INTRODUCTION

Bodunrin concurs: "The African philosopher cannot deliberately ignore the study of the traditional belief system of his people. Philosophical problems arise out of real-life situations. In Africa, more than in many other parts of the modern world, traditional culture and beliefs still exercise a great influence on the thinking and actions of men..." (Wright, West Valley College).

The statement made by Bodunrin regarding the African philosopher, is just as relevant and applicable to the criminologist. Any theorist striving to explore, understand, and explain a criminal phenomenon must take the value system, which is normally associated if not based upon the individual’s traditional belief system, into account. In the African - and more specifically the South African context - tradition, culture and beliefs definitely exercise a great influence on the thought and actions of people. In the this article this issue of diversity will be addressed and a criminological framework will be illustrated in an attempt to place criminal behaviour into theoretical perspective. This would have implications for handling black offenders in the criminal justice system. Western and African perspectives or theories have different epistemological and ontological points of departure.

WHY A CRIMINOLOGICAL FRAMEWORK?

Criminologists in South African have become more aware of the need for criminological theory based upon the African experience. As a result of this realisation and in the search for a better, more informed knowledge system, philosophical and psychological writings will be applied as sources of information. This awareness has been a slow process that Louw (1995) initially contributes to the decolonisation of Africa, and later to the dismantling of apartheid. Through this process an acknowledgement of the plurality of cultures has taken place.

PROBLEMS ASSOCIATED WITH DEVELOPING AN “AFRICAN THEORY”

Certain problems are encountered when dealing with the issue of “an” African theory. The first of these is concerned with ethics and ethnicity.

Issues of ethnicity and ethics: theory and application

When developing or analysing African theory one has to take cognisance of ethnicity and ethics. Ignoring
differences is unethical. Minow (Muir 2000) refers to "the dilemma of difference". This implies that too much emphasis is placed on the differences between people or that we are insensitive to them and that people are stigmatised because they are different. This is a dilemma when we develop "theories of difference" on Africa. From a criminological perspective (theoretically and practically), it is important to accept the differences between people of different cultures in our treatment of offenders, rather than using the differences to stigmatise or place them at a disadvantage. Theories must be non-generic and culturally based. Often American or other programmes are applied which have poor outcomes because they are not suited to South African cultures.

Pre-modern, modern, and post-modern—making the distinction

It is difficult to determine the extent to which the Western influence has affected South African society. About 60 percent of the black population in South Africa is non-urbanised (and about 76% of the total population is black, the remaining percentage accounting for coloured, white and other). Many members of these non-urbanised communities, who are largely unexposed to modern (industrialised, Western) culture, are completely illiterate (about 10% of South African adults have had no education in the Western sense of the word). And many of them still adhere to the customs of their tribe or larger ethnic grouping. This does, however, not mean that urbanised blacks do not adhere to these customs at all. Some individuals still do or attempt to, especially those in the ever-growing informal settlements outside major cities (Van der Merwe, Goduka & Swadener, in Louw 1995).

It would be necessary to develop a sliding scale to gauge the level of modernisation of the offender. This scale would have to indicate the level of westernisation, urbanisation and to what extent ties with the traditional community have been broken. This would have implications for sentencing and rehabilitation. In sentencing the question would be to what extent did the offender’s break from the community, its values and norms contribute to the crime committed. Did the offender’s alienation from the community facilitate the path into a criminal lifestyle? For purposes of treatment, the level of modernisation and relationship with the community (including the family) would have to be considered when deciding on a suitable treatment strategy.

It is necessary to distinguish between African and Western philosophy and to examine the effect on theory.

Differences between Western and African theory

“African” in this context refers to the polymorphous grouping of the indigenous peoples of the sub-Saharan region. Western and African perspectives or theories have different epistemological (how do we know what we know or being concerned with the theory of knowledge) and ontological (concerned with the nature of being) points of departure. Western theories are scientific, analytical and reductionistic whereas the African approach is based upon subjective, direct experience. Western theories serve to analyse, predict and control human behaviour, while the African approach strives towards intuition and integration.

It is Jung’s psychoanalytical theory that comes closest to the African perspective. Jung’s theory shows the influence of his travels to North, East and Central Africa, where he developed a fascination for Africa. His views were influenced by his contact with the
African perspective and way of life. His explanation of the collective unconscious, the unconscious, and communal species memory that never achieves consciousness and represents accumulated experiences, corresponds closely with the African perspective of the collective conscious.

