

The Power of Naming

'Senseless Violence' and Violent Law in
Post-Apartheid South Africa

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Contents

The long transition: Violence during and after apartheid	2
Defining transition, defining vigilantism	4
Vigilantism, people's justice, and apartheid: A brief overview	9
Transitional violence?	11
The persistence of necklacing and the 'breakdown' of the criminal justice system	15
Police violence	20
Conclusion: 'Corrective' violence	26
References	30

We are shocked and dismayed at this senseless violence. We believe there is enough space in our democratic order for any dispute to be resolved through dialogue without any breaches of the law or violence.

Jacob Zuma¹

Atrocity is that part of the crime that the punishment turns back as torture in order to display it in the full light of day: it is a figure inherent in the mechanism that produces the visible truth of the crime at the very heart of the punishment itself. The public execution formed part of the procedure that established the reality of what one punished. Furthermore, the atrocity of the crime was also the violence of the challenge flung at the sovereign; it was that which would move him to make a reply whose function was to go further than this atrocity, to master it, to overcome it by an excess that annulled it.

Michel Foucault²

This report focuses on vigilantism, on the practice of ‘necklacing’ as a form of punishment, and on police violence in South Africa post-apartheid. The report engages with a series of questions about how popular forms of justice are imagined and enacted and about what the persistence of forms of violent punishment that originated during apartheid signifies in South Africa today. The report explores some of the complex reasons why people understand violence to be a means for achieving justice. It considers issues related to collective violence, violence connected to service delivery protests, and violence widely understood by perpetrators, onlookers, and researchers to be punitive in intent. It contests the idea that such forms of violence are “senseless”, arguing that to do so is to evade the question of how violence is bound to the political order, both past and present.

¹ Presidency (2012).

² Foucault (1995:56).

The long transition: Violence during and after apartheid

This report focuses on vigilante justice and violent forms of punishment in Khayelitsha and Nyanga, townships just outside the city of Cape Town where, between March and August 2012, at least 14 people were killed by ‘necklacing’.³ The primary response from the government, from nongovernmental organisations and activist groups and from members of the public who wrote to local newspapers has been to call for an increase in policing in those areas where necklacings have taken place. I argue that increasing the number of police in the townships is an inadequate response on a number of levels, not least because the excessive violence of the police in many cases mirrors that of vigilantes.

The importance of thinking about police and state violence in relation to violence in South Africa more broadly has taken on renewed urgency in the wake of the massacre by the police of striking workers at the Lonmin platinum mine in August 2012. How does the history of South Africa shape the violence of the present? In what ways does the police service continue to be shaped by apartheid-era policing tactics? What is the relationship between the violence of the post-apartheid state and the authoritarianism of apartheid?

The report begins with a discussion of what it means to think about violence in/and transition. It includes a reading of an account by a police officer and former member of a Self-Defence Unit who relates how she perceives the relation between violence and justice.⁴ Her views, documented by Centre for the Study of Violence and Reconciliation (CSV) researchers in 1999, intersect in interesting ways with perceptions of justice today. I then consider the ways in which necklacing has figured in public discourse in recent months, and in particular contest the idea that necklacing signifies a “breakdown” in the criminal justice system.

³ Necklacing is a form of violent punishment associated with the apartheid era that, as the recent cases of necklacing discussed in this report make clear, continues to be practiced in South Africa. South African sociologists Wilfried Scharf and Baba Ngcokoto define necklacing as “the much publicised and controversial process by which a car tyre is placed around the victim’s neck filled with petrol and set alight. It became a form of execution in the townships from 1984 onwards and was used by both pro- and anti-government groups. It is usually the action of an incensed crowd of people rather than an individual act” (1990:371). See also Nomoyi and Schurink (1998). The exact number of people who have been killed by necklacing in the Western Cape in recent months remains unclear.

⁴ Self-Defence Units were set up in 1984 as part of the African National Congress’ strategy to defend communities from the apartheid regime’s security forces. See Rakgoadi (1995).

The section that follows turns to recent instances of police violence and brutality in response to service delivery protests against the state and in response to striking workers. The report focuses on the police response to service delivery protests held in Ficksburg in April 2011 and describes strikes and riots that occurred at Implats platinum mine near Rustenburg in February 2012, in which thousands of miners took part, three people were killed, and several people were injured.

Reports on the Implats strike and related violence appeared primarily in the business sections of South African newspapers and quite rapidly disappeared from public view. In the following month, there were nine incidents of mob justice, including several instances of necklacing in townships in the Western Cape. These events were reported by newspapers but, like the violence related to the Implats strike, drew little commentary or analysis in the press and did not lead to public debate.⁵ In this report, I ask how these events can be thought together and what is at stake in keeping them apart. I draw a link between these disparate forms of violence in order to bring to light a disturbing parallel between legal and illegal forms of violence that structure the democratic social order, itself secured by violence. In conclusion I argue for modes of response that address not only the symptoms (as increased policing, when it is not accompanied by other interventions, does) but also the causes of violence post-apartheid.

A 2009 CSVR study commissioned by the government addresses the question of why South Africa has such high levels of violence. The researchers note that “South Africa has been distinguished by high levels of violence for most of the last century” and, drawing on the work of Gary Kynoch on colonial cities, trace the “serious problem of violent crime” to “as early as the 1920s” (CSVR, 2009:5). Under the heading “Brutalisation and the culture of violence”, the researchers cite Kynoch’s account of colonial and apartheid-era oppressive state practices and policies that created “conditions, unique to South Africa, [that] nurtured a culture of violence that has reproduced itself ever since” (6).⁶ Critical here is the question of how such a culture ‘reproduces’ itself. What are the modes and mechanisms of such reproduction? If we follow Kynoch’s account of a South African ‘culture of violence’ that began under colonialism and extends

⁵ A notable exception was the brief article, “Brutal responses to suspected theft a sign of deep damage”, initially sent as a letter to the editor of the *Cape Times* by Father Michael Lapsley (2012).

⁶ In their provisional research report for the third phase of the Violence and Transition Project, Chiedza Chagutah, Godfrey Maringira, and Nicky Rousseau note that the use of the notion of a ‘culture of violence’ was subject to fierce critique by parliamentarians when the CSVR researchers presented their findings to them in 2009.

to the present, how do we think about the effects of transition(s)? If vigilantism during the 1980s and 1990s is understood as a phenomenon shaped and promoted by apartheid, how do we understand the politics that promotes vigilantism today?

In asking these questions, I seek to contest widely held ideas that circulate within public discourse (including state discourse) about vigilantism and that read violence as falling outside of the political. Against views that link violence to culture or biology, I argue for recognising the place of the political in both theorising and addressing violence. This entails interrogating how the ideology of the state makes possible and promotes precisely the forms of violence it simultaneously condemns. The massacre of workers at the Lonmin mine casts one causal element for ongoing violence in South Africa into sharp relief: the part of the state in protecting the interests of the wealthy elite. The events at Lonmin have led to a national debate about police violence. That it took a massacre to achieve this is an indictment of the structures of power in post-apartheid South Africa.

Defining transition, defining vigilantism

Among the most significant changes that marked the South African transition from apartheid to democracy were those made in and to the law. While it was widely understood that the transformation of the social order and the delivery of houses, education, and health care for all could not be achieved overnight, the drafting of the Constitution and the introduction of the Bill of Rights were the *conditio sine qua non* for the founding of the new nation-state.⁷ Indeed, since 1994, the powers of the Constitutional Court to contest decisions made by the state have meant that citizens are able to draw on juridical power to secure their rights. The landmark Treatment Action Campaign and Grootboom cases against the state made clear that that the transformed justice system could be utilised as a powerful tool to attain social justice.⁸

While the South African legal system is in principle designed to serve the interests of the people, the transformation of the criminal justice system has been slow and uneven. Despite extensive reform, the legal system continues to bear traces of apartheid-era legislation. For

⁷ As legal scholar Catherine Albertyn notes, the Bill of Rights and Constitution sought to give “legal and constitutional form” to the principles of the Freedom Charter, all of which “seek to give substance to the principles of equality, democracy and social justice” (1994:41).

