

REICHER'S article is hard to penetrate because of its dense jargon: "the central ideological project", "de-contextualising crowds", "the entire collectivity has been pathologised". But the ideas buried beneath this verbiage are quite simple, and in my view quite wrong. I shall confine my comments to three crucial errors: (a) a misunderstanding of a key legal issue; (b) a misleading account of the historical context of the trials; and (c) a misguided assumption about the psychological evidence.

Common purpose

Reicher says that "the doctrine of 'common purpose' was introduced by a decision of the Appellate Division during the case of *State v. Safatsa* (better known as the 'Sharpeville 6') in December 1987". He goes on to say that "this ruling effectively allowed anyone who was part of a crowd in which a killing occurs to be tried on a charge of murder" and that "the individual need have had no part in the killing itself, and therefore no defence can be mounted on the basis of what was actually done in the crowd".

This interpretation of the common purpose doctrine is the linchpin of Reicher's historical conspiracy theory and "most relevant" to his criticism of my article. According to him, the introduction of common purpose by members of the South African judiciary in 1987 was a politically motivated response to "the dramatic upsurge of mass protest in the mid-1980s", and since it meant that the behaviour of individuals in crowds was irrelevant to their defence, "the stage was therefore set for a series of trials in which issues of the general nature of crowd behaviour became a crucial issue". These trials merely served the interests of the apartheid regime by "establishing the legitimacy of the court in criminalising the accused". On this basis Reicher proceeds to "question" my claim that the trials in which I testified represent an important legal breakthrough.

It would be pointless to debate the logic of this argument, because it founders on the falsity of its own factual foundation. The common purpose rule was *not* introduced in the 1980s, though it gained notoriety in 1987 on account of the way it was used against the "Sharpeville Six". How would Reicher explain the following judgment based on common purpose delivered 70 years earlier: "Every person who joins in rebellion is party to a common unlawful purpose ... Every rebel is liable for all [unlawful] acts committed by other rebels in prosecution of the rebellion" (*McKenzie v. van der Merwe*, 1917: 45)? And how would he explain the section headed "Common Purpose" in Stephen's classic digest of English (yes, English) criminal law

Are there Theories at the Bottom of his Jargon?

Andrew Colman replies to Reicher, and defends his claim that the trials represent a legal breakthrough.

which says: "When several persons take part in the execution of a common criminal purpose, each is a principal in the second degree, in respect of every crime committed by any one of them in the execution of that purpose" (Sturge, 1950, Article 17)? Stephen cites authorities on common purpose dating back to 1672, more than 300 years before Reicher's conspiracy theory requires that it was first introduced.

Reicher believes that South African judges conspired to introduce the common purpose rule in 1987 to discredit the wave of political protest sweeping the country at the time, and that they began to grant extenuation on the basis of crowd psychology for the same reason: to label it irrational. In reality, the common purpose rule is centuries old and is not even of South African origin.

The rule does not allow "anyone who was part of a crowd in which a killing occurs to be tried on a charge of murder", and it is quite wrong to say that "no defence can be mounted on the basis of what was actually done in the crowd". The prosecution has to prove not only that the defendants were part of the crowd, but also that they shared a criminal intention with the actual killer(s). In most common purpose trials the defence depends crucially on "what was actually done in the crowd". This does not fit in with Reicher's conspiracy theory, according to which the common purpose rule was introduced so that individual action could be ignored and the "entire collectivity [could be] pathologised".

Historical context

Reicher's account of the historical context of the trials is also seriously misleading. He claims that social psychological processes had already been accepted by courts on numerous occasions before I testified, and on that basis he questions my "assumption", as he calls it, that my cases "do represent a breakthrough in terms of the acceptance of psychological evidence". In recent years, he says, there has been "far greater success in trying to introduce psychology", because it suits the ideological interests of the state.

Reicher bases this interpretation on Foster's (1990) review of 13 South African cases involving collective violence in which psychological evidence was called.

According to Reicher, the review reveals that "courts had long accepted that the [psychological] processes could in principle allow extenuation, only sometimes they questioned the application to a particular case". In support of this, Reicher slightly misquotes Foster to the effect that "no court has, to date, entirely rejected psychological evidence concerning collective violence". I happen by chance to have read this exceedingly obscure reference, so I know the context of the quotation. It turns out that Foster meant merely that no court had ruled the evidence inadmissible, not (as Reicher implies) that the courts had accepted psychological evidence as proof of extenuating circumstances. The full quotation is:

No court has to date *entirely rejected* expert psychological evidence concerning collective violence. In all cases, with the possible exception of the *Uppington 26*, the evidence itself and the status of the expert witnesses have been accepted. Instead, the evidence on crowd behaviour has been found, for one or other reason, *not* to apply to the *particular* accused in these cases. (p. 165, Foster's italics)

Foster's own conclusion was: "In only one of the thirteen cases discussed in this chapter was expert testimony on collective action accepted as extenuation" (p. 170). Reicher's paraphrase is a splendid example of selective quotation used to distort the message of a text.

Foster's (1990) review was not, in fact, accurate. What actually happened was as follows (for a fuller account see