

WHY WAIT?

By-laws and regulations for high impact crime prevention

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Reducing crime is not just about making arrests and convicting criminals. The social and economic inequalities that cause crime require 'crime prevention' measures that can take years to show any results. But there is an alternative. This article argues for locally based interventions that can change social behaviour in the short term and have an immediate impact on safety and security. By-laws, for example, can be used to target those with something to lose and to regulate the 'free-for-all' environment that grips many of our inner cities.

Who is responsible for preventing crime? Most people would say "the police". They would have the South African Constitution to back them up, which lists "crime prevention" as the first responsibility of the South African Police Service (SAPS).

But there appears to be widespread consensus that the causes of crime are rooted deep in social and economic inequalities. This would indicate that the solutions to crime problems must, in some way, address these inequalities. The police are ill-suited to doing this. They are trained, rather, in the equally important task of maintaining social order by reacting to crime incidents and other emergency situations. They are not social engineers.

The South African approach to this dilemma has generally been to make the SAPS the 'lead agency' in coordinating inter-departmental crime prevention efforts. The idea is that departments such as Social Development, Education, and even Health and Housing may be able to contribute to changing the social conditions that generate crime. While neither the police nor the other agencies have the skills needed on their own, it is hoped that as partners they will be able to come up with solutions.

The problems with this approach are manifold. There is little reason to believe that the social services departments have any better insight into why people commit crime, or how to change their attitudes and behaviour, than do the police. Since crime prevention does not explicitly lie within social service departmental agendas, performance indicators are not geared to encourage their participation in interdepartmental efforts. In the end, this approach blurs the line between crime prevention interventions and the eternally receding horizon of 'social regeneration'.

This has meant that crime prevention often falls between the cracks. It is seen as a long term project in an area where there is a blaring demand for short term results. When resources are allocated to dealing with the problem of crime in society, the concrete requirements of the police are generally more compelling to lawmakers than 'pie-in-the-sky' social development projects.

Chief among these police demands are funds for salaries; salaries needed so they can do more of what they know how to do. On the one hand, this encompasses their vital reactive function – responding to calls and reports from the public, and investigating crime. On the other is what the police

call 'crime prevention', which seems to be any 'proactive' work that is not motivated by a specific call for assistance from the public. This generally includes visible patrols, raids of suspect buildings, roadblocks on routes used for getaways by criminals, and cordon and search operations in high crime areas.

The thinking behind this is that crooks can be scared into behaving by the sight of a blue uniform. Those who aren't, can be incapacitated by locking them behind bars for long periods of time. This will scare their friends into behaving too, because they will see that government is serious about crime. No matter how poorly raised or economically needy, everyone can be expected to respond to fear.

While the above portrayal verges on caricature, it does set out a live dilemma. On the one hand, we trust the police to protect us from crime. On the other, we recognise that they are ill equipped to deal with its social causes. This article suggests a way around this impasse – a way of changing social conditions in the short term. Since most crime problems are local problems, the key is the kind of local law designed to regulate social conditions: the by-laws.

Crime prevention in South Africa

The 1998 White Paper on Safety and Security defines "crime prevention" as:

All activities which reduce, deter, or prevent the occurrence of specific crimes, firstly, by altering the environment in which they occur, secondly by changing the conditions that are thought to cause them, and thirdly by providing a strong deterrent in the form of an effective Criminal Justice System.¹

The document goes on to differentiate between the types of activities described in the first two points and that of the third, drawing the distinction between "social crime prevention" on the one hand and "crime prevention through effective criminal justice" on the other. This dichotomy has persisted throughout the discourse on crime prevention in South Africa, with social crime prevention being described as a long term process, and law

enforcement-based crime prevention as a short term option.

For example, the National Crime Combating Strategy (NCCS), the present operational strategy of the police, is broken into two phases. Phase one, which was to have been conducted between 2000 and 2003, has been nicknamed "Operation Crackdown".² In an attempt to 'stabilise' escalating crime levels in the 145 station areas that produce 50% of the crime in the country, joint police and military operations were launched, involving saturation patrols, building searches, roadblocks, and cordon and search operations. In these operations, a 'zero tolerance' approach was taken, and a massive number of arrests were made for a wide range of charges.

