulates the exercise of rights

> by the emphasis it lays on sharing and co-responsibility and the mutual enjoyment of rights by all…
>
> An outstanding feature of ubuntu in a community sense is the value it puts on life and human dignity. The dominant theme of the culture is that the life of another person is at least as valuable as one's own. Respect for the dignity of every person is integral to this concept. During violent conflicts and times when violent crime is rife, distraught members of society decry the loss of ubuntu. Thus heinous crimes are the antithesis of ubuntu. Treatment that is cruel, inhuman or degrading is bereft of ubuntu.[300]

In this important precedent, the Constitutional Court affirmed *ubuntu* as a uniquely African ideal that should animate the practice of justice in the new South Africa.

While this was a welcome judgment, there was nothing especially revolutionary in how the court took up *ubuntu*. The justices explained *ubuntu* as a notion of solidarity that entails respect and sympathy between equals, an interpretation that lends itself to an idea of justice grounded in liberal subjectivity. Indeed, in her opinion, Justice Yvonne Mokgoro compared *ubuntu* with the value accorded "the dignity of the individual" in U.S. American law.[301] Set in contrast to the cruelty of the death penalty, this *ubuntu* is a catchall term for morality that carries none of the danger implied by theories of relational personhood. As such, it also fails to convey the distributed sense of vulnerability and accountability explained by the concept of *mens daemonica*.

In the post-apartheid period, terms like restorative justice, *ubuntu* and reconciliation have become popular among jurists. They label principles and practices framed as alternatives to criminal justice that are nonetheless folded into policing, prosecuting, punishment and parole. The Victim Offender Dialog, described in Chapter 5, is a case in point. Cast as "restorative justice," the Dialog entailed a public performance of apology and forgiveness that capped prison terms and marked supervised reentry into society. In practices like these, the measure of justice continues to be taken at the level of acts of wrongdoing that transpire between discrete and

[300] The State v T Makwanyane and M Mchunu, CCT/3/94 (Constitutional Court June 6, 1995): para. 224-225. In a show of unity, each of the eleven Justices contributed an opinion in concurrence with the verdict, authored by Chief Justice Arthur Chaskalson. These passages are supplied by then-Justice Pius Langa in his opinion (he would later serve as Deputy President, Deputy Chief and finally Chief Justice of the court). In total, six of the eleven justices mention *ubuntu* and specifically its appearance in the postamble. Langa's definition is the most extensive. Justice Ismail Mahomed writes of "the ethos of an instinctive capacity for and enjoyment of love towards our fellow men and women" (para. 263) and Justice Yvonne Mokgoro writes of it as "personhood and morality…[and] the significance of group solidarity on survival issues so central to the survival of communities" (para. 308).

[301] The State v T Makwanyane and M Mchunu, CCT/3/94 (Constitutional Court June 6, 1995): para. 309.

distinct individuals. This was not inevitable. In the 1990s, in the early years after apartheid, when South Africans were reimagining the relationship between citizens and the government, there was a real sense that housing security, income equality and land redistribution were issues of justice inextricably linked to seemingly idiosyncratic acts of criminal violence. In the intervening years, the most successful efforts at redistribution have happened through means-tested social grants, but the value of these has not kept up with inflation and so their effect has been relatively modest. In spite of these social grants, the gap between rich and poor has only widened as rates of formal employment decline (Seekings & Nattrass, 2016, Chapter 6).

I have said that this is not a story of South African exceptionalism. In jurisdictions around the world, the legal definition of rape has expanded in ways that do not necessarily reflect, but nonetheless change the way sexual harm is experienced. At the same time, sex crimes are uniquely resistant to calls for criminal justice reform. Releasing those who commit non-violent drug offenses has received broad-based support in countries with massive prison systems (South Africa included), but releasing those who commit sexual offences is "the third rail" of prison abolition movements (Pfaff, 2017, p. 185), garnering considerably less political traction. Nuanced thinking about those who commit sex crimes is akin to "sympathy for the devil" (Levine, 2017). The #MeToo movement, with its emphasis on publically rooting out and punishing offenders, has helped maintain this dynamic, even among feminists otherwise amenable to prison abolition (Gruber, 2020).