Other Western theories which can be used to explain the African perspective and serve as a frame of reference are Cybernetics and the Systems theory. “System” is a word which describes any "experience-cluster" that we can map as a set of interacting elements over time. Typically, a system is mapped by identifying the pathways of information flow - and possibly also the flow of energy, matter and other variables. Cybernetics is the study of systems which can be mapped using loops (or more complicated looping structures) in the network defining the flow of information. Bateson (Becvar & Becvar 1996:76) defines systems theory as the study of systems that can be mapped using any kind of network to define the flow of information. This includes the study of systems whose emergent properties we cannot yet predict owing to a lack of plausible mechanisms, rigorous mapping techniques and/or robust mathematical treatment. This view helps us to understand the African perspective as it studies the properties that emerge from the interconnectedness and complexity of relationships between parts. This interconnectedness and the complexity of relationships will be examined later in this paper.

Muir (2000) states that the need for cybernetics and systems theory is based upon the following: "When we try to pick up anything by itself we find it is attached to everything in the universe." This interrelatedness is comparable with the wholeness of the African experience. Muir (2000) speculates that if the science, religion, philosophy and epistemology of Western civilisation were “in better shape (more mature?), we would not need cybernetics and systems theory as separate areas of inquiry; they would be woven into the fabric of our knowledge as already are other prior mental tools such as: the flexibility of language ... our tradition of education has a blind spot when it comes to complexity, interconnectedness and relationship”. This complexity, interconnectedness and relationship should form the basis of African criminological theory.

Problem: A plurality of cultures

The plurality of cultures to which Louw (1995) refers includes racial and ethnic variety as well as other overlapping affinity groups that constitute African, and specifically South African, society. Louw (1995) goes further by identifying other categories (that is, besides race or ethnicity) which further thwart any attempt to develop a theory for understanding and explaining crime in South African society. These categories include those of literate/illiterate, urbanised/non-urbanised, and perhaps even the somewhat controversial categories of pre-modern, modern, and post-modern. The latter should be the focus of academic debate and study as it in itself causes controversy in the study of African theory.

The fact is that there is not just one African society, but many African societies. Any claims or references to "African society" are generalizations, and are at most family resemblances between a plurality of (predominantly traditional sub-Saharan) African societies. Societies or cultures cannot be viewed as monolithic, transparent and neatly demarcated wholes. They overlap in a variety of ways (Van der Merwe, in Louw 1995).

Problem: Absolutism or relativism

Louw (1995) postulates that this plurality of cultures may cause researchers to resort to either absolutism or relativism in their assessment of other cultures. The absolutist will dogmatically and arbitrarily evaluate
someone from another culture by means of criteria with which the latter does not identify him or herself. Absolutism impedes the self-understanding of the other or others. Louw (1995) contributes absolutism among members of a community, as a source of violence in society and believes that it is this characteristic that regularly facilitates political unrest and bloody conflicts.

On the other hand, the relativist may attempt to transcend and avoid the latter mistake by adopting the view that surrenders the assessment of the other to “subjective arbitrariness”. The relativist is of the opinion that there are no criteria in view of which the other might be judged non-arbitrarily or objectively. Relativism deprives one of the right to criticise another group or culture in fear of being absolutist. The criminologist must find a scientific midway whereby an objective and empathetic evaluation of another person’s “otherness” is possible using assessment tools that make provision for this “otherness” or uniqueness. This may be done by placing the offender within a framework which clearly provides and creates a setting for the characteristics of complexity, interconnectedness and mutual relationship.

Winch (Hughes 1998:127) postulates that [t]wo things may be called the same or different only with reference to a set of criteria which lay down what is to be regarded as a relevant difference. When the “things” in question are purely physical the criteria ...will of course be those of the observer. But when one is dealing with intellectual (or, indeed, any kind of social) “things”, that is not so. For their being intellectual or social...in character depends entirely upon their belonging in a certain way to a system of ideas and modes of living.

In African theory it is thus important to move away from criteria which may be set by the observer and to rather focus on belonging in a certain way to a system of ideas and modes of living. Winch explains this process as the rules of social interaction. These rules of social interaction are the shared actions of members of a specific language and culture. The concept of Ubuntu can also be illustrated in terms of these rules of social interaction. Louw (1995) regards Ubuntu as an African or African-inspired version of an effective decolonising assessment of the other. This assessment of the other also transcends absolutism without resorting to relativism.