⁸ See Pillay (2002).

example, as human rights lawyer Fatima Hassan points out with reference to the causes of the strike and massacre at Lonmin, South African legislation still contains what she describes as “a very regressive law” that permits “differential and inequitable treatment” for miners who contract lung diseases at work (Hassan, 2012). Progressive laws also often fail to serve those they are intended to protect as a result of factors not written into law that nevertheless affect its outcomes, such as continuing gender discrimination in the legal system. People wait for long periods of time before they are tried, jails are overcrowded, the police service is riddled with corruption, and in many cases both the police and the courts mishandle evidence and fail to follow standard procedures.

In his discussion of the implementation of “rule of law reform” in the aftermath of political transition, democratisation expert Thomas Carothers observes that interventions aimed at promoting the rule of law are often invoked as though the law were an ideologically neutral and universally applicable method of effectively delivering democracy after political transitions. Carothers argues that “the primary obstacles to such reform are not technical or financial, but political and human” and that “citizens must be brought into the process if conceptions of law and justice are to be truly transformed” (1998:96). Implementing the rule of law is recognised here as bound to the transformation of “conceptions of law and justice” that can be acquired and cultivated. However, recognising that ideas about justice are not innate but acquired does not mean that such notions are easily changed. The persistence of extralegal forms of violent punishment that are perceived as a means of attaining justice testifies to the fact that there is no singular conception of law post-apartheid and that the law of the state is by no means the only law that rules. The relation between violence and justice and how people understand these to be linked is an important nexus to think about and to unbind.

Scholars have documented how the absence of legal structures for all South Africans under apartheid led to informal practices of achieving justice, of community organisations formed to police neighbourhoods, and of community courts (Scharf and Ngcokoto, 1990; Beinart, 1992; Crais, 1998). After the end of apartheid, these forms of justice and policing did not disappear. Certain forms of community policing were formalised and Community Police Forums were established across the country before the 1994 elections as a key element in the reform of the police from ‘force’ to ‘service’. They were constituted by “community representatives who would advise, monitor and co-operate with the police in their area” (Gordon, 2001:122).

South Africa also now has one of the largest private security industries in the world. Armed private security services are commonplace in South Africa's wealthy neighbourhoods and are widely recognised to be a legitimate and necessary response to the high levels of crime in the country. Such forms of self-policing are generally not considered to be vigilantism. Vigilantism, particularly when it involves enacting violent punishment and takes place in the townships, is cast as illegitimate within public discourse. By many people who live in the townships, however, such forms of violence are perceived as the most efficient and expedient means of attaining justice.

In her CSVR study on vigilantism during what she describes as "South Africa's period of transition", Bronwyn Harris notes that before 1994 "vigilantism was a negative term applied to illegitimate and violent actions that were seen as being politically motivated" (2001:5). Such forms of 'conservative vigilantism' generally referred to violence enacted in support of the apartheid state. Harris notes a shift in how vigilantism is understood after the end of apartheid and argues that it is "predominantly defined by recourse to 'fighting crime'" as its political valence falls away (5). Harris understands vigilantism through the prism of South Africa's transition from apartheid to democracy and in the 'transitional gap' opened up as the repressive, apartheid-era criminal justice system began to be transformed. More than a decade after the publication of Harris' report, it seems important to ask whether vigilantism should still be conceptualised in relation to the transition in this way. If thinking about violence in relation to transition refers to thinking about the violence of the present historically and, in particular, to acknowledging the constitutive force of the violence of apartheid, the concept of 'the transition' may serve as a way of keeping open the relation between the present and the past. This is because the concept can help us to recognise how the violence – epistemic, structural, juridical, economic and physical – of apartheid continues to shape the post-apartheid present. Arguably, however, as the concept marks the relation between two states but also anticipates an increasing difference between them, 'the transition' can also be used to limit or foreclose an engagement with the deep histories that are bound to the violence of the present.⁹

Analysing and theorising violence in relation to transition implies thinking about violence in relation to change, and even about violence as a force of change. Using transition as a framing

⁹ The research conducted over the course of the three phases of the Violence and Transition project has sought to mark not only the changes brought by the political transition in South Africa but also the sites of continuity, as well as to problematise and disrupt the notion of transition.

device for research on violence might lead researchers (even if unconsciously) to seek out changes in people's lives and shifts in their ways of thinking and being. Such a focus may make it difficult to recognise things that have not changed much at all. The concept of 'the transition' is not innately positive, but in relation to violence the term has primarily been used to mark what can be understood as the redemptive potential in violence (as in 'the transition to democracy' and 'transitioning out of violence', both of which imply moving away from and the disavowal of violence).

While researchers who have worked on the subject of violence and transition in South Africa have been concerned with the ways in which high levels of violence have continued post-apartheid, they have also sought to understand how violence has taken new forms or has been subject to reclassification. For instance, Vanessa Barolsky writes of widespread and extreme forms of violence in Kathorus between 1990 and 1994, linking violence to what she terms "radical re-configurations of power" and to "a re-making of the social world in the nation-state-in-the-making where the contours of meaning, of membership, of citizenship and statehood are profoundly fluid and contested" (2007:176). This report takes seriously the idea that violence can operate and be understood not only as destructive but as constitutive of identities and as a productive force that secures social boundaries and bonds even as it marks their limits. If violence can be understood as a productive and even constitutive force, in every instance one would need to ask what is being constituted and in what ways. At the same time, one would need to ask what is prohibited, negated, or destroyed through violent forms of production. This is to say that if community is in some way formed through violence (gangs, soldiers, ex-combatants, vigilantes, rape survivors), the possibility of community-through-violence is also radically delimited. Communities formed through and underpinned by violence are sustained through (often violent) forms of exclusion.¹⁰

The insistent repetition of forms of violence such as necklacing, police brutality, ongoing forms of interpersonal and collective violence, and the violence of the state (both structural and through force) almost 20 years after the end of legislative apartheid has made it increasingly difficult to rationalise the violence of the present in relation to the political transition and to understand violence as a force of change. This is not to argue that the history of violence in South

¹⁰ "Sometimes crime is able to unite people, especially victims of crime, because when crime comes it does not affect IFP or ANC only; where violence happened, everyone cries, neighbours cry." (Self-protection focus group transcript, CSVr researchers, Kathorus, May 2005, 7).

Africa has no bearing on the forms of violence we experience today, nor is it to proclaim the end of all forms of political violence (violence for change). It is rather to recognise that the key analytical frame that has structured how we have 'made sense' of violence – that of transition – might no longer hold.

Some of the forms of violence we are subject/witness to in the present cannot be read as seeking to bring about social change, as components of some larger political struggle, or as forms of remaking of subjects or of worlds. Rather, some of the forms of violence we are witness/subject to that in an earlier transition/post-apartheid moment may well have been read as signs of the turmoil of the times, as indicators of a society in the throes of (violent) change, and as signalling new forms of social relations and political life yet to come now seem oriented towards securing the existing, unjust, social order. In other words, such forms of violence are inherently *conservative*.

There have been other key moments in thinking about the meanings of violence in South Africa when dominant approaches and frameworks have unravelled in the face of violence that seemed to exceed sense. One of these was the period immediately preceding the end of apartheid, which was characterised by an intensification of violence.¹¹ Political theorist André du Toit describes this period as having inaugurated a crisis in understanding political violence in the country, arguing that at the moment of negotiated settlement, which “could be expected to bring the earlier cycle of violence to an end ... there was a proliferation of sustained political violence, now robbed of much of its earlier significance and rationality” (1993:28). In his reading of Du Toit’s argument, Riedwaan Moosage observes that “Du Toit points to a resistance framework that had run up against a limit in relation to political violence” (2010:85). He writes that “violence described as political violence in the context of resistance was explicable. However, without the context of resistance to oppression/repression, the markers of ‘significance and rationality’ ceased to exist. In this sense, political violence was rendered inexplicable” (85). Moosage’s careful phrasing implies that it is the definitions of both political context and violence that render violence explicable or inexplicable. Violence itself, however, is no more or less explicable than it was prior to the end of the conditions that provided a framework that made possible the ‘sensible’ rendering of violence. These moments when the logics of violence and its theorisation seem to diverge dramatically throw into sharp relief how the explanatory codes for making violence sensible have always been contingent on and

¹¹ Between 1990 and 1994, approximately 14,000 people were killed in political violence in South Africa. See Hamber (1999).

cannot be unbound from the always political constitution or naming of violence. This reading points to how violence can also never be ‘senseless’. Naming violence as senseless is to refuse to recognise the history and politics of violence.¹² Our inability to analyse the violence of the present does not mean that the violence is ‘senseless’ but rather that we do not know how to explain it.