In contrast, phase two, which is supposed to run from 2004 to 2009, is designed to 'normalise' crime levels through interventions aimed at addressing the causes of crime. It would appear that the SAPS' primary mechanism for accomplishing this will be sector policing, a geographically-focused form of community policing in which the police engage with community members to identify and solve persistent crime problems.

Thus, the first phase was intended to have a quick impact on the crime figures through law enforcement, while the second is intended to address the causes of crime over a longer period of time. What is actually going to be done to stop crime in phase two has not yet been determined: it is hoped that together, the police and the community will be able to come up with solutions appropriate for the particular localities in which the sectors are established.

The two-phase approach has allowed the police to apply their existing skills for three years and put off dealing with the issue they know is actually beyond their scope: addressing the social causes of crime.

An alternative approach

Is it possible to change social circumstances in the short term? One aspect of social reality can be changed immediately: the law. Some would argue that legal change is irrelevant without

commensurate enforcement capacity, but South Africa provides many examples to the contrary.

Anti-smoking laws, which many believed would be 'unenforceable', resulted in major renovations among many restaurant chains. While the police may be too busy to arrest incorrigible tobacco addicts, the law has provided the basis for more informal types of social coercion to be employed. Non-smokers now have a legal basis on which to challenge those violating the law, although this is more likely to be done with a glare than with a trip to the courthouse. The net result is a world less friendly to cigarettes, which is likely to be a healthier world.

Looking at another example, employment equity inspectors may be few in number, but the consequences of being caught out are just too terrible for most major concerns to contemplate. The law provides the moral authority for the previously disadvantaged to challenge unfair hiring decisions and to demand corrective action. With the dash of a pen in Cape Town, work circumstances countrywide were changed forever.

Similarly, the law requiring that domestic workers be registered for unemployment insurance has seen widespread compliance by thousands of private individuals motivated more by a genuine desire to comply with the law than by fear of prosecution. Domestic workers, who are the consummate example of workforce members with little coercive bargaining power, have been alerted to their rights through the media and word of mouth, despite the fact that many are illiterate.

What these examples have in common is the challenging of people who cannot afford to be, or do not desire to be, on the wrong side of the law. There may be crime problems that can be dispatched just as expeditiously if similar players can be identified whose decisions resonate at street level.

The biggest problem with deterrence theory is that many, if not most, people who engage in criminal acts are, in fact, undeterrable. Most acts of violent crime are committed in the heat of the moment,

when the possibility of incarceration is utterly irrelevant. This 'heat' is turned up when alcohol or drugs are involved. And there are people in any society whose lives are lived 'in the heat of the moment'. What would deter the legislators who craft our criminal codes becomes just another part of the drama of lives lived under an entirely different set of values.

The trick, then, is to find a way of changing the choices faced by these undeterrables by targeting the actions of those with something to lose.

Targeting those with something to lose

South Africa is different from many developed countries in that it is possible to live almost entirely outside the ambit of the law. People can and do build un-inspected homes on property they do not own, draw free water from untreated sources, eat un-regulated food, and dispose of their waste in unauthorised ways. It is very difficult to touch these people by changing the law, since they owe their way of life to ignoring it.

But there are large groups of people who defy the law while simultaneously enjoying its protection. This is most obvious in urban contexts, which comprise some of the most notorious crime hotspots in the country. These people owe their lifestyle not to the absence of the law, but to the fact that it is not enforced. They rely on unregulated environments.

It is not a coincidence that crime and grime go together, but neither causes the other. Crime can only thrive when people don't give a damn anymore, a sentiment that is most pungently manifest in neglect of basic hygiene. Squalor doesn't generate crime. Rather, the two are both symptomatic of the same disregard for the value of public order that permeates localities the state neglects.

Inner-city areas pose many lifestyle advantages to the urban criminal – advantages most would be loathe to give up. The desire to make a crooked buck does not automatically imply an ignorance of the advantages of indoor plumbing. And especially for criminal businesses, it can be difficult to attract

a moneyed clientele to locations without access to paved roads and other amenities the buying public tends to take for granted.

The high-rise environments that characterise inner-city areas do not spring up on their own accord. They are comprised of buildings owned by people. These people have something to lose: their buildings. So while the criminals on the city streets may not have much law enforcers can threaten, the people who control their living environments do.

