

Killed by South Africa's Institutional Disequilibrium¹

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Abstract

Why is South Africa's crime rate so high? In this paper I put a new argument on the table. I argue that there is an institutional gap between the formal institutions (which were changed at the end of Apartheid) and the informal institutions (which mostly remained the same). My hypothesis is that this institutional gap is one of the major determinants of the exceptionally high crime rate in South Africa. To support my hypothesis I consider New Institutional Economic theory, the institutional arrangements under Apartheid, as well as the current institutional environment. The paper focuses on legal institutions specifically, showing that the failure of these formal institutions is a significant cause of the crime rate.

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1. Introduction

In his book “Institutions, Institutional Change and Economic Performance” Douglas North (1990: 45) argues that “... the informal constraints that are culturally derived will not change immediately in reaction to changes in the formal rules. As a result the tension between altered formal rules and the persisting informal constraints produces outcomes that have important implications for the way economies change ...” Most certainly North was not thinking about South Africa when he wrote this, but it has turned out to be frighteningly true for this country.

The term ‘institutions’ are often misused in academic literature, but in the economic sphere it is generally known as the “rules of the game” – “the humanly devised constraints that shape human interaction” (North 1990: 3). *Formal* institutions refer to the political, economic and judicial rules in a country that take the form of constitutions, statutes, rights, contracts, etc. North (1990: 36) defines *informal* institutions as “codes of conduct, norms of behavior, and conventions.” He continues to say that these constraints may in many cases influence our daily lives and the choice set we face more directly than the prevailing formal institutions.

In the early 1990’s, with the dramatic political changes at the end of Apartheid, South Africa experienced an institutional shock. Formal institutions were radically changed overnight. A new constitution was drawn up and governmental structures were renewed. Simultaneously, restructuring occurred in the legislative and judicial procedures, the police force and administrative protocol. The educational system was also changed from primary right through tertiary schooling. Very few, if any, formal institutions remained the same.

South Africa has been praised for its “peaceful” transition from many years of segregation to a fully democratic society. The violent revolution anticipated by Marxians never realised. However, as North predicted, the informal institutions did not change in tandem with the formal ones, resulting in an institutional gap.

I hypothesise that the tension between the informal constraints and the new formal rules in South Africa, is one of the main determinants of the extremely high crime rate. The institutional disequilibrium endangers South Africans' daily lives and in a very subtle

way the change in regimes was not able to completely avoid a violent revolution, but instead resulted in an ongoing one. Elren van der Spuy, professor of criminology at the University of Cape Town, in an interview with Sasha Abramsky (2005), comments about South Africa that “Dinner-table conversation in this country suggests a country at war with itself.”

The paper is organised as follows: section 2 gives an overview of New Institutional Economic (NIE) theory specifically concerned with the gap between formal and informal institutions. Section 3 briefly describes the institutional arrangements under Apartheid. Section 4 discusses the change in regimes in 1994 by focussing on the changes in formal institutions while section 5 considers some of the existing/persisting informal institutions in South Africa and shows how many of these have remained the same – resulting in an institutional gap. Section 6 then focuses on how this institutional gap affects the legal institutions specifically and shows how it relates to the crime rate. Section 7 discusses various implications of this finding as well as some policy options and avenues for further research. Section 8 concludes.

2. Theoretical overview

Of importance here is the notion of ‘institutional path dependence’. This term refers to the evolutionary process by which institutions change over time. ‘Path dependence’ was first mentioned in the context of technological change by Paul David in his 1985 article “Clio and the economics of QWERTY”, but it is now a well established phrase amongst economic historians and institutional economists. It means that “prevailing customs and, in general, history matter for the success or failure of institutional change...” (Furubotn & Richter 2005: 34).

Customs, morality and rules of conduct are of the utmost importance in any institutional structure. Already in the 18th century Adam Smith ([1776] 1976) recognized the importance of rules of conduct in enforcing institutional constraints: “Those general rules of conduct, when they have been fixed in our mind by habitual reflection, are of great use in correcting misrepresentation of self-love concerning what is fit and proper to be done in our particular situation” (quoted in Sen 1990: 87). Ellickson (1998: 540) states

that “[m]uch of the glue of society comes not from law enforcement, as the classicists would have it, but rather from the informal enforcement of social mores by acquaintances, bystanders, trading partners, and others.”

A particularly relevant article by Boettke, Coyne and Leeson (2007) provides more insight on this point. In their article entitled “Institutional Stickiness and the New Development Economics” they show *how* history matters for institutional path dependence. They provide a useful framework for understanding institutional “stickiness”² based on the Regression Theorem³. Accordingly, “the stickiness, and therefore likely success, of any proposed institutional change is a function of that institution’s status in relationship to indigenous agents in the previous time period” (Boettke *et al.* 2007: 4). At the centre of their analysis is the importance of informal institutions as the foundation for any successful institutional structure or any form of institutional change.