Vigilantism, people’s justice, and apartheid: A brief overview

Between September 1984, “when township-based protests signalled intensified and broad-based resistance to apartheid”, and February 1986, “over a thousand persons were estimated to have died in the unrest” (Haysom, 1986:1). The 1980s saw the proliferation of highly visible forms of vengeance and punishment and acts of murder across urban and rural South Africa. This violence was perpetrated by the security forces and right-wing vigilante groups. Scharf and Ngcokoto observe that “after 1985 the term [vigilante] increasingly referred to right-wing African groups working in close alliance with the police to eradicate or intimidate extra-parliamentary groups, more particularly the youth component of these groups” (1990:369). Even at the time, the violence was known to have been ‘sponsored’ by the regime, to have occurred with the compliance or assistance of the police, and to have been fuelled rather than mitigated by the responses of the state, which made use of the violence to quell dissent, arrest community leaders and activists, and to detain people without trial. However, this violence was named ‘black-on-black’ conflict in the South African media and today is often referred to as ‘internecine’ conflict. It is said to have come about as a result of ethnic rivalry and, in the popular imaginary, is limited to conflict between Xhosa- and Zulu-speaking South Africans. As Nicholas Haysom notes in *Mabangalala*, a text that documents the widespread emergence of right-wing vigilantes across the country in the 1980s:

The use of this label [black-on-black conflict] served to obscure the emergence of a pattern of extra-legal violence by right-wing vigilantes. By referring to all conflict in which both parties were black, as black-on-black conflict, the links and relationships between the conflicting parties and apartheid structures were buried. Furthermore, the label carries with it a racist suggestion of traditional or tribal internecine strife. (1986:1)

¹² Perhaps the most well-known instance of refusing to grant sense to violence is the way in which the Holocaust has come to represent the limit point for thinking. Naming the murders in the death camps ‘senseless’ and ‘unthinkable’ only serves the ends of political forgetting. Recently, President Jacob Zuma used the term in his statement on what he has termed the ‘tragedy’ of the Lonmin massacre, stating, “We are shocked and dismayed at this senseless violence” (“Lonmin ‘deeply regrets’”, 2012).

The violence that seemed to flare up in the 1980s was linked to long-term struggles against the violence of the state and the wilful destruction of those forms of organised resistance and modes of self-governance that communities had managed to forge against all odds. Haysom writes that the apartheid government's attempts "to legitimise conservative tribal courts known as the 'Makgotla'", which "imposed savage punishments and generally directed their activities towards the rebellious or disrespectful", were fiercely opposed by many township dwellers (1986:4).

In "Images of punishment in the people's courts of Cape Town 1985–7: From prefigurative justice to populist violence", Scharf and Ngcokoto provide an account of the rapid proliferation of 'people's courts' in townships in the mid-1980s. They argue that "in one perspective these people's courts may be viewed as an important pre-figurative project, an attempt to create adjudicative structures consonant with popular notions of justice for a post-apartheid society" (1990:342). They observe that the people's courts should be understood in a larger context of informal structures being set up to police black African communities since at least the 1950s, which included street-committees, "private police forces in the form of *makgotla*, peace-keepers or vigilantes", informal courts, and "neighbourhood moral pressure" (344).

In his work on the Makhulu Span movement in the Eastern Cape in the 1950s and 1960s, Clifton Crais seeks to historicise the emergence of people's courts. He argues that they complicate the neat division between so-called 'traditional' courts and 'modern' (European, colonial) courts in that they are "complex and creative bricolages that appropriate critical signs from various sites, contest the dominant order, and become spaces within which people imagine, communicate and enforce ideas and visions of society and morality" (1998:49). In this light, forms of popular justice become exemplary transitional practices through which people forge responses to a shifting political order. While Crais acknowledges that people's courts were both violent and authoritarian, he argues that they were also "powerfully constitutive sites of imagining that arose at quite specific political moments" (59).

Crais' work, like that of Barolsky and Scharf and Ngcokoto, challenges us to recognise the ways in which violence can operate to form communities as much as it destroys them. It also leaves us with the question of why such sites of imagining were not actualised after the end of apartheid to take lasting form as institutions that could bring about justice for all. This may be connected to how vigilantism has been aligned with deeply conservative and oppressive political agendas in South Africa both during and after apartheid. Crais' work also leads us to consider why it is that,

post-apartheid, so many South Africans remain alienated from the legal order intended to represent them and continue to take the pursuit of justice into their own hands. If practices of popular justice under apartheid served to “contest the dominant order”, what do such practices signify today? As the time of transition grows more and more distant, it is increasingly difficult to argue that practices of popular justice summon an as yet unrealised justice of the future.

Transitional violence?

Research on vigilante violence in South Africa conducted by CSVR from 1990 to 2000 provides a perspective on the ways in which vigilantism has been understood over time and offers particular insight into changing ideas about crime and justice in the years immediately following the first democratic elections. Interviews conducted by CSVR researchers focused on specific incidents of vigilantism or on the broad political and organisational landscape of governmental and extralegal crime fighting groups. The interviewees were members of Self-Defence or Self-Protection Units,¹³ community policing forums, and taxi associations, as well as one of the leaders of Mapogo Amatamaga, the large vigilante group that operated in the North West Province in the 1990s, and PEACA members in Khayelitsha and Gugulethu. Members of the police service, government officials, and public prosecutors were also interviewed. A small number of interviews were held with people who had been subjected to vigilante violence. The broader context for vigilante violence and the life histories and everyday experiences of those interviewed was largely omitted. However, the interviews provide insight into the continuities and disjunctures between ideas about punishment, justice, and policing during and after apartheid.¹⁴

CSVV researchers also conducted interviews with people who had been members of Self-Defence Units in Kathorus in the East Rand in Gauteng Province. In the section that follows, I analyse an excerpt from an interview conducted with Patricia Tshabalala, who joined a Self-Defence Unit (SDU) in 1994.¹⁵ The interview is notable for the ways in which Tshabalala relates her views

¹³ Self-Defence Units (which were linked to the United Democratic Front and the ANC) and Self-Protection Units (which were linked to Inkatha Freedom Party) were formed in the 1980s by township dwellers to protect their communities from attack. They also began to police and punish people who were perceived as having transgressed the laws of their communities and, for this reason, are sometimes considered vigilantes (Harris, 2001).

¹⁴ See Harris (2001) and Barolsky (2005) for research on violence and transition on the East Rand.

¹⁵ Tshabalala was part of the Community Constable Project, which started in 1994. She joined an SDU during the time when the ANC was seeking to disband SDUs. See Rakgoadi (1995) on the fate of SDUs after the end of apartheid.

about the political transition and its effects – what she reads as the transformation of violence into crime. The interview took place in Katlehong, one of three townships east of Johannesburg that make up the Kathorus area and that experienced extremely high levels of violence between 1990 and 1994. Barolsky, one of the CSVR researchers who worked in the area, notes:

Between 1990 and 1994, political violence claimed the lives of approximately 14000 people in South Africa nationally while during the preceding five years, 1984–1989, no more than a quarter of this number died as a result of political conflict. On the East Rand [where Kathorus is situated], approximately 3000 people lost their lives over a period of four years after the opening up of the South African political process in 1990 and the un-banning of formerly prohibited organisations. (2007:176)

Tshabalala is cited as saying, “When you tell people from outside that you are from Kathorus, they say, Kathorus, you can smell the blood. That is a violent place”.