These people do control the little bit the criminals have to lose: their relatively comfortable inner-city living arrangements, and the indoor component of their playing field. Building owners control their crooked tenants' access to indoor plumbing. And while the threat of prison may loom too remotely for some to take notice, there are few things more immediate than needing a place to relieve oneself.

Accountable environments

Inner city crime can only ferment in dimly lit places. Criminal enterprises require housing where nobody asks too many questions. If these environments were to suddenly become regulated, criminals could literally face eviction from their cosy, if somewhat dingy, cocoons.

Several basic tools are found in the by-laws. Municipalities are allowed to regulate in the areas of health and safety. They can set down basic business and licensing requirements. They can collect rates and taxes. They can zone.

Let's apply these to your basic inner-city area. Imagine a by-law that requires all owners of rental property (including hotels) to keep copies of the identity documents of residents. This would ensure that all foreign residents keep their visas up to date, that all runaway sex workers can be traced by their families, and that the next time there is a shoot-out in the hallway, the host can match the photocopies to the bodies. They might even be able to point out those who hastily relocate after the incident.

Failure to maintain these records should result in a frightening and escalating series of fines – fines that can pay the salaries of inspectors and may, in the

case of repeat offences, exceed the value of the building. If this is the case, the building can be attached in settlement.

Municipalities may presently be loath to take ownership of crumbling tracts of residential real estate, but there are law-abiding South Africans who need roofs over their heads. These South Africans have land-reallocation grants that can be used to refurbish the buildings. As proud owners of new homes, they comprise a class of people who most definitely do give a damn, and this is the strongest bulwark against backsliding into the anarchy that prevailed before.

Suddenly, criminal fugitives may have a hard time finding a place to hang their hat in the slums they once called their own. They may have to invest in a tin roof, plastic sheeting, and cardboard. They may even have to commute. Whatever their response, there will be new points of vulnerability to exploit, new environments ripe to be regulated.

Guns and booze

While having a gun might not make you a killer, it does make you a lot more dangerous when you lose your temper. And if you have had a few before taking aim, chances are a simple kneecapping could turn into something far more serious. Guns and booze may not cause crime, but their proliferation does aggravate the situation.

Firearms and alcohol are two legal commodities, and are thus subject to regulation. In theory, this is done at national or provincial level, but clearly it could use some local tweaking. For example, just because it is legal to own a firearm does not mean that the city needs to allow people to carry their weapons on their persons. 'Check your guns at the city lines' has a Wild West sound to it, but it could result in lives being saved in scuffles that accidentally become slayings.

All this is legally contentious, of course. National legislation and constitutional rights to property and movement will be invoked. But there are creative ways around the problem. A municipal tax could be instituted, with rebates or exceptions for those who declare their buildings firearm free zones, for

example. With dedication and perhaps a little litigation, municipalities should be able to take extra measures to ensure the safety of their streets. Moral authority is on their side.

Similarly, the right to a liquor license seems to have become second only to the right to vote in the new South Africa. But just because you have the piece of paper does not give you the right to open shop wherever you choose. Zoning is a powerful tool for municipalities to use in relegating undesirable activities to a well-watched basket. Like with the smoking regulations, this is unlikely to reform many alcoholics, but it may make bar-hopping inconvenient enough to interrupt a few binges.

In the short term, this is likely to result in the further proliferation of unlicensed premises, but a similar approach must be taken. Most shebeens are housed inside buildings with owners. If nothing else, by-laws could require confiscation of liquor stocks, which can be sold to further fund enforcement, such as rewards for those who provide evidence against unlicensed vendors.

In the United States, owners of bars have been subject to various state 'dram shop laws' that hold them accountable for any damage done by people they have served while visibly intoxicated. The primary witness for the state in these cases is often the drunk himself. This follows the same principle of deterring those who have something to lose.

Of course, drunk drivers have vehicles and municipalities have the right to enforce traffic regulations. As with inner city buildings, this property could be made directly forfeit on conviction, or the fines could be stiff enough that they exceed the value of the car. If applied aggressively, the city police should never suffer for lack of transport.