Boettke *et al.* (2007) separate institutions into three broad categories, namely foreign-introduced exogenous (FEX) institutions, indigenously-introduced exogenous (IEX) institutions and indigenously-introduced endogenous (IEN) institutions. The categories are mostly self-explanatory, but the exogenous/endogenous component might need further explanation. “Exogenous institutions are constructed and imposed from above. These are the creations of governments or other formal authorities like the IMF, USAID or the World Bank. ... [T]hese [institutions] can be created indigenously by national governments or by outsiders when they are foreign-introduced. In contrast, endogenous institutions emerge spontaneously as the result of individuals’ actions, but are not formally designed” (Boettke *et al.* 2007: 7). The article gives a detailed description and examples of the three different categories, but it is particularly the IEN institutions that concern us most.

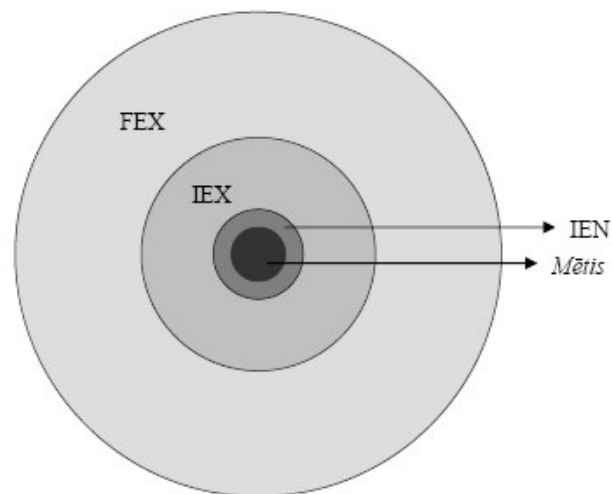
“IEN institutions are those we associate primarily with spontaneous orders. These embody the local norms, customs and practices that have evolved informally over time ... *[They] necessarily precede effective FEX and IEX institutions historically.* As

² Boettke *et al.* (2007: 4) defines institutional stickiness as “the ability or inability of new institutional arrangements to take-hold where they are transplanted.”

³ This concept was first created by Mises ([1912] 1980).

spontaneous orders, IEN institutions have their roots in the behavior of individual agents pursuing their own ends ...” (Boettke *et al.* 2007: 8, 9) [italics added]. IEN institutions are believed to have its foundation in *mētis* – an ancient Greek term used to characterise local knowledge gained from practical experience. *Mētis* includes rules of conduct, skills, conventions/traditions, norms and culture. “Because it is based in the accepted, understood and habituated mentalities and practices of indigenous peoples, the presence or absence of *mētis* explains the stickiness of various types of institutions. In fact, *mētis* can be thought of as the glue that gives institutions their stickiness. ... In this sense, IEN institutions are institutionalized *mētis*. As such, IEN institutions tend to be the stickiest institutions of all. ... The further an institution falls from *mētis*, the less sticky it tends to be” (Boettke *et al.* 2007: 11-13). Figure 1 shows how the three categories of institutions are related to each other and to *mētis*.

FIGURE 1: Institutional Stickiness



Source: Boettke et al. (2007: 18)

An important conclusion, both in general and specifically for the hypothesis proposed here, is that “[s]uccessful institutional changes in developing parts of the world must have IEN institutions at their core” Boettke *et al.* (2007: 18). Boettke *et al.* (2007) continue to prove and elaborate on this statement using a simple mathematical model of the Regression Theorem as well as many historical examples.

Theoretically it is thus possible to have an institutional gap between the more formal institutions and the informal institutions within a country. Unfortunately, besides North (1990: 45) stating that “the tension between altered formal rules and the persisting informal constraints produces outcomes that have important implications for the way economies change,” not much has been written on how such a gap would “look”. What would be the characteristics of an institutional gap? How would one know that there is a gap between the formal and informal institutions in a country? These are very general questions however, so to narrow the scope of this paper it was decided to focus on the legal institutions in South Africa only. My hypothesis is that the formal legal institutions in South Africa are failing (to a certain degree) because of the institutional gap and that this failure is partially responsible for the extremely high crime rate. In other words, the change in IEX institutions was not in line with the existing IEN institutions. Thus the transplanted IEX institutions were not “sticky” enough and caused an institutional gap to arise – together with certain adverse consequences.

The following two sections provide evidence to the theoretical claim of an institutional gap in South Africa. In section 3 both formal and informal institutions under Apartheid are described briefly before the change in formal institutions at the end of Apartheid is considered in section 4.