Unanimism

As previously mentioned, it is crucial to avoid an absolutist or relativist stance. Another major point of concern is the danger of reifying (converting-abstracting) the stereotype of the African as simply less evolved (Basu 1998). This is known as Unanimism. The term, popularised by Hountondji, illustrates the “strange and unwarranted assumption that all the inhabitants of the vast and varied continent of Africa can be supposed to resemble each other in any salient characteristic of thought or culture”. This view may create political problems and impoverish the cultural variety found within the different tribes. The salient characteristic that can be identified and the rules of social interaction or ubuntu determine the functioning of the community.

When we try to develop an African theory we must thus take Basu’s concerns into account. Basu (1998) places much emphasis on the dangers associated with the use of the term of an African culture or philosophy. Basu says that to do so is “shallow at best and may be tantamount to chicanery (deceit or deception). If we say that they are indeed deeply different in so significant a matter as their intellectual
traits and world-views, are we not accepting as reality the worst kind of racist superstition? ” With regard to an African criminological theory one would thus have to —

be extremely careful about making sweeping generalizations of any sort. Certain easy expectations of difference may serve as self-fulfilling prophecies - the Westerner expecting to find mysticism in India will probably find precisely that. We must wait for African philosophers to reveal their range of thought and critique, and we must welcome their perspectives... (Basu 1998).

An African theory would thus not be a given blueprint, by which the Black offender can be analysed and classified but would rather provide a “distinctive, self justifying realm of discourse with its own logic and standards of rationality...” (Hughes 1990:128). The latter discourse must thus form the basis of an “African theoretical approach”.

AFRICAN PSYCHOLOGY

African culture has a rich heritage, and African thought is derived from symbols, myths and collective rituals. The African view of the world and other people is founded on a holistic and anthropological ontology. Humans form an invisible whole with the cosmos (unity with God and nature). Humans are both the point of departure and centre of the universe.

The African cosmic whole is comprised of the following systems: The macro-cosmos, meso-cosmos and micro-cosmos. The macro-cosmos is the domain of the individual person in daily living and implies a collective existence. It influences the difference in ethos and values among people. The macro-cosmos is influenced by both the meso-cosmos and the micro-cosmos. African traditional religion does not focus primarily on the individual but on the community to which the individual belongs. This illustrates the collective consciousness and implies collective responsibility. The modern legal system is based upon individual responsibility where only the offender is held responsible, unlike medieval times when clans or families were held collectively responsible for a member’s infringements or actions; in the African culture this is characterised by the collective
consciousness. The implication of this system is that the modern African has become isolated. Modernisation has led to the destruction of the African culture’s solid religious base which, in turn, has led to individuals struggling with the conflict of losing their historical roots. Terblanche (Prinsloo 1998:77) describes this process as the disintegration of the regulating systems, which leads to a state of dysfunction.

The meso-cosmos level is a kind of no-man’s-land. At this level coincidence and forces such as malignant spirits and sorcerers hold sway. Behaviour can be understood as conflict, sickness and death — everything stems from this source. This is the site of dramatic events and worldly success. It is also at this level that one can explain the human dynamics of the African individual. Behaviour is seen to be caused by neither intrapsychic nor interpersonal dynamics, but by external agents, i.e. outside the person. Taking these psychological components and processes into account, the African perspective does not fit into the ambit of the modern legal system. Because, from an African perspective, behaviour is not caused by intrapsychic or interpersonal dynamics, individuals cannot be held responsible or accountable for their own actions or behaviour and it is ascribed to external, supernatural beings or powers. Thus the person is unable to take the initiative to seek solutions, and it is necessary to look for invisible powers and beings behind the empirical, rational reality.

These factors do not excuse behaviour or exempt the individual from responsibility but should be recognised as mitigating. The above psychology should play an integral role in the sentencing of offenders whose value system is based upon the African perspective. However, the court system does not take this psychology into account. It is necessary for this information to be brought to the attention of the court for consideration during sentencing, as well as decision-making regarding the form of punishment. The use of pre-sentence investigations and the presentation of presentence reports to the court would bring about a just process of decision-making by introducing African crime causality theories. An important part hereof would be the introduction and explanation of the collective consciousness.