Tshabalala joined the SDU because she wanted to join the police and had heard that the police service was only recruiting people who had been members of SDUs or Self-Protection Units. In 1999, she became a member of the South African Police Service. While employed to protect the community and to fight crime, she expresses the view that the police are ineffective and states that she would employ extralegal violence if someone broke into her home:

My mother said, “resign from this job” but I like it. I always wanted to be in the police even though at that time, some comrades would burn police houses. Yes, sometimes criminals around the township would attack or disarm CC’s [community constables] because you know who they are and you have got powers. But the CC [Community Constable Project] was very effective at the time before these constitutional rights – what do they say? – [in the present] you can’t assault a suspect.

The post-apartheid present is defined here as a time in which constitutional rights are guaranteed but which are understood as working to protect criminals: “Then [by contrast] they would say “whatever we need from you, give it to us”. And we did. Torture people like that.”

Tshabalala is candid about having used violence in order to punish those suspected of committing crimes. She does not appear to think that the use of torture was in any way problematic but that it is precisely the failure to employ such methods that makes the post-apartheid criminal justice system so ineffective.

Now people come in and rob you. Then it was not the same. The other day I heard sirens wailing and I thought they are just making a noise, not preventing anything. At that time [however], we were quick. We [members of the SDUs/Community Constable Project] used to attack quickly. They [people living in the area] used us because we were people from the area.

The “wailing” sirens of the police vans are dismissed as ineffectively “just making a noise” and are contrasted with the swift response of the SDUs in the past, who are described here not as preventing violence but as “attack[ing] quickly”. The fact that members of SDUs were from the neighbourhoods they policed is also referenced here as a strength, in contrast to the police in the present who may be stationed in areas they know little about. Tshabalala goes on to describe how the violence seems to have increased both in intensity and frequency:

These days, it is very scary. Then, not everyone had a firearm. Crime is worse now. House robberies are bad. They happen everyday. If they find you alone in your house, they will rape you, rape your child, kill your man, take everything. It is worse today because it is not violence, it is crime.

The proliferation of firearms is linked here to the increase in crime and to its more frightening nature. The shift from violence to crime in Tshabalala’s conception seems to lie in crime’s totalising reach – a form of violence without limits. Tshabalala speaks of the community’s relationship to the police and notes, “The community’s perception is that generally if there is something wrong, don’t bother to call the police. They know the police won’t come. Or if they do, it will only be after two hours”. She goes on to talk about how she perceives most police officers to be more concerned with their private interests than with fighting crime. Her remarks about police having “gone soft” are disparaging in tone:

It seems these days, the police are going to become social workers, teachers, preachers – they’ve all got diaries, they go to meetings. Now they are busy with meetings. You can say: “excuse me Captain” and he says: “not now, I’ve got a meeting to attend”. I’m not sure if they are trying to be friends with the criminals, the private sector?

The ambiguity of the closing line of Tshabalala’s statement, which links the police to criminals and obliquely references police corruption, is telling. Where do the loyalties of members of the police force in the present lie? For her, ineffective and corrupt policing is connected to the fact that “nowadays the children of Katlehong are not many in the police” and that many of the police stationed in Katlehong do not even come from surrounding neighbourhoods but from other provinces. Yet, Tshabalala’s reflections are less about the fact that the police are ineffective because they do not know the areas they patrol than about the fact that the police do not feel a sense of obligation to the community they are meant to serve. Implicit here is the idea that the police will only “care” about those with whom they have a particular relationship. This view reveals

much about the challenges of transforming practices and perceptions of state institutions in the aftermath of apartheid.

Tshabalala also links the fact that the police are ineffective in combating crime in her community with the formation of the Neighbourhood Watch in her area:

Last year when my neighbourhood was targeted so much [by criminals in the area], we formed a neighbourhood watch and each paid R10 a month so they would patrol. The other night, at 2am, they caught two guys who were not from this area, they came from another location.

One of the interviewers asks what became of the men who were caught and Tshabalala responds:

They were beaten up. Really badly. They were fucked up. Then the patrol called the police. Later someone said they saw the guy walking around. I said maybe he was out on bail or he came from the hospital. You see, there is this constitutional thing that the police can't arrest someone who is injured. They have to take them to hospital first. ... Luckily the patrollers were not arrested because often the police arrest those who are defending themselves.

It is clear that for Tshabalala the Neighbourhood Watch patrol did not do anything wrong in beating the suspected criminals. It is significant that she does not actually provide details about what the two captured men ostensibly did. She merely notes that they were not from Katlehong. Included in her response to the interviewer about what became of the two men who were caught is an account of another incident that also makes clear her position in relation to the use of extralegal violence in addressing crime:

The other day, the patrol caught and detained three guys from the two-rooms who had come to rob the bond houses. They were detained all night and two died. Then the house owners were arrested for killing those criminals. It was terrible.

The transcript includes the interviewer's notes that contextualise Tshabalala's comments in order to clarify her meaning: "It was terrible [that the house owners were arrested]". These notes are hardly necessary as Tshabalala's own subsequent comments make her position clear:

If I get someone in my house, I won't even tell anyone. I'll kill him. I'll take my *panga* and chop him to pieces, then leave him out in the rubbish at the gate. I won't say anything.

The gruesome manner in which Tshabalala envisages killing the imagined thief resonates with the methods often used in vigilante killings. The modes of violence used to punish suspected criminals are significant (often these forms of violence are different from 'ordinary' forms of violence that are not related to vigilantism or to punishment), yet they are often overlooked in analyses of vigilantism that read vigilantism as a response to the failures of the criminal justice

system. The conclusion that vigilantism arises in response to the ineffectiveness of the police service and criminal justice system, the most widely held explanation for such forms of violence, is, in some ways, affirmed in the interview conducted with Tshabalala.¹⁶ However, such an explanation is complicated by Tshabalala's testimony. Why does Tshabalala hold the views she does about violence and justice? Why should it be that so often in the South African context, justice is not understood to have been served before the person accused of having done wrong is subject to violent punishment? How have ideas about retributive justice shifted over time and over the transition period? I argue that too great an emphasis has been placed on the inadequacies of the justice system in explaining vigilantism post-apartheid. While the absence of effective forms of policing and an efficient justice system may be necessary for arguments seeking to explain the existence of vigilantism, they are not sufficient.

In the section that follows I consider the problem of the persistence of vigilantism and focus in particular on the cases of necklacing that occurred in Khayelitsha and Nyanga in 2012. I argue that necklacing as a form of punishment testifies to the ongoing psychic legacy of apartheid as much as it is connected to ongoing structural inequality. These cases force us to interrogate the stubborn persistence of forms of violence over time, despite shifts in the political and social order.

The persistence of necklacing and the 'breakdown' of the criminal justice system

The recent cases of necklacing in the Western Cape are widely understood to have resulted from a "breakdown in the criminal justice system"¹⁷. The interview with Tshabalala, along with related

¹⁶ In their study, *Violent justice: Vigilantism and the state's response*, Makubetse Sekhonyane and Antoinette Louw argue that there is a direct connection between vigilantism and "a slow and inaccessible criminal justice system" (2002:47). Lack of confidence in the police and in the criminal justice system is a legacy of apartheid, but, as I argue here, this alone does not provide an adequate explanation for the persistence of vigilantism.