3. Institutions under Apartheid

The amount of literature on Apartheid is somewhat overwhelming. Much has been written from many different perspectives. Most of the Apartheid stories begin in 1948 when the National Party (NP) won the election. However, policies of segregation were already in place in the early days of colonisation, long before the concept of apartheid was formally institutionalised. There are records of racially discriminating rules and regulations already in place by the end of the 18th century, but Worden (1994: 72) argues that “it was only in the period between the end of the Anglo Boer War in 1902 and the 1930's that a cogent *ideology* of segregation emerged and was implemented” [italics added].

After 1948 more formal institutions were created to implement the “divide and rule” policy of Apartheid. In the attempt of disempowering the non-white majority, they were “divided into a host of minority groups, [along racial and ethnic differences] which could no longer pose a threat to the white minority” (Henrard 2002: 19). This may be an area for further research, but the reason why we do not see an obvious institutional gap resulting from this (initial) change in formal institutions is exactly because of what Worden said (quoted above). The ideology of Apartheid was already established at that time. It was already part of the informal institutions, so to speak. Racial segregation was obvious in all spheres of life (culture, norms of behaviour, etc.) and thus the change in formal institutions (especially the educational, judicial and financial institutions) only formalised the existing informal institutions of Apartheid. In line with the argument made in the previous section, Apartheid was first part of *mētis* which then evolved into an IEN institution and later into an IEX institution – hence the exceptional “stickiness” thereof.

As part of the IEX institutions under Apartheid, the educational system is one of its elements which has received most attention. Besides the racially segregated schools, differences in state funding were made obvious in teacher/pupil ratios and the qualifications of teachers. A different curriculum was also to be followed in the non-white schools preparing them for subordinate jobs by focusing on more practical subjects. (Davenport 1991; Dube 1985) From 1959 onwards the tertiary education system were also segregated since African, Indian and Coloured citizens were not allowed to attend open universities. (Henrard 2002) The principle of mother tongue education was used to further divide ethnic groups and in order to limit employment opportunities, the language policy were designed to “promote ethnic identity while hampering proficiency in the official languages” (Henrard 2002: 21).

Legislation clearly favored white South Africans as well, and it was probably through this mechanism that Apartheid was most formally implemented. The Population Registration Act of 1950 described procedures for classifying the different racial groups into Whites, Blacks/Africans, Coloureds and Indians/Asians. In accordance with the divide and rule policy, and in preventing a unified resistance movement, Coloureds and Indians were given an intermediate position (Carrim 1996). Other important Apartheid

legislation include the Group Areas Act of 1950 which promulgated segregated residential areas; the Reservation of Separate Amenities Act of 1953 which extended Apartheid to public amenities; the 1953 Bantu Education Act implementing most of the educational segregation policies as discussed in the previous paragraph; different pass laws and labor regulations which complimented the separate residential areas law and instituted migrant labor for the blacks. (Henrard 2002)

The Promotion of Bantu Self-Government Act of 1959 was one of the cornerstone acts of the broad plan of Grand Apartheid (or 'separate development' as it was sometimes called). "Ethnic homeland loyalty was to replace national political aspirations in a move which the state hoped would defuse calls for the moral necessity of African self-government within South Africa itself." (Worden 1994: 110-111).

Financial institutions and policies were also designed to further the cause of Apartheid. Heintz (2002) examines the institutional factors responsible for South Africa's capital accumulation crisis during the 1970's and 80's. He attributes the boom period before that (in the 1950's and 60's) to "(i)vestment subsidies, expansionary monetary policy, and an overvalued exchange rate [which] effectively lowered the costs of accumulation by providing access to inexpensive credit and reducing the costs of domestic investment and imported capital" (Heintz 2002: 4). Almost all the financial institutions catered for white South Africans only. These institutions were expanded to provide medium- and long term credit for industrial growth as promulgated by the government. (Heintz 2002) Table 1 lists the institutions supporting capital accumulation, and thus financial stability, during Apartheid. The *Domestic features* or domestic institutions were able to support and strengthen Apartheid because these were IEX institutions based on IEN institutions and *mētis* already incorporating Apartheid. The *International features* can be seen as a form of FEX institutions (although these weren't imposed on South Africa) also closely linked to the IEX and IEN institutions.

TABLE 1: Institutions supporting capital accumulation in Apartheid South Africa

<i>Domestic features</i>	
1	Political and institutional stability maintained through the repression of black political movements and trade unions.
2	Fiscal support for accumulation through industrial subsidies for certain industries and subsidized credit for land acquisition.
3	Expansionary monetary policy, including the introduction of credit controls and interest rate caps in the 1960's.
4	Expansion of financial institutions (for example, Volkskas, Sanlam, Nedbank), in part through favourable government treatment, which channelled resources to providing medium- to long-term loans for industry.
5	Labor market regulations, including influx controls and job reservations, which helped maintain an inexpensive pool of well-disciplined black labor while securing better jobs and collective bargaining rights for white workers.
6	A race-based welfare state that extended high quality public services and maintained near full-employment for whites.
7	Direct state involvement in the development and expansion of strategic enterprises in the transport, energy, and communications sectors, for example Telkom, Eskom, Transnet, and Sasol.
<i>International features</i>	
1	An over-valued exchange rate which made capital imports relatively inexpensive. Exchange controls maintained stability.
2	Trade policies which supported a form of import-substitution industrialization.
3	The Bretton-Woods system which guaranteed a stable world gold price and demand for gold as a reserve asset.
4	White minority rule in the neighboring states of Namibia and Rhodesia (Zimbabwe) and in the Portuguese colonies of Mozambique and Angola.