The micro-cosmos is the source of an African’s daily living or every-day life. This gives rise to the collective existence which is influenced by both the macro-cosmos and the meso-cosmos. It is at this level that the difference between African and Western ethos and values is the greatest. The micro-cosmos influences the relationship between the individual and the community, as is illustrated in the following table:

<table>
<thead>
<tr>
<th>WESTERN</th>
<th>AFRICAN</th>
</tr>
</thead>
<tbody>
<tr>
<td>• ethos - individual survival</td>
<td>• ethos - survival of community and union with nature</td>
</tr>
<tr>
<td>• competition, individual rights, autonomy</td>
<td>• co-operation, interdependence and collective responsibility</td>
</tr>
<tr>
<td>• individuality, uniqueness, self-responsibility</td>
<td>• communality, group orientation and agreement</td>
</tr>
<tr>
<td>• self concept = I</td>
<td>• self concept = we</td>
</tr>
</tbody>
</table>
We can infer from the table that the African functions within a collective existence. The very identity of the African is embedded in the collective existence and life experiences such as suffering, life, and death, and events such as marriage are shared with the group. The African perspective does not draw a line between him or herself and the object. The African will sympathise, abandon his or her personality and identify with the “other”. The African does not assimilate but becomes assimilated. This is a further fact which makes the African prone to becoming involved in crime.

African psychology does not account for the individual personality structure. Instead, dynamics are attributed to activities of ancestral spirits and other magical powers outside the personality. The naming of children is a typical example. The name given to the child describes his or her personality or an event in his or her life. In other words, the name is descriptive of the individual.

This fact will make the difference in a pre-sentence report done for a black offender. Pre-sentence reports individualise the offender and portray a picture of the offender as a person to the court. It is thus important to illustrate the person’s frame of reference from an ecosystemic perspective. African behaviour and functioning could best be explained from an ecosystemic perspective where the person is viewed as a system comprising subsystems, which in turn form part of a larger suprasystem. Traditional African cognitive functioning is based on intuition and emotion and not on pure rationality as among Westerners. African rational functioning is linked with the collective way of life, and reasoning is intuitive through participation.

The African concept of time is two dimensional, with a long history, a present and almost no future. The future has no meaning because it has not yet been experienced. Experience is derived from previous generations. Traditional Africans have actual time, potential time and no time. Actual time comprises of events currently taking place, while potential time includes events that will definitely happen in the near future or as part of a natural rhythm, such as the certainty that the sun will set and rise. This has implications for the incarceration of the inmate and the rehabilitation programmes offered. All are future orientated (rehabilitation in order to facilitate reintegration in the future). It may thus be postulated that it would be difficult for the African to accept rehabilitation programmes that are future orientated.

All the latter components play an integral role in the mental health and optimal functioning of the African individual. African theory states that Africans use the left and right side of the brain in a balanced manner, unlike Westerners who only use one side at a time. The balanced use increases optimal psychological health and functioning. Imbalance (as in the case of Westerners) causes stress and tension. The collective existence of the African also promotes optimal functioning. Whereas Westerners strive towards individualisation and competition, which often results in stress, Africans are characterised by selflessness and a collective existence. This offers security and thus counters anxiety and stress or tension. However, when the African is separated from the collective group or becomes alienated, the resultant stresses and tension levels are not as easily dealt with. Stressors encountered in the criminal justice system may intensify this stress and may affect the mental health of African offenders and lead to alienation. The need to belong to a group may be a main reason why African offenders become involved in gang activities.

Modernisation has broken down this collective existence and eliminated the natural inherent ability to counteract stress, anxiety and tension. The traditional system has immense power, the group is stronger than
individual members, and this acts as a strong control mechanism. A break from tradition may contribute to crime in the sense that the individual does not feel as though he or she is a member of the community and may commit crimes against it. As early as 1969, Mbiti foresaw this process of separation and alienation. He maintained that “[m]odernisation has removed the African from the support group where stressors such as poverty leave the individual isolated and without support”.

**ROLE OF RELIGION IN AFRICAN PHILOSOPHY**

"A person is a person through other persons" (Louw 1995). In African tradition this saying has a deeply religious meaning. The person one is to become "through other persons" is, ultimately, an ancestor. Ancestors include extended family. In African society an inextricable bond exists between man, ancestors and whatever is regarded as the “Supreme Being”. Ubuntu forms an integral part of African religion and indicates a deep respect and regard for religious beliefs and practices.