Follow the money

Police in Hillbrow think that one major factor behind the remarkably high rate of robbery in the area³ is that many of the residents are foreign nationals whose permits for being inside the country might not be entirely in order. Many of these foreigners engage in street trading or other informal

enterprises, which means they often carry a lot of cash, but they lack the identification documents with which to open a bank account. Their homes are even more insecure than their pockets, and the local crooks know this.

As the police in the area have suggested, one rapid way of regulating the finances of these quintessentially unregulated people would be to provide keys for secure rental strongboxes at a nominal fee, with no identification required. Until such time as residential control makes the inner city a less attractive destination for illegal immigrants, these devices could allow a safe stash for one's life savings. The demand for such boxes may quickly give us an idea of the scale of foreign commercial activity in our inner city areas.

Increasingly drawing marginalised people into more regulated lifestyles – whether they be illegal immigrants or local street sex workers – could provide a possible bridge into the mainstream, while simultaneously minimising the harms suffered both by the individuals and by the society at large. These people, who are not malicious criminals, are best addressed with a carrot instead of a stick, as the hardships they face daily are often heftier than the stoutest knobkerrie.

Not about zero tolerance

Proponents of the crime and grime link boast an array of macho-sounding approaches to 'taking back the streets', many of which are ostensibly rooted in New York's zero tolerance experience. Most of these have to do with enforcement of laws rooted in social norms, such as the prohibition of public drunkenness or lewdness, drinking in public, and even jaywalking. The idea is to 'send a signal' that people do give a damn and that deviance will not be tolerated. It is rooted in the notion that moral decay can be rolled back by enforcing decent conduct and respect for the laws, however trivial.

While this approach may have some utility in areas where the majority of the people still subscribe to a common set of norms, it is most emphatically not what is being argued here. The potential of by-law enforcement lies in the realm of market disruption far more than that of moral regeneration. It is about

functionally disabling the infrastructure on which urban criminals rely – not scaring skid row alcoholics into keeping their zippers up and crossing at the robot.

The so-called 'zero tolerance' school of thought posits massive criminal justice resources to ensure blanket police coverage and plentiful jailhouse accommodation to receive their work product. What is being suggested here requires neither.

The enforcers

Given the case loads endured by the police in this country, along with the endless stream of serious crimes like murder, rape and robbery, is there the capacity to enforce these minor local laws? Surprisingly, most people forget that this is actually the primary responsibility of the municipal police.

At present, the municipal police in many areas seem to be focusing either on acting as a force multiplier for the SAPS or on 'business as usual' – traffic enforcement. This should change, and would if city management got a sense of the potential of by-law enforcement.

But while the municipal police are likely to do most of the heavy lifting, who should be driving the process? There are many possible options. Since the process may involve the drafting and passage of new laws, it makes sense that someone in the local legislature be involved. But it is also important that someone with clout over a range of executive departments be included. The city manager is an obvious choice, but there are many others. The local deputy director of public prosecutions is a possibility,⁴ as is the local municipal police chief.

Since no single individual is likely to have direct control over all the forces that must be marshalled, we are likely to find ourselves squarely back in the 'crime prevention by committee' dilemma. But this can be avoided by a single, well-placed individual taking the reigns and cultivating a series of bi-lateral relationships with the pivotal people. In the end, the types of interventions available may be limited by local personalities, but this simply means that the champion of the cause may need to be a little more creative.

Changing the rules

Our inner cities suffer for our neglect. The people who live there are victims, even if some are also perpetrators. It is time these unregulated environments be shown the light of day. Many more interventions could be added to the suggestions above, but they would all conform to the same central idea: social circumstances can be changed, locally, today.

It is possible that similar measures could be taken in areas other than the inner city, like peri-urban informal, and even rural, areas. Although the environment and types of crime problems may differ, the principles should be the same. Regulate those areas that have been forgotten. Deter those who have something to lose. Lead those who have become marginalised back into the mainstream.

Endnotes

- 1 <<http://www.info.gov.za/whitepaper/1998/safety.htm>>
- 2 In fact, this term only applies to one component of the overall strategy.
- 3 My 2002 survey of 1,100 households in the Hillbrow and Johannesburg Central station areas found that 30% of the respondents said they had been robbed in the last year alone. See ISS Monograph 78 *Rainbow Tenement: Crime and policing in Inner Johannesburg*.
- 4 The work of the Hatfield Magistrate's Court may provide a good example of the potential this route contains.