¹⁷ In November 2011, several civil society organisations led by the Social Justice Coalition lodged a complaint in "respect of police inefficiency and a breakdown in relations between the police and the community in Khayelitsha". They called for a commission of inquiry to be established. See nu.org.za/wp-content/uploads/2012/12/complaint1.pdf to read the complaint. The commission, set up by Western Cape Premier Helen Zille and headed by Kate O'Regan and Vusi Pikoli has been blocked by Minister of Police Nathi Mthethwa on the grounds that the commission would focus specifically on the police and would not investigate the role of the criminal justice system in sum. The interdict filed by Mthethwa to have the commission suspended showed that over a period of 14 months 78 people were killed as a result of vigilantism in the Western Cape. At the hearing about the suspension of the commission, Zille's lawyer, Sean Rosenberg, stated that there was a "self-evident link" between vigilantism and a breakdown of trust in the police (Davis, 2012).

work conducted by CSVR on vigilantism and policing in South Africa, is important for the ways in which it can be used to contest dehistoricised claims. The claim that necklacing signifies a 'breakdown' in the justice system suggests that the system was at some point functional. This is not the case. By connecting the practice of necklacing to the 'breakdown' in the system, the claim also effaces both the history and significance of necklacing. Recognising that vigilante violence is deep-rooted in South Africa does not, however, mean that vigilantism should be understood as a 'traditional' or 'indigenous' form of meting out punishment and bringing about justice. Such readings of vigilantism naturalise these forms of violence and cast them as operating outside the political. Rather, as this report aims to show, the persistence of vigilantism in South Africa is an indication of the difficulties we encounter in actualising democratic practices in the aftermath of apartheid.

In an extensive analysis of a necklacing that took place in the 1980s, psychologist Pumla Gobodo-Madikizela refers to the practice as "the dark side of the anti-apartheid struggle" (1999:101). She writes of the way in which the perpetrators of the necklacing and the crowd that is witness to the burning body engage in a seeing that is at the same time a refusal to see. In her account of the necklace murder of Nosipho Zamela in Mlungisi on the 8th of December 1985, Gobodo-Madikizela seeks to analyse what made it possible for the crowd to variously instigate, consent to, and bear witness to the burning of Zamela's body. She writes,

There is no question that the burning body was understood for what it was, i.e. everyone present at the scene of the necklace clearly understood that the consequences of burning Nosipho's body would be her death. But, what Nosipho was *going through* was not sufficiently appreciated to translate into feelings of empathy for her. They saw the flames, her helpless struggle as she faded into the inevitable silence and into death. But they did not see her pain. (136)

For Gobodo-Madikizela, the act of witnessing was made possible, at least in part, by the language of 'the spectacle' used to describe the murder: "necklacing" rather than "killing", "frying" rather than "pain", "necklace" rather than "tyre" (136).¹⁸

¹⁸ Gobodo-Madikizela makes an argument for a kind of psychic dissociation on the part of those responsible for necklacings that makes it possible for them to be blind to the pain of the person they are murdering. It would also be possible to argue that a process of what anthropologist Mary Douglas (2002), and after her Julia Kristeva, has termed 'abjection' is at work, whereby the body of the person to be killed is objectified and dehumanised and those considered to have no place in the social order are perceived as deserving the pain inflicted on them.

Gobodo-Madikizela's reading of the silence of Nosipho Zamela's mother in the aftermath of her daughter's death conveys the impossibility of coming to terms with the terrible facts of her murder. The mother's inability to speak of the killing of her daughter signifies the ongoing trauma of her loss. Her inability to speak about necklacing can be linked to the wider difficulty of engaging with the painful charge of apartheid-era atrocities and, in particular, the ways in which they are linked to violence in the present. As this report argues, the naming of present-day violence as 'senseless' is to disavow this difficult relation.

Official responses to the murders of suspected thieves in Khayelitsha and Nyanga in 2012 make clear that we are yet to formulate ways of responding to necklacing that acknowledge the complexity and gravity of the place of violence in South African society.¹⁹ They also reveal a decided historical and political amnesia. As noted above, the relation between violence and justice and how people understand these to be linked is an important nexus to think about and to unbind. Much research on vigilantism fails to ask how violence and justice came to be so intertwined in South Africa. For instance, Benjamin Häefele, in a research report compiled for the Western Cape provincial government, asserts that "the age old principle of 'an eye for an eye' still exists in Khayelitsha. It is in human nature to get even to make right what was wrong. Revenge attacks and vigilante activities occur thus on a regular basis" (2004:4).

As this report has argued, violence cannot be understood through recourse to biologism and cannot be thought outside of the nexus between the social, political, economic, and psychic. It is important to historicise violence and to provide an analysis of the context in which acts of violence occur in seeking to understand their cause. Häefele's attempt to draw a causal link between being subjected or witness to violence in the past and enacting violence in the present falls prey to a number of conceptual pitfalls. He argues that because many people who live in Khayelitsha grew up in Crossroads and were witness to extreme forms of violence under apartheid and because they never received trauma counselling, "these children are now living as adults in Khayelitsha, with no tolerance, forgiveness, gratitude or kindness for other human beings" (4). These are unsubstantiated claims that lead the researcher to pass judgement on entire communities. Häefele engages in a form of selective historicising that dehistoricises as it proceeds. This is not to argue

¹⁹ The Democratic Alliance provincial government has established a commission of inquiry into the so-called "breakdown in the criminal justice system". The commission, which focuses on policing in Khayelitsha, began its work in August 2012 and has been critiqued by activists as "long overdue" (Underhill, 2012). After its establishment was contested by Minister of Police Nathi Mthethwa, the work of the commission was suspended.

that psychological factors have no causal relation to vigilantism, but rather that they cannot be understood as the sole cause. Such claims are also racist in that they beg the question of how the violence of white South Africans during and after apartheid would be rationalised within such a conceptual schema. Häfele's reading detaches vigilantism from the political context and social conditions that make such forms of violence possible.

In his paper "The Bakassi Boys: Vigilantism, violence and political imagination in Nigeria", Daniel Jordan Smith argues that "vigilantism is a common response to ambiguities and ambivalence regarding the authority of the state" (2004:430). He writes that "in contemporary Nigeria, vigilantism's popularity is a response to a widely shared sense that recent political and economic reforms have led to greater inequality and injustice – a failure of accountability" (430). Smith also argues that the "overwhelmingly negative" way in which the police are perceived by Nigerians, "as corrupt and ineffective", partly accounts for the widespread support of vigilante groups (438). Smith writes that many Nigerians (not unlike many South Africans) regard the police "to be unconcerned with investigating crime and quick to unleash violence on uncooperative citizens (even when they have committed no crime except resisting police extortion)" (438).

Smith's work casts light on the paradox of how people understand violence both as necessary and as oppressive: "Nigerians often lament the violence of the state, however, most people I know also participate in discourses that construct certain kinds of violence as ethical and necessary for the maintenance of an otherwise unruly society" (437). The paradox of "necessary violence" in order to maintain social order is certainly not restricted to societies that have undergone political transition. In such contexts, however, there are more visible and intense contests over the legitimacy of conflicting modes of administration of justice. How can we understand the failure of state-sanctioned law to address the multiple forms of violence and injustice that exist in post-apartheid townships? Are there still ways in which such spaces are considered to fall outside of the protections afforded by the juridical sphere? In the same way that the absence of functional health care facilities in the townships symbolises the radical exclusion of the poorest members of South African society from the kinds of treatment and care they may require, so too the absence of courthouses and well-staffed and adequately resourced police stations in such places may contribute to a sense of having been "abandoned" by the state.²⁰

²⁰ The first public hospital in Khayelitsha, one of the largest townships in the country, only opened in 2012. Prior to this, there was only a day hospital in the township.