**TRADITIONAL AFRICAN DEMOCRACY**

Traditionally African democracy takes place through discussions or “indaba’s”. A hierarchy of importance among the speakers exists, and each person has a chance to speak until agreement, consensus or group cohesion, or equality is reached. Expressions such as simunye ("we are one", "unity is strength") and slogans like "an injury to one is an injury to all" reflect this equality. This concept of unity should be considered where punishment is concerned. The punishment handed down should appease the community.

The African inclination towards co-operation, group work or shosholoza (to work as one) is can be seen in the approximately 800 000 "stokvels" in South Africa. Stokvels are joint undertakings or collective enterprises, such as savings clubs and burial societies, which are often formally registered. Stokvels refer to community-based financial arrangements. Resources are pooled and distributed to members as either (interest-free) loans or payouts (Du Toit 2000:32-33). Stokvels are based on the Ubuntu principle of the "extended family system" and all those involved are considered to be brothers and sisters. This practise is a visible sign of the cohesion in the African culture and this bond must be considered when managing the African offender.

**THE CONCEPT OF INDIVIDUALITY**

It appears as if the Ubuntu concept of individuality is a contradiction of terms. Ubuntu claims that the self or individual is constituted by one’s relations with others. But if this is the case, between whom are these relations? Can persons and personal relations really be equally primordial? (Shutte 1993:56). According to Schutte, African thought deals with this (apparent) contradiction in the idea of seriti. Seriti is an energy, power or force which is maintained to make persons unite in personal interaction with others. Thus “the self” and others can be seen as equiprimordial or as aspects of the same universal field of force. However, as Shutte observes, this "solution" of the contradiction posed by the Ubuntu conception of individuality, comes at a price:

...in the perspective opened up by the African idea of the universe as a field of forces, it is difficult to see how the existing individual can have any enduring reality at all, much less how he [or she ] can be possessed of the freedom and responsibility that is usually reckoned the most valuable mark of personhood (Shutte 1993:56).
Care must be taken not to see the inclusivist, collectivist or communalist conception of individuality as an oppressive collectivism or communalism. The African conception of man does not negate individuality. It simply discourages the view that the individual should take precedence over the community (Ndaba 1994). Furthermore, Ndaba states that the collective consciousness evident in the African culture does not mean that the “African subject wallows in a formless, shapeless or rudimentary collectivity...[It] simply means that the African subjectivity develops and thrives in a relational setting provided by ongoing contact and interaction with others” (Ndaba 1994:14).

Van der Merwe (1996:1) poses the question whether Africans do adhere to Ubuntu or, at least, endeavour to do so? And if so, he queries whether Ubuntu is uniquely or exclusively African? The example of the relatively non-violent transition of South African society from a totalitarian state to a multi-party democracy, is seen as not merely the result of the compromising negotiations of politicians. Van der Merwe believes that it is the result of the emergence of an ethos of solidarity, a commitment to peaceful co-existence amongst ordinary South Africans in spite of their differences, in the spirit of Ubuntu. Ubuntu fits well into the objectives of punishment.

**AFRICAN THEORIES: A CRIMINOLOGICAL PERSPECTIVE**

Current criminological theories are based upon a Western perspective and explain the phenomenon of crime and criminality from a Western, first-world perspective. This has a limiting effect on criminological research in South Africa and on gaining an understanding of why South Africa has such a high rate of violent crime and offences against women and children.

If we acknowledge that culture may largely control the way in which we think or function, it is important to study the effect of culture and tradition on behaviour. To date very little attention has been paid to the development of African theory, and the lack of African-based criminological perspectives is a serious drawback. Certain issues need to be considered in the development of African theory and African-based criminological perspectives.

**An African framework as a tool in the criminal justice system**

Understanding and applying an African approach to our criminal justice system and the persons that are caught up in this system, may be a means by which we can refrain from the mistake of absolutism. The philosophy of “Ubuntu” as a frame of reference when studying a segment of South African society, would thus avoid absolutism and relativism. These concepts must be understood and considered during the punishment, handling, treatment and rehabilitation of the black offender. Existing African theory is predominantly in the form of personality theories. These theories form the basis of the criminological paradigm.