Source: Heintz (2002: 7)

Although not much is documented on the informal financial institutions developed among the black population during those years, it is not difficult to imagine that the formal institutional atmosphere under Apartheid caused the non-white population to create their own private financial institutions⁴. Also, informal ways of settling legal disputes had to be developed amongst the blacks⁵, since the legal system favored the white population in many obvious ways too.

⁴ The emergence of 'stokvels' would be an appropriate example here.

⁵ Kangaroo courts, lynching of perpetrators in Soweto and public beating of drug traffickers in the Cape Flats are examples.

4. Changing institutions

There were numerous institutional changes at the end of Apartheid – the beginning of the New Democratic South Africa. Probably the most fundamental change was the new constitution, Act 108 of 1996.

Negotiations concerning a new constitution and political regime started in 1990. At first negotiations were only between the NP (the ruling party at that time) and the ANC (the African National Congress), but in 1992 the forum of CODESA (the Convention for a Democratic South Africa) were established to facilitate multi-party negotiations. Although this did not make an end to the violence and uprisings, a power-sharing agreement, interim constitution and national elections on April 27, 2004, were negotiated by the end of 1993. (Van Cranenburgh & Kopecky 2004)

The ANC won the 1994 election with more than 60% of the vote in their favour. According to the power-sharing agreement and the principles of a GNU (Government of National Unity) established by the interim constitution, the NP held the vice presidency. However, in May 1996, the final constitution was passed and the power-sharing principle was dropped, causing the NP to leave the government later that year. (Van Cranenburgh & Kopecky 2004) The political developments since then have been very interesting, but unfortunately that is not the focus of this paper. Since it is a largely accepted fact that the formal institutions in South Africa undergone dramatic changes at the end of Apartheid (the history is well-known) it might be superfluous to discuss all institutional changes in detail. Thus I will consider only some of the more important institutional changes and developments briefly.

Many of these institutional changes accompanying the change of regimes were based on the provisions in the 1996 constitution. Especially the Bill of Rights, chapter 2 of the constitution, had (and still has) a very direct effect on the everyday-life of South Africans. Suddenly people from all ethnic groups and races were equal and had equal rights. Numerous new laws were passed in the years following 1996 to repeal the old Apartheid laws and establish equal opportunities for all. The new laws and regulations provided for a new financial system accessible to all, a new educational system where all groups would be welcome in all schools, new language policies with 11 languages

recognized as the official languages of South Africa, no geographical areas were assigned to any particular groups and public services were made available to all.

Certain constitutional clauses⁶ provided for the enactment of Affirmative Action (AA) and Black Economic Empowerment (BEE) legislation. These laws set the framework for the upliftment of the 'previously disadvantaged' groups. New labour laws and regulations provide for the employment of non-white South Africans in jobs that were previously white-reserved, as well as more fair labour practices – all in the attempt of eliminating the inequalities of the past.

Unfortunately, the top-down institutional change was not very effective and did not solve the problems of a society in transition. It was not possible to use IEX institutions to change *mētis* which have been in existence over 100 years and complementary IEN institutions existing over 50 years. As predicted by theory, the informal institutions were quite “sticky”. Boettke *et al.* (2007) showed that, amongst other things, forcing institutions on a society, which are at odds with the informal institutions already operating in that society, will not be very “sticky”, i.e. they are likely to be ineffective.

The following section shows that the informal institutions that existed under Apartheid did not change much after 1994, even though the formal institutions were changed considerably, thus resulting in an institutional gap.

5. Current informal institutions

Informal institutions in present-day South Africa take on many different forms and in most cases are still unaltered from what they were during the Apartheid era. The fact that South Africa is one of the most fractionalised countries in the world does not help to make cultural integration much easier either. South Africa scores 0.88 and ranks 141st out of 148 countries on the ELF (Ethnolinguistic Fractionalization) Index with only a few countries being more fractionalised. The ELF Index measures “the probability that two randomly selected individuals from the country in question will not belong to the same ethnic group.” (Annett 2001: 571) In Alesina *et al.* (2003) they develop new measures for

⁶ Art. 9(2)

fractionalization; South Africa scores 0.75 on ethnic fractionalization, 0.87 on linguistic fractionalization and 0.86 on religious fractionalization. These types of cultural differences only reinforce the informal institutions created before and during Apartheid. The different race groups are not making any noticeable efforts to incorporate each other's cultural norms and/or behaviour.