As numerous studies of vigilantism in South Africa make clear, township dwellers often do not call on the police to intervene in cases of crime and violence as they do not believe that the police will assist them.²¹ In an article on the case of three men suspected of theft and murdered by necklacing in Khayelitsha in March 2012, African National Congress (ANC) ward councillor for Khayelitsha Andile Lili is cited as drawing a direct connection between the absence of the police and necklacing:

The police aren't committed so people decide to take the law into their own homes. The vigilante violence wouldn't have happened if a police van was visible in the community. There is a van that is supposed to be in that sector day and night, but it is not there or it is not visible. The killing took about 45 minutes because those people were questioning the young men to find out where the stuff they stole. If the police were visible in Enkanini, that incident wouldn't have happened. (De Waal, 2012)²²

Research conducted by the Institute for Security Studies (ISS) on the development of vigilantism in South Africa includes a description of the results of a survey conducted in Eastern Cape Province on attitudes towards punishment that mirrors some of the views expressed by Tshabalala above. The study casts light on how, for many respondents, vigilantism is not only understandable but also acceptable when it is understood to be enacted in order to achieve justice:

Respondents were particularly lenient when it came to punishing people who had been convicted of vigilante crimes. When asked what kind of sentence a person deserved who had murdered his daughter's rapist, 5% said no punishment at all and 38% chose a non-custodial sentence. (Sekhonyane and Louw, 2002:6)

The ISS study seems to suggest that rather than exposing the lack of human feeling towards others, acts of vigilantism may represent a depth of feeling towards others as well as a powerful sense that justice must be served when a wrong has been committed. At the same time, the forms of violence used to punish suspected criminals often exceed the crimes committed. For instance, there have been several cases where those suspected of stealing have been brutally murdered and, perceived as having transgressed the laws that govern the community, are cast outside of the human and as deserving of violent death (note Tshabalala's description of how she would leave the chopped-up

²¹ See, among others, Dixon and Johns (2001) and Harris (2001).

²² The arrival and intervention of the police has indeed at times saved people from being necklaced. For instance, on the 9th of September 2003, the front page of the major daily newspaper in Gauteng, *The Star*, carried a large photograph of the head and shoulders of a young man surrounded by a tyre. The image had the following caption: "Vigilante victim ... this man narrowly escaped being necklaced by a mob in Vosloorus on the East Rand yesterday. When police arrived, he had been badly beaten and already had a tyre around his neck. After talking the mob out of setting him alight, police arrested him on charges of housebreaking and malicious damage to property."

corpse of the thief in the rubbish bin outside her house). The paradox of meeting injustice with the injustice of extreme forms of violence is one that cannot be explained by the absence of a functional police service and criminal justice system. Rather, these forms of extralegal punishment can be understood as continuous with and as mirrored by the 'legal' violence of the state.

Police violence

In recent times, service delivery protests in South Africa have been characterised by demonstrators clashing, often violently, with the police. The police service has often met protestors with forms of violence that exceeded what would have been necessary to maintain control of the crowd.²³ This report was written just over a year after community activist Andries Tatane was murdered by South African police at a service delivery protest in Ficksburg in Free State Province. The case against the seven police officers accused of killing him recently began in the Ficksburg regional court. The police officers, charged with assault and murder, have all pleaded not guilty. Forty-four protestors who participated in the same march were arrested in April 2011 and charged with public violence. Cases against 29 of the protestors were dropped and 15 are standing trial.

In his account of how events unfolded at the protest, one of the organisers of the march and the first witness to be called at the trial of the police officers, Makheta Phillip Selokoe explained that when the marchers, who he said were peaceful and numbered between 4,000 to 5,000, reached the Setsoto municipal offices in order to hear the mayor's response to their demands, an apple and a plastic water bottle were thrown into the crowd from the second floor of the building. In response, a protestor threw a stone against the glass doors of the building, which smashed. After this, Selokoe said, "everything went out of control" (Van Schie, 2012). At the hearings, the police officers' lawyer attempted to discredit Selokoe's testimony and claimed that Tatane was not an "innocent victim" who died attempting to protect other protestors but an "aggressive" man who incurred the wrath of the police by unlawfully attempting to enter the municipal buildings and by showing the police "the middle finger" ("Tatane not peaceful", 2012). Footage of Tatane being

²³ It was widely reported that after he delivered a speech in which he called for police officers to take an offensive stance against criminals, then National Police Commissioner Bheki Cele called for the police to "shoot to kill". Cele claimed he never made this statement. However, it cannot be disputed that the South African Police Service has been militarised. The use of deadly force by the police has been subject to increasing scrutiny in the wake of allegations of excessive violence and brutality.

beaten and shot with rubber bullets at close range by the police was screened at the court. He died as a result of his wounds.

What follows is a news article that describes a series of responses made in the immediate aftermath of Tatane's murder and of the footage of his death being aired. The multiple meanings of his death are suggested by the differences among the official pronouncements issued by the minister of police; the condemnation of police brutality by Congress of South African Trade Unions (COSATU), the South African Communist Party (SACP), and the African Christian Democratic Party, as well as by the ANC (neatly side-stepping its responsibility as the ruling party); the instrumentalised use of the event by the Democratic Alliance (DA) to attack the ANC; the intensification of public violence linked to the community's rage at the murder; and the grief of Tatane's widow, Rose Tatane.

The violent and public death of Ficksburg protester Andries Tatane on Wednesday has drawn a flood of condemnation from across the country, while Police Minister Nathi Mthethwa repeated an earlier warning to protesters not to taunt members of the police.

Mthethwa said on Thursday that he "noted the unfortunate incident where there was a scuffle between a striker and the police" and that it was "unfortunate that a life has been lost" in the "alleged incident".

"From where we are, it will be improper to draw conclusions on the incident, but (we) remain confident that an impartial investigation will inform us what transpired, who was in the wrong, and so forth," he said.

The minister then scolded protesters who "provoke" the police. He said that while the government "fully respects" citizens' right to protest, it would not tolerate the "violent, barbaric destruction of property and intolerant conduct, including provoking and taunting police".

Tatane, a father of two, husband to Rose Tatane and a community activist, died on Wednesday from his injuries sustained during service delivery protests in Ficksburg.

Said Rose: "I saw him lying there on a stretcher. He looked stiff, like somebody who died a long time ago. My son, Molefe, asked for his father. I told him his father was with the people," said Rose.

"I saw the police beating him. I saw him standing up. I saw him falling. The last I saw was when the ambulance took him away," she said, describing watching the footage on SABC news on Wednesday night.

On Thursday, residents in Meqheleng, a township bordering Ficksburg, burnt a municipal building and a public works depot as they vented their rage at the death. Angry youth armed with petrol bombs and rocks barricaded roads with residents having to escort journalists inside the township.

The ANC was unequivocal in its condemnation. It said the "chilling and sad scene" broadcast on television showed how members of the SAPS "violently killed an unarmed protester after severely beating him".

The party expressed its condolences to the victim's family and urged Mthethwa to institute a "commission of inquiry" into the death "to bring the perpetrators to book".

"We are a constitutional democracy, with our people enjoying all rights to stage peaceful demonstrations to back their concerns – a far cry from being a police state. It was totally unbelievable, shocking and disgusting to see images ... of such extreme police brutality and murderous activity," the ANC said.

The ANC called on the Independent Communications Authority of South Africa (Icasa) to investigate whether the SABC had "overstepped its mandate" by broadcasting "such shocking and disturbing images on its prime time news slot with disregard to young viewers and other sensitive people".

Icasa spokesman Paseka Maleka said on Thursday it had received no such complaint and that any complaints relating to content against the public broadcaster should be directed to the National Association of Broadcasters, of which the SABC is a member.

DA federal chairman Wilmot James said Tatane's "tragic death at the hands of the police" showed that the ANC government was willing to use "apartheid-era policing tactics to clamp down on service delivery protests – a deplorable and desperate act that shows just how badly this administration has lost its way". He also slammed the governing party for "attempting to censor the broadcast of this story".

Free State Cosatu provincial secretary Sam Mashinini said the TV footage clearly showed that Tatane "did not have any weapon in his possession". He called for a "thorough investigation" into the incident and said anyone found to have "misused his powers and caused the killing of a person ... must face the might of the law".

"Whatever the (victim) might have done to the police it did not warrant the brutality by the police," he said.

The SACP said the "intolerance of the police signals a growing crisis in the attitude of our policing service". It added: "For months now the SACP has observed the irrational response of police to working-class protests. The SACP calls on the government to address this issue with the urgency it deserves."

African Christian Democratic Party leader Kenneth Meshoe decried the "shocking" actions of police officers who "pounced on an unarmed protester like a pack of hyenas".

Paul Hoffman, of the Institute for Accountability in Southern Africa, yesterday wrote to Public Protector Thuli Madonsela urging her to expedite his earlier complaint about the "militarisation" of the police service, which he says is unconstitutional.