**African offenders in the criminal justice system: An African perspective**

In South Africa, the overburdened criminal justice system often leads to the victimisation of offenders. The slow process of sentencing makes overcrowded detention facilities a grim reality. Upon sentencing, the offender is incarcerated in conditions that are not conducive to rehabilitation and reform. In addition, yet another form of victimisation takes place where the justice system does not reflect the inherent culture of its inmates. South African law is based on the Anglo-Saxon system and developed from other legal systems, such as English, Scottish and German law. It is this system which is applied to control the actions and behaviour of all citizens of South Africa.
When a person deviates from the norms and values of the community, sanctions are imposed to control such behaviour and to show moral condemnation. Society imposes sanctions in the form of punishment to prevent further offending. It is this legal system which guides the trial and sentencing of offenders.

The largest population group in South Africans is black, as is the prison population. It can thus be postulated that many of the prisoners’ norms and values, their cultural heritage and their ethnic value systems, do not always concur with those of our legal system. This paper does not deal with these legal aspects but looks at the psychological effects and the criminological outcome of this state of affairs. It is the African offender in South Africa who may be victimised by a legal system which does not take African psychology into account.

Restorative Justice: An African Perspective

The concept of restorative justice falls within the paradigm of Ubuntu. Restorative justice will first be defined and then applied in the African perspective. According to Pranis (2000), restorative justice is based on the following principles:

- Restorative justice is not a specific programme or set of programmes but is rather a way of thinking about responding to the problem of crime (it moves away from a Westernised, rationalistic approach to crime to an African response).
- It is a set of values that guides decisions on policy, programmes and practice.
- Restorative justice is based on the redefinition of crime as injury to the victim and community, rather than as an infringement on the power of the state (an approach which clearly falls within the philosophy of “Ubuntu”).
- The main purpose of justice in the restorative model is to repair the harm caused by the crime to whatever degree possible.

The definition furnished by Bright (1997) looks at restorative justice as a process that is judged by its outcomes. According to Bright, “restorative justice is a process whereby parties with a stake in a specific offence resolve collectively how to deal with the aftermath of the offence and its implications for the future”.

According to the South African Law Commission (1979) restorative justice:

- deals with victims and offenders by focusing on the settlement of conflicts arising from crime and resolving the underlying problems which caused it,
- deals with crime generally in a rational and problem solving way,
- recognises the community rather than the criminal justice agencies as the prime site of crime control,
- is a form of criminal justice based on reparation aimed at repairing the damage caused by the crime, either materially or at least symbolically, when one person wrongs another, and
- entails reparation to the victim and community as a duty or obligation of the offender.

For the latter purpose it is necessary to involve the victim to a much greater degree than in current practise. Thus an operational definition would be that restorative justice is a change in mind set or cognitive response to the problem of crime which contributes to the adoption of new values and approaches to criminal justice policy, programmes and practice, taking into account the harm done to a member of the community and addressing the imbalance created both to the victim and the community.
Several of the key principles of restorative justice show the link to an African perspective and prove to be possibly more suitable to an African world view than a Western one. According to Lemley (2000), the concept of restorative justice loosely rests on several related, though distinct, theoretical, religious, and historical traditions. Lemley (2000) holds that restorative justice policies in the criminal processes in the United States have recently experienced a dramatic upsurge. However, it is added that successful implementation and theory testing, requiring theoretical specification, seem to be lacking. In South Africa restorative justice is in its infancy. Mandatory minimum sentences introduced by the 1997 Criminal Law Amendment Act (South African Law Commission 2000) sought to ensure that some serious offences were punished more severely and to bring a measure of uniformity to the sentencing process. However, without a restorative approach any steps taken in this regard will be less effective.

The report of the South African Law Commission (1997) addresses the issue of cultural beliefs and perspectives. It states that traditionally, African principles are based on reparation and less emphasis is placed on the retributive aspect of crime. The victims of crime are therefore central in those judicial systems. It addresses the issue whether African principles should also be accommodated in the search for a system which will give due recognition to the victims of crime.

Community service programmes in Africa build on customary processes for making amends, thus addressing community concerns and easing the offender's reintegration into the community.

Restorative practices to transform criminal justice can, however, only be realised if a broad base of support for restorative justice principles and practices is developed. Because restorative justice is grounded in community involvement, it is not possible to implement a comprehensive restorative system without community ownership and support. The African perspective fully accommodates this principle and approach. The philosophy of Ubuntu is captured in the following quote from the Humanity Organisation (1995):

Amidst daily life in Soweto, a humane spirit reigns, one which characterizes people's allegiances and relations to one another. Referred to in Zulu and Xhosa as ubuntu, it translates roughly in English as "humanity towards others. What a wonderful word! What an easy reminder of how we can get along best, of what smoothes [sic] our ride: that natural, necessary thought of our neighbors.