Although the public school system had been transformed to be more representative of the population as a whole and to eliminate racial discrimination, you still find white Afrikaans schools and black Xhosa schools. Obviously these schools now exclude certain groups of people on different grounds than race. For instance, the school fees would be very high so that the lower income group, which unfortunately still comprises of mostly black people, cannot afford. The school could also teach in Afrikaans or English only, thus making it impossible for certain groups to understand and join that specific school. Or they would limit their intake to a certain geographical feeding area where mostly white people live.

That brings us to the next example of informal institutions: geographical constraints. The different race groups still live in distinctly different areas. Very rarely would you see a coloured or black family in a white neighbourhood and vice versa. In the same way, South Africans tend to shop at malls and grocery stores which are known to "cater" for their specific race group and where you would be shopping with fellow Whites or Blacks. Even leisure time is influenced by informal constraints originating from the previous regime. For example, a white person may choose to drive further and spend more money to go to a "white" beach when the closest one to his/her house is a *former* "coloured" beach.

Another very important issue is the amount of informal financial institutions among the Blacks and Coloureds. 'Stokvels' and community banks are two well-known informal financial institutions used by the Blacks. 'Stokvels' are a type of rotating scheme helping people to save money. Community banks are widely used and provide people within a certain community, who trust one another, with an informal way of saving and lending money.

More in line with the focus of this paper is the informal “police force” which has come to exist. There is of course a formal, state-funded police force, but according to public perceptions they are very ineffective. One could give many reasons for this (corruption, lack of training, lack of incentives, improper implementation of BEE policies, and so forth) but that is not what concerns us here. The fact is that many private companies and groups of people are now providing private protection and security to the citizens.

The remainder of this paper attempts to characterize the institutional gap within the legal/judicial environment specifically. In line with their argument in Boettke *et al.* (2007), it is shown that the institutional disequilibrium is probably the main reason for the failure of the formal (judicial) institutions. In this environment specifically, it is argued that the institutional gap is a major determinant of South Africa's high crime rate.

6. Crime and the institutional disequilibrium

South Africa is notorious for its extremely high crime rate. Not all sources agree (mostly because of differences in definition), but South Africa is in many cases listed as having the highest, or at least second highest, crime rate in the world⁷. The most recent official crime statistics for South Africa was released on July 3, 2007 by the SAPS (the South African Police Service)⁸. Compared to the statistics for 2005/2006, the 2006/2007 statistics showed decreases in the incidence of common assault, common robbery, indecent assault, rape, assault GBH and attempted murder. Unfortunately this good news was overshadowed by the increases in the incidence of murder and aggravated robbery (specifically carjacking and robbery at residential premises). A total number of 19 202⁹ murders was recorded for the financial year 2006/2007 – an average of more than 52 murders *per day*.

⁷ See for instance various issues of the United Nations Survey of Crime Trends and Operations of Criminal Justice systems or websites like www.nationmaster.com

⁸ Appendix 1 provides a summary of the total crimes per category from April 2001 to March 2007.

⁹ It is important to note that the number of murders recorded by the SAPS during a specific year excludes incomplete complaints. For example, 18 545 murders were recorded in 2005/2006, but there were an additional 31 272 incomplete complaints – putting the total number of murder complaints at 49 817 (136 per day) for 2005/2006.

As alarming as that figure is, the accuracy thereof is brought into question by previous figures from the SAMRC (the South African Medical Research Council). In 2000 the SAMRC documented the number of murders as 32 482 (89 per day) while the SAPS documented only 21 683 murders for that year (59 per day). Interpol recorded the per capita murder rate for South Africa as 59 per 100 000 in 1998 (as opposed to 6 per 100 000 in the USA). (Mc Cafferty 2003)

In addition to the high crime rate it is reported that “for every 1000 crimes committed in South Africa, only 430 criminals are arrested. Of these, only 77 are convicted and barely 8 of these are sentenced to two or more years of imprisonment. It is also calculated that South African convicts have a 94% recidivism rate (that is, 94% of all persons released after serving a sentence immediately become involved in crime again).” (Mc Cafferty 2003: 17)

According to the 1992 Nobel laureate Gary Becker, crime is one of the most important activities within an economy. (Becker 1968) He uses economic tools to analyse the rationale for criminal behaviour and finds that people do not become criminals because “their basic motivation differs from that of other persons, but because their benefits and costs differ” (Becker 1968: 176). Following Becker’s methodology, the number of offences any person would commit can be represented by the following equation:

$$O_j = O_j(p_j, f_j, u_j) \quad [1]$$

where the number of offences the person (j) would commit during a specific period is given by O_j , his probability (or risk) of conviction is given by p_j , f_j represents the punishment he would get per offence for which he is convicted, and u_j is a vector of variables representing other influences such as income available from other activities (both legal and illegal), the frequency of nuisance arrests, his willingness to commit a crime, etc. (Becker 1968) Becker continues to describe how the different variables in equation [1] are related to one another and considers how a person’s behaviour might differ in response to changes in the values of these variables.