The ICD confirmed that investigators had been sent to the area.

ICD spokesman Moses Dlamini said statements would be taken from the police and witnesses and a final report would be sent to the national director of public prosecutions for a decision on whether or not to prosecute. (De Lange, 2011)

For the ANC, Tatane's murder signifies a decided aberration in an otherwise democratic social order. The party's response works to disassociate it from the police service and in particular from the violence it employs: "We are a constitutional democracy, with our people enjoying all rights to stage peaceful demonstrations to back their concerns – a far cry from being a police state". The ANC uses the voice of a benign but unsuspecting sovereign, claiming to be unaware of the

violence necessary to secure its power: “‘It was totally unbelievable, shocking and disgusting to see images ... of such extreme police brutality and murderous activity,’ the ANC said.” The murder made visible the “totally unbelievable” divide between the ideals of the liberation movement and the workings of the neoliberal nation-state (De Lange, 2011). This divide is made particularly acute if one considers the reasons for the protest. Historically, the liberation movement has been seen to be aligned with the will of the people, working to attain political, social, and economic rights.

In a similar way, the violence that led to the deaths of three people and resulted in at least 59 people being admitted to hospital as a result of injuries incurred during a strike and the riots that followed at Implats platinum mine throws into sharp relief the disjuncture between ongoing inequality in South Africa and the promises of the post-apartheid state.²⁴ The unprotected strike began on the 12th of January 2012 when rock-drill operators at the mine downed tools.²⁵ Seventeen thousand workers were dismissed when they ignored a call to return to work. A photograph that accompanies an article about the strike in the *Business Report* of the *Cape Times* is captioned, “Police stand guard over men they arrested near Rustenburg yesterday afternoon. Police barricaded roads between Bafokeng South mine hostel and Freedom Park at Implats’ Phokeng mine. One man was stripped naked and beaten to death, apparently because he had been going to work” (Faku, 2012).²⁶ The photograph contains an inset of a group of about 22 people standing along a road that is captioned: “Chinese shop owners whose businesses were looted gather under the protection of police who freed them after they were abducted by strikers”.

The reports in the media about the strikes and the images that accompany them portray the violence that characterises post-apartheid neoliberal capitalism. The mine makes manifest Karl Marx’s critique of the exploitation of workers under capitalism: the mine consumes the labour (and lives) of the miners and the product of their labour disappears into the ether of transnational capital. These events convey the foundational place mining held in the establishment of apartheid, both as a result of the massive wealth it generated and because of the ways in which it shaped South African society. The article and accompanying photographs refer to the migrant labour system that forced families apart for long periods of time and made attempts to establish homes

²⁴ The mine is situated approximately 120 kilometres (80 miles) outside of Johannesburg.

²⁵ An unprotected strike is a strike that does not comply with the South African Labour Relations Act.

²⁶ The fact that the man was stripped of his clothes and beaten by a mob seems to indicate that his death was intended to set an example for others who refused to join the strike. The way in which the man was killed resembles some of the vigilante killings discussed in this report.

close by to one's place of work illegal; the rudimentary single-sex dwellings built to house miners and the violence that has centred around them since their establishment; the police who continue to protect the interests of the state; and the presence of transnational capital, figured here in the sad shape of the Chinese shopowners who sought the protection of the police after their goods were looted and after being abducted by the workers.²⁷ Read collectively, these are all signs of the deep and ongoing forms of structural violence that is bound to the collective violence of the present.²⁸

In the case of the Ficksburg service delivery protest, the DA was quick to connect the violence of the police and the ANC, claiming that Tatane's death exposed the ANC's willingness to engage in "apartheid-era policing tactics". The DA asserts that the murder is "a deplorable and desperate act that shows just how badly this administration has lost its way" (De Lange, 2011). Yet, the relation between the state and the ongoing forms of violence necessary to secure its rule can be understood as the open secret at the heart of democratic forms of government. In his discussion of how the police "exemplify the contradictions of law as a social institution", Stathis Gourgouris notes that "[Walter] Benjamin rightly points out that the police is a radical disruption of democratic logic – indeed, that in a democracy the police cannot but act illegitimately, for it must exercise an order of despotic violence that a truly democratic polity ought to have dissolved" (1997:133–134).

The violence of the law and the ways in which such violence is perceived by South Africans is significantly complicated by the excessive violent law that was apartheid. In a disturbing echo of the statements made by the security police who murdered anti-apartheid activist Steve Biko in September 1977, Police Minister Nathi Mthethwa referred to Tatane's murder as resulting from a "scuffle" (De Lange, 2011). The use of this word interpellates the history of police brutality that shadows the existence of the police service in the present. If Tatane's murder signifies the reenactment of "apartheid-era policing tactics", how is post-apartheid policing imagined?²⁹

²⁷ The mine owners represent the true face of transnational capitalism, but are protected from both the miners and from public scrutiny.

²⁸ On this point, see Satgar (2012).

²⁹ Among the recommendations presented as the conclusion to the study is the following: "It is extremely disturbing that apartheid policing repertoires, including the use of violence against peaceful crowds of citizens, and allegations of arbitrary brutality and torture, are re-emerging in the post-apartheid state. The re-militarisation of police exacerbates the situation. We recommend that unambiguous guidelines for maintaining order during public protests in a democracy – namely, that it is the role of the police to protect citizen's rights to protest or demonstrate – be drawn up, and that clear training be provided for those police who are expected to undertake this task" (CSV and SWOP, 2011:131). See my critique of the notion of 'repertoires' below.

In his discussion of service delivery protests that took place in Azania township³⁰ between July 2009 and February 2010, Malose Langa describes the violence that ensued between protestors and the police. Writing of the methods used by protestors, in particular the digging of holes to create traps for police vehicles, Langa writes that “it seems this was the re-invention of anti-apartheid tactics in the battle against the special police units” (2011:63). He also observes that “the dominant theme in all the interviews conducted was that police’s use of force was almost identical to apartheid-era policing” (64).

In his analysis of the case studies included in a study on “community protest and xenophobic violence”, Karl von Holdt writes,

The cycles of police violence and protest violence appeared to be a well-worn and well-understood routine, with each party anticipating the repertoires of the other. Just as much as the protestors drew from the repertoires of anti-apartheid protest, so the police appeared to draw from the repertoires of apartheid-era repression of protest. That is, their actions suggest that the police view protest as a threat to public order rather than as a democratic right which should be protected by the police. (CSVR and SWOP, 2011:30)

He argues,

The insurgent civil society of the struggle against apartheid during the 1980s established violent practices as an integral element of civil society mobilisation and of struggles for citizenship, so it is not surprising that similar repertoires of violence are apparent in current insurgencies over citizenship and exclusion. (7)

Von Holdt writes that

violence is integral to insurgent citizenship in South Africa. Violence – both against the state and against collaborators in the community – was very much a part of the insurgent movement of the anti-apartheid struggle, which at its heart was a struggle to assert the rights to citizenship of the black majority, and provides a repertoire of practices when frustration and anger become too much. (27)

The idea that “violence is integral” to certain forms of social life comes close to asserting that there is a “culture of violence” in South Africa. As noted above, if we employ the term ‘culture of violence’, it is critical to undertake an analysis of how such a culture comes into being and is replicated. Similarly, if, indeed, there are repertoires of violence existing in South Africa, it is important to recognise these as “phenomen[a] to be problematized”, as Von Holdt notes, and not as “a taken-for-granted social fact” (26). This would entail asking whether people understand these

³⁰ The area is given a fictional name in the research report.

forms of resistance and policing to be resurgent or persistent forms, and to ask how people make sense of these forms and to ask about the forms of intercivillian violence valorised in the liberation struggle. It would also be to ask how and in what ways the violence of the present is by no means an aberration but rather the defining repertoire of the current political order.