According to Ramose, and Shutte (Louw 2001), “Umuntu ngumuntu ngabantu. Motho ke motho ka batho”, are the Zulu and Sotho versions of a traditional African aphorism, which can be translated as "a person is a person through other persons". The central concept of "Ubuntu"means "humanity", "humanness", or even "humaneness". It implies a basic respect and compassion for others and signifies both a factual description and a rule of conduct or social ethic. It describes humans as "being-with-others", and prescribes how individuals should relate to each other, for example what "being-with-others" should be all about.

When dealing with an offender in the criminal justice system it would be necessary to adopt a stance and treatment philosophy which reinstates and restores the offender's "humanity", "humanness", or "humaneness".

The 1997 South African Governmental White Paper on Social Welfare officially recognised Ubuntu as:
The principle of caring for each other's well-being...and a spirit of mutual support...Each individual's humanity is ideally expressed through his or her relationship with others and theirs in turn through a recognition of the individual’s humanity. It also acknowledges both the rights and the responsibilities of every citizen in promoting individual and societal well-being.

Ubuntu is founded on processes of production and consumption that are people-centred, meeting their material as well as social and spiritual needs. The philosophy of Ubuntu grows out of the organic relationship between the majority of the people, their spiritual roots and the natural world. According to the Humanity Organisation (1995):

- humanity is an integral part of eco-systems, leading to a communal responsibility to sustain life
- human worth is based on social, cultural and spiritual criteria and competence rather than conventional market-based concepts
- natural resources are shared on principle of equity among and between generations.

Punitive strategies should thus be based on these principles in order to be effective and to accommodate not only the African offender but any other offender. Louw (1995) elucidates that it would be ethnocentric to insinuate that the Ubuntu ethic of caring and sharing is uniquely African. The values promoted by Ubuntu, form a part of many Eurasian philosophies. This distinction does not aim to repudiate the intensity with which these values are given expression by Africans. But, rather to show that the mere fact that they are intensely expressed by Africans, does not make these values exclusively African. What the author does, however, suggest is that Ubuntu serves as a distinctly African rationale for these way of relating to other persons. Ubuntu also influences African religion.

**Punishment**

An African perspective to crime and punishment clearly accommodates the use of the pre-sentence investigation and report to individualise the offender and to allow for an Afrocentric approach to the punishment, treatment and rehabilitation of such an offender. The use of the pre-sentence report is validated by Stinchcomb and Hippensteel (2000) in the following quote:

As the clinically driven paradigm associated with the earlier era of criminal justice policy-making known as the medical model has been replaced more recently by the legislatively defined prescriptions of the justice model, accompanying changes have occurred throughout the system. From the discretion of judges to the crowding of correctional institutions, few criminal justice operational practices have escaped the influence of changing public policy ideologies as the political pendulum has swung over time; presentation
investigation (PSI) reports are no exception. Once the backbone of a micro oriented emphasis on the individual offender's potential for change, the nature, role, and impact of PSIs have been transformed as the system has shifted to policy-based sentencing practices that place higher value on personal accountability and procedural uniformity.

An African perspective can be applied in the pre-sentence report, still ensuring personal accountability and procedural uniformity. The report individualises the offender and explores the individual’s potential for rehabilitation and reintegration. African religion involves important concepts such as group solidarity, the group psychology, and a collective consciousness. Although it appears to be contradictory, the concept of individuality also comes into play. These concepts are also entrenched in African democracy.

CONCLUSION

We see, then, that modernisation has removed the African from the support group and that stressors such as poverty leave the individual isolated and without support. African offenders find themselves in this vacuum where they function in isolation and are removed from the norms and values of their upbringing. They are faced with the norms and values of Western society. The value of the individualisation of punishment (by means of the pre-sentence report) and a suitable treatment philosophy (by means of treatment or rehabilitation programmes accommodating the African philosophy), based on the foundations of the African perspective, is thus an important step and should be taken cognisance of in the criminal justice system. This would accommodate the otherness of the various cultures — not only that of the African — who finds himself in the melting pot of cultures within South Africa.

BIBLIOGRAPHY


Louw, DJ. 1995. Ubuntu and the Challenges of Multiculturalism in post-apartheid South Africa. Department of Philosophy, University of the North, E-mail:<DirkJl@unin.unorth.ac.za>;<LouwDj@pixie.co.za>