In his Nobel lecture Becker (1993: 390) builds on his earlier theories and says that the amount of crime within an economy “is determined not only by the rationality and

preferences of would-be criminals but also by the economic and social environment created by public policies, including expenditures on police, punishments for different crimes, and opportunities for employment, schooling, and training programs.” It is difficult to determine *exactly* what the causes of high and/or increased crime within a specific country are. In South Africa it is commonly believed that crime is largely a result of the high unemployment rate, the high level of income inequality, the large percentage of the population living under the poverty line, as well as racial resentment because of the country’s history. Another probable cause, I propose, is the institutional disequilibrium.

The previous sections showed that there exists an institutional gap between the formal (IEX) and informal (IEN/*mētis*) institutions in South Africa and thus theoretically, the formal institutions should be failing. Considering judicial institutions specifically, we see that, according to our expectations, the legal rules and statutes are not enforced properly, causing these institutions to fail. Both potential and previous criminals face little risk of conviction. In terms of equation [1] above, p_j (the probability of conviction) is very small. This variable is of course negatively related to O_j (the number of offences committed) and will cause O_j to be higher, the smaller p_j is. I turn to the SAPS Annual Reports to show that the risk of conviction is indeed very low in South Africa.

Table 2 gives data for murder and robbery with aggravating circumstances from the SAPS Annual Reports between 2001 and 2006¹⁰. For each category the percentage charges referred to court during each financial year is calculated by dividing the number of charges referred to court by the total number of complaints reported plus the total number of complaints that were incomplete that year. The detection rate shows the percentage of the charges referred to court that was in fact solved.

¹⁰ This time period was chosen because of it being the most recent comparable data.

TABLE 2: Risk of conviction

	% Charges referred to court				
	2001/2002	2002/2003	2003/2004	2004/2005	2005/2006
Murder	*	53.90 ¹	18.44	21.42	21.90
Robbery with aggravating circumstances	*	13.10	9.00	10.31	10.47
	Detection rate				
	2001/2002	2002/2003	2003/2004	2004/2005	2005/2006
Murder	24.10	21.90	22.52	26.09	26.66
Robbery with aggravating circumstances	15.1	12.8	11.81	12.88	12.94

Source: SAPS Annual Report 2002, 2003, 2004, 2005, 2006

* The SAPS only started collecting this data from the financial year 2002/2003.

¹ This figure was calculated differently than the rest of the series.

Probably the first thing one notices when looking at Table 2 is the extremely low figures. Of the 49 817 murders recorded in 2005/2006 only 21.9 % (11 262 cases) went to court and only 26.66% (3 002) were solved. Thus only 6.02% of the number of murders recorded ended in possible sentencing. 122 154 robberies with aggravating circumstances were recorded in 2005/2006. Of these only 10.47% (11 944 cases) went to court, while only 12.94% (1 546 cases) were solved – only 1.26% of the aggravated robberies recorded¹¹.

These figures clearly show that the SAPS as well as the courts and legal rules in South Africa pose no real threat to a potential criminal. The criminal does not face any credible risk of conviction. His/her probability of conviction (p_j) is round 0.01 for committing a robbery with aggravating circumstances and round 0.06 for committing a murder. The number of offences committed would necessarily increase with such a low probability.

In the defence of the SAPS: the total figures look somewhat better than those for murder and aggravated robbery alone. For all 20 serious crimes together, 29.39% of the

¹¹ All of these calculations include both complete and incomplete charges.

charges were referred to court during 2005/2006 and the detection rate was 40.59%. The overall probability or risk of conviction would then be around 0.12 – still a very low figure proving the failure of judicial institutions in South Africa.

Another prominent feature of Table 2 is the increase in the charges referred to court as well as the detection rate from 2003/2004 onwards. Although the increase is minimal, this is very good news for South Africans. In the context of this paper it may mean that the institutional gap is slowly narrowing as informal institutions start adapting, but this is something I will return to in the next section.

Surely there are many more indicators of judicial institutional failure in South Africa, but because of time and space constraints it will have to suffice only briefly mentioning some. Considering equation [1], f_j (the punishment a convicted criminal would receive) will be a good indicator and related to that is the percentage of a given jail sentence served before the criminal is released again; access to lawyers, legal advisors and courts in general should be considered; the discrepancy between the constitution or other statutes and customary law in South Africa; the role of corruption or bribery within the legal system; the speed with which complaints and other legal procedures are dealt with, and so on. Most South Africans would agree that a deeper look at the things mentioned here would confirm the failure of judicial institutions in this country.