Prison abolition movements in the United States offer an alternative vision of justice. While many mainstream proponents of criminal justice reform shy away from discussions of gender-based violence, national non-violence movements like INCITE! Women of Color Against Violence, Critical Resistance and Black Lives Matter as well as counterparts in local organizations center these very problems in their theory and practice of justice.[302] Doubly burdened by state violence and sexual violence, black women, women of color and trans women

[302] For example, the Bay Area Transformative Justice Collective takes aim at child abuse; Communities Against Rape and Abuse (CARA) assist social justice organizations in addressing sexual violence; generationFIVE seeks to end child abuse within five generations; the StoryTelling & Organizing Project (STOP) aggregates stories of collective actions taken to intervene in interpersonal violence, especially sexual and domestic violence; and an anarchist zine on anarchist approaches to crime and justice is entitled "What about the rapists?" after an objection that their approach to governance frequently encounters. Explicitly working without recourse to police, social services or child protective services, these organizations mediate problems of gender-based violence within their ranks and within partner organizations.

are leaders of these movements that pursue justice beyond punishment.[303] These groups instead promote models of "community accountability" and "transformative justice" that insist that those who commit harm – even rape, domestic violence and child abuse – are not evildoers in whom some terminal source of blame resides. Patrisse Cullors (2019, p. 1694), a co-founder of the Black Lives Matter movement, understands this approach as "…differentiating between large-scale systems that have been built to perpetuate our harm, and individual harm caused against one another." Justice for Cullors involves taking aim at the former without reducing the latter to questions of punishment.

For organizations pioneering such forms of redress, there is no one-size-fits-all protocol.[304] An act of sexual wrongdoing triggers a process of remedy that is steered by the person who was wronged and the person who committed wrongdoing. Often, an "accountability-seeking group" is formed around the grievance, a group that might include representatives selected by the person who committed harm. This group understands itself to share accountability for what happened and is invested in seeking a resolution for the person who has been harmed. This process may include role-playing, story-telling, consciousness raising, group sensitivity trainings, public admissions of guilt, apology, or therapy for wrongdoer, wronged and/or their communities. Those who do this work are committed to recognizing the humanity of all those involved, including the person who committed harm. Under the sign of reconciliation and reparation, the goals of this work is to have the person who committed harm genuinely taken responsibility for what was done.

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[303] Emily Thuma (2019) describes the history of black feminist organizing for prison abolition, beginning in the 1970s consolidating against carceral forms of feminism.

[304] My account here is informed by the following texts, which include illustrative case studies: baliga, sujatha. (2018, October 10). A different path for seeking justice for sexual assault. *Vox*. https://www.vox.com/first-person/2018/10/10/17953016/what-is-restorative-justice-definition-questions-circle; Bierria, A., Colbert, E., Ibarra, X., KigvamasudfVashti, T., & Maulana, S. (2016). Taking Risks: Implementing Grassroots Community Accountability Strategies. In INCITE! Women of Color Against Violence (Ed.), *Color of Violence: The INCITE! Anthology* (pp. 250–266). Duke University Press; Davis, A. Y. (2003). *Are Prisons Obsolete?* Seven Stories Press: 105-115; Kim, M. E. (2011). Moving Beyond Critique: Creative Interventions and Reconstructions of Community Accountability. *Social Justice*, *37*(4), 14–35; Russo, A., & Spatz, M. (2007). *COMMUNITIES ENGAGED IN RESISTING VIOLENCE*. Women & Girls Collective Action Network: http://www.usprisonculture.com/blog/wp-content/uploads/2012/03/communities_engaged.pdf

In Chapter 5, I proposed *mens daemonica* as a way of understanding culpability without a terminal source, a model of culpability that ranges in unpredictable ways through individuals, households, neighborhoods and larger collectives. Non-violence organizations of the sort I have described above are putting into practice a model of justice that treats accountability this way. And yet, of necessity, this work is limited in scope. The "community" of community accountability only applies to those that take up these approaches: the social justice organization committed to prison abolition or the neighborhood, burdened by police brutality, which has opted out of criminal justice. This narrow approach does not reflect an ideological commitment so much as a pragmatic response to the withdrawal of the social welfare state and the exigencies of life lived under late capitalism. Accountability does not rest solely in such sites. It washes over cities, travels across regions, through and between nations through filaments of connection. And through the refusal of connection. It is no coincidence that prisons disproportionately incarcerate those who are also denied social assistance, childcare, education, healthcare, food and housing (Gilmore, 2007; Simon, 2007; Wacquant, 2009).

Recall Magistrate Sinthumule's words, "Witchcraft belief is not an excuse. If you start there, there will be no end to it." In this moment, Magistrate Sinthumule was admonishing jurists who recognize witchcraft belief as mitigating criminal liability. Such recognition, she warned, struck at the very tenability of the criminal justice system. What if, rather than heeding this warning, we instead took her words as a provocation?

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