Conclusion: 'Corrective' violence

Addressing a large crowd of residents soon after the necklace murders in Khayelitsha and Nyanga in 2012, Police Minister Mthethwa called on them to work together with the police rather than resort to what he has termed "senseless killings". Western Cape Premier Helen Zille is cited in the *Cape Times* as having said, "I believe there are clear grounds to conclude that the trust relationship between the police and the residents of Khayelitsha is seriously strained" (Koyana, 2012).³¹ Alongside Zille's statement is a photograph, taken with a cell phone camera, of three men, all of them encircled by tyres and by a crowd of people, many of them children, who have assembled to watch them die.³²

This image, like that of Andries Tatane encircled by the police officers who brought about his death, is painful to behold, both for what it tells us of the present and for what it evokes about the past.³³ One aspect that binds these seemingly discrete forms of violence together (collective violence/mob justice) is the defining role played by the South African Police Service. In the case of the Ficksburg service delivery protests, the ways in which police officers responded led to the death of Andries Tatane. The police officers understood themselves to be securing law and order by their presence, and the violent death of one of the protestors at their hands came about because of his resistance to the force of law they embody. In this view, Tatane himself embodied a threat to the legitimacy of the state, his death both accidental and necessary. The recent cases of necklacing in the Western Cape are also widely understood to be connected to the police service, in this case to their absence. Activists, many people living in Khayelitsha and Nyanga, and politicians have all linked the incidents of necklacing to the lack of visible and effective policing.

³¹ Barbara Maregele's article "Latest mob killings bring area's death toll in past two weeks to eight" (2012) was accompanied by photograph taken on a cell phone by Nombulelo Damba. Three images of the men being necklaced, all taken by Damba, also appear on several websites. See also "Macassar massacre" (2012).

³² Gobodo-Madikizela (1999) writes of the complex dynamics at work in the formation of a mob and of the decision-making process involved in performing a necklace murder. See Chapter Five of her doctoral thesis.

³³ For analysis of media representations of violence under apartheid, including a discussion of the way in which necklacing was portrayed, see Posel (1990).

In both cases, violence is employed as a mode of resolving conflict and is understood as securing the social order. In both cases, violence makes manifest the force of the law, in the case of Tatane's murder the law of the state and in the case of those who were necklaced the law of the community. Both cases can be understood as instances of 'policing' but both are also incidents where, paradoxically, violence exceeds and marks the limits of the law.

Vigilantism takes place outside of the field of what is recognised to be legal but is often thought of as "people taking the law into their own hands". In other words, vigilantism is not a blatant disregard for the law as it can in itself be understood as a form of law and as a way of bringing about 'instant justice'. In this sense, vigilantism can be linked to the maintenance of a form of social order and the policing of social boundaries. In "Keeping the peace': Violent justice, crime and vigilantism in Tanzania", Megan Plyler draws on the work of Jon Rosenbaum and Peter Sederberg to articulate how vigilante violence is bound to the state and to the protection of the existing social order:

Vigilantes respond to perceived threats to the dominant social order and this explicates why vigilantes do not commonly articulate an alternative societal vision – they are dependent upon and tied to the existing state establishment. Vigilante acts cannot be separated from the state in which they occur because they rely on the mores and societal values that are intrinsically linked to the state's social and political ideology. Furthermore, such actions are predicated on the assumption that the state cannot adequately defend the prevailing socio-political order from alleged seditious elements. Vigilantism, then, essentially propagates conservative ends as it attempts to support, restore or restructure existing societal arrangements. (2007:125)

Vigilantism may often serve conservative ends and may be directed towards securing an imagined social order. However, the history of vigilantism in South Africa, for instance people's courts in the 1980s, makes clear that it cannot always be linked to the social and political ideology of the state.

Plyler's claims can be thought in relation to groupings like People Against Gangsterism and Drugs (PAGAD) in South Africa and the ways in which vigilantism and other violent forms of the policing of social boundaries are intended to preserve a social order that is not that propagated by the post-apartheid state (at least not as it is imagined in and by the Constitution). Plyler writes that vigilantism is "frequently a moralistic response that has mass support and can, and usually does, seek redress for real or imagined grievances that reside in political, economic or social inequalities" (125). She defines mob justice as "a form of vigilantism against those people perceived as deviant or subversive to the social order" (125). The history of vigilantism in South Africa is not singular or

coherent. It has been linked to securing the power of the state, and it has been and is used as form of resistance to the state. Despite dominant readings of instances of collective violence and/or mob justice as a call to the post-apartheid state, there is also a way in which this violence can be understood as an end in and of itself.³⁴

Thinking about violence in relation to ‘correction’, discipline, punishment, and social order implies thinking about the continuities between legal and illegal forms of violence. Forms of violence conceptualised as ‘corrective’ work with the assumption that there is a social order that can be restored and that the person who requires correcting has deviated from or disrupts that order. In a context like that of post-apartheid South Africa, in which the question of social order is by no means settled and a just social order has not been attained, ‘corrective’ violence is paradoxically highly visible. Linking violence to correction within the popular imaginary could also be understood as a way of both explaining and legitimising violence. In interviews conducted by CSVR researchers in Northern Province in the late 1990s about the vigilante group Mapogo Amatamaga, a respondent describes how the use of a *sjambok* coated with salt and herbs to beat suspected criminals is referred to as ‘medicine’. This could be connected to the expression in English “giving them a taste of their own medicine”, as the members of Mapogo Amatamaga understand themselves to be preventing violence by administering violent punishment in order to teach criminals a lesson. In *The country we want to live in: Hate crimes and homophobia in the lives of black lesbian South Africans*, Nonhlanhla Mkhize, Jane Bennett, Vasu Reddy, and Relebohile Moletsane (2010) explicitly link violence against lesbians to other forms of violence in the country and connect these various forms of violence through the lens of ‘control’, ‘systemisation’, and ‘renormalisation’:

Within South Africa, there is a long and brutal tradition of the use of excessive violence to control ‘the other’. The apartheid government’s security forces were masters in this field, and in the years preceding 1994 a range of other parties also engaged in public acts of intensive fear-mongering and egregious physical assault (necklacing; the Cape Town-based acts of the ‘Witdoeke’; the murderous clashes between Inkatha Freedom Party and ANC supporters in Kwazulu-Natal during the late 1980s and early 1990s). Territories currently under gang control (including prisons), many domestic spaces and the gigantic businesses based on the sale and acquisition of drugs all rely on the normalisation of excessive brutality to systemise their ‘ways of being’. In 2007, South Africa saw an upsurge in targeted brutality

³⁴ Gobodo-Madikizela writes of how, under apartheid, “the police were known to watch necklace burnings from a distance and only appeared when the smoke had died down to take pictures or videos and to remove the body to the mortuary” (1999:112).

towards people identified as ‘foreigners’, and for the first time in public discourse, the attacks, thefts, insults, threats and murders of those from the Democratic Republic of Congo, Malawi, Zimbabwe, Mozambique, Somalia and other African contexts were named as ‘hate crimes’. These are crimes based on the identification of people as members of a particular group, stigmatised and ‘othered’ as such, and where mass permission may be granted to annihilate, destroy or maim people in the name of ‘renormalising’ community. There seems no doubt that the murders of the women referred to above were hate crimes and, as importantly, as that they were hate crimes committed primarily by men, often in groups or pairs. (49)

If violence can be understood as an attempt to enforce and secure a shifting social order, then it is important to ask who decides what constitutes the social order that must be kept in place and who has the power to police this. Equally, it seems important to ask about how our responses to violence are conditioned by the social order, itself conditioned by violence.

Forty-four people died at the Lonmin platinum mine and 34 of those killed were shot dead by the police. In his statement issued the day after the massacre, President Jacob Zuma insisted that “today is not an occasion for blame, finger-pointing or recrimination. ... It is a day for us to mourn together as a nation” (Presidency, 2012). The question of what would make national mourning possible in a country that remains the most economically unequal and socially divided in the world demands that we refuse the too-easy naming of violence as ‘senseless’ and instead focus on addressing the all-too-often repressed ongoing exploitation that structured the apartheid state and has not withered away in the post-apartheid present.

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