The following section discusses the implications and consequences of this institutional disequilibrium as well as some policy options and research opportunities.

7. Implications

The relationship between “good” institutions and higher economic growth has been proved by many economists including North (1990, 1991), Acemoglu *et al.* (2001, 2002) and Glaeser *et al.* (2004). Even more important than “good” institutions, economists have shown that for formal institutions to function in a growth-enhancing way, complementary informal institutions are crucial. (North 1990, 2005; Aoki 2001; Platteau 2000; Boettke *et al.* 2007) So what will the implications be for an economy where changed formal institutions do not reflect unchanged *mētis* or informal institutions – as is the case in South Africa?

In the previous sections it was shown that the exceptionally high crime rate may be a partial result of the current institutional gap in South Africa. But what does that mean for this country? Will the gap continue to exist or could we expect to see a narrowing of the gap in the near future? Will the IEX institutions be able to change *mētis*? In reference to the tension resulting from changes in formal institutions and informal institutions remaining unchanged, North (1990: 91) says that “the result over time tends to be a restructuring of the overall constraints – in both directions – to produce a new equilibrium that is far less revolutionary.” Does this mean that South Africa will return to some form of Apartheid because most of the informal institutions tend to favour this alternative – even though it might be irrational and wealth-minimizing in many cases? I hope not.

South African citizens are frustrated with the prevailing situation, as the new formal institutions did not bring the changes they promised to bring. Large parts of the population are still as poor as they used to be under Apartheid and still don't have access to the opportunities supposedly brought by the new regime. Citizens living under the poverty line have only seen an ever-increasing income gap. Many people have left the country in search of greener pastures. The question on everybody's lips: how long will this violent transition continue?

I believe that the violence will die down as South Africa moves closer to an institutional equilibrium. How long this move will take and what exactly the equilibrium will look like is not sure¹². It seems though, that South Africa is indeed making some progress towards such an equilibrium. In the previous section Table 2 showed increases in both the number of charges referred to court and the detection rate over the last couple of years – providing evidence of definite improvement in the functioning of the judicial institutions. But what are South Africans to do in the mean time? Is it possible to speed up this process of change?

North (2005: viii, 3, 63) is of the opinion that “[e]conomic change ... is for the most part a deliberate process shaped by the perceptions of the actors about the

¹² See Djankov *et al.* (2003) for an excellent discussion on different types on institutional equilibriums for different countries.

consequences of their actions. ... The key to understanding the process of change is the intentionality of the players enacting institutional change and their comprehension of the issues. ... The stock of knowledge the individuals in society possess is the deep underlying determinant of the performance of economies and societies and changes in that stock of knowledge is the key to the evolution of economies.” North is not the first to suggest that change starts with the individual. Already in the 18th century did Josiah Tucker, Adam Smith, Adam Ferguson and Edmund Burke write about the importance of individual choice to promote public interest. The famous Friedrich Hayek (1948: 7) wrote that “the spontaneous collaboration of free men often creates things which are greater than their individual minds can ever fully comprehend.”

Each South African *individually* needs to decide that he/she wants to make an end to the violence by changing certain aspects of his/her behaviour (i.e. changing *mētis*) and adapting to the new formal institutions. The idea is not to completely change the specific culture of each and every race group, but to move closer to an institutional equilibrium where the different cultural groups can co-exist peacefully with the formal institutions better reflecting these underlying informal institutions. By themselves, the new formal institutions are all good, growth-enhancing institutions, but the change cannot be one-sided – the formal institutions will also have to adapt over time. When restructuring the formal institutions in this very diverse “Rainbow Nation” of South Africa it is important to remember that “[t]here is all the difference in the world between treating people equally and attempting to make them equal” (Hayek 1948: 16). It is the first of these scenarios one would like to achieve, not the second.

From a policy perspective the fact that the institutional disequilibrium might be hindering South Africa's development is a serious concern. Throughout North's book (1990) he argues that institutions determine the performance of economies. The institutional gap should thus have a negative effect on the country's economic growth and overall development. This might not be a direct effect, but an adverse indirect effect will certainly be evident in social phenomena like the high crime rate. It is the forward linkages that are important here. The high crime rate, for instance, will have negative growth effects visible in the form of decreased foreign direct investment and/or other

types of investment for which the institutional environment is an important determinant. It is thus imperative for the South African government to facilitate this process of institutional change the best they can. For example, the government could make more “sticky” policies by aligning IEX and IEN institutions.

A particularly relevant option may be public-private partnership. Private companies or individuals could provide more “hands-on” information of the underlying informal institutions while the government could provide the necessary enforcement capacity. The importance of *individual* change was discussed above – the government could facilitate such individual change through public education. A Zulu tribe in the midst of Kwazulu-Natal may not believe that the system of private property rights is better than their system of communal rights until someone teaches them about the growth-enhancing benefits thereof (assuming of course that they want higher growth rates). Only after people know what benefits the new formal institutions holds over the previous ones (and some informal institutions) could they possibly decide to change their personal norms of behaviour.

Much more research is needed on the topic of institutional change – especially concerning radical top-down changes in the formal institutions. For South Africa specifically, the response of informal institutions to the institutional gap (or to the results thereof, like the high crime rate for instance) will be a very interesting topic. Further characterisation of the institutional gap is also needed. International comparative studies should be very interesting and will definitely contribute to our current understanding of radical institutional change. And of course the area of policy options is always open for creative suggestions.

8. Conclusion

To prove my hypothesis that the institutional disequilibrium in South Africa is one of the major determinants of the high crime rate in that country, NIE theory was discussed first, before looking at the institutional arrangements under Apartheid and the existing institutional environment. The focus was on the failure of judicial institutions specifically and it was shown that there is very little risk of conviction after committing a crime. A

brief consideration of Gary Becker's theory on the economics of crime indicated that the number of offences a person may commit will increase if, amongst other things, the probability/risk of conviction is very low. This contributes to the tension between the changed formal institutions and the unchanged informal institutions partially manifesting itself in an ongoing violent revolution.

Some implications of this phenomenon were considered in section 7 and it was suggested that both formal and informal institutions will have to adapt. Change should start with the individual, but government can facilitate this change through education and well-planned public-private partnerships.

Although some progress has been made, the situation in South Africa does not look very favourable at this stage, but I believe that what North (1990: 140) says in conclusion to his book, is also true for this country, "The promise is there. We may never have definitive answers to all our questions. But we can do better."

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APPENDIX 1: Total crime per category in South Africa

Crime Category	April 2001 to March 2002	April 2002 to March 2003	April 2003 to March 2004	April 2004 to March 2005	April 2005 to March 2006	April 2006 to March 2007
Murder	21,405	21,553	19,824	18,793	18,545	19,202
Attempted murder	31,293	35,861	30,076	24,516	20,553	20,142
Rape	54,293	52,425	52,733	55,114	54,926	52,617
Indecent assault	7,683	8,815	9,302	10,123	9,805	9,367
Assault with the intent to inflict grievous bodily harm	264,012	266,321	260,082	249,369	226,942	218,030
Common assault	261,886	282,526	280,942	267,857	227,553	210,057
Common robbery	90,205	101,537	95,551	90,825	74,723	71,156
Robbery with aggravating circumstances	116,736	126,905	133,658	126,789	119,726	126,558
General aggravated robbery (subcategory of aggravated robbery)	96,963	96,166	105,690	100,436	91,068	92,021
Carjacking (subcategory of aggravated robbery)	15,846	14,691	13,793	12,434	12,825	13,599
Truck hijacking (subcategory of aggravated robbery)	3,333	986	901	930	829	892
Robbery at residential premises (subcategory of aggravated robbery)	-	9,063	9,351	9,391	10,173	12,761
Robbery at business premises (subcategory of aggravated robbery)	-	5,498	3,677	3,320	4,387	6,689
Robbery of cash in transit (subcategory of aggravated robbery)	238	374	192	220	385	467
Bank robbery (subcategory of aggravated robbery)	356	127	54	58	59	129
Arson	8,739	9,186	8,806	8,184	7,622	7,858
Malicious damage to property	145,451	157,070	158,247	150,785	144,265	143,336
Burglary at residential premises	302,657	319,984	299,290	276,164	262,535	249,665
Burglary at business premises	87,114	73,975	64,629	56,048	54,367	58,438
Theft of motor vehicle and motorcycle	96,859	93,133	88,144	83,857	85,964	86,298
Theft out of or from motor vehicle	199,282	195,896	171,982	148,512	139,090	124,029
Stock-theft	41,635	46,680	41,273	32,675	28,742	28,828
Illegal possession of firearms and ammunition	15,494	15,839	16,839	15,497	13,453	14,354
Drug-related crime	52,900	53,810	62,689	84,001	95,690	104,689
Driving under the influence of alcohol or drugs	24,553	22,144	24,886	29,927	33,116	38,261
All theft not mentioned elsewhere	576,676	620,240	606,460	536,281	432,629	415,163
Commercial crime	58,462	56,232	55,869	53,931	54,214	61,690
Shoplifting	68,404	69,005	71,888	66,525	64,491	65,489
Culpable homicide	10,944	11,202	11,096	11,995	12,415	12,871
Kidnapping	4,433	3,071	3,004	2,618	2,320	2,345
Abduction	3,132	4,210	4,044	3,880	3,345	3,217
Neglect and ill-treatment of children	2,648	4,798	6,504	5,568	4,828	4,258
Public violence	907	1,049	979	974	1,044	1,023
Crimen injuria	60,919	63,717	59,908	55,929	44,512	36,747

Source: SAPS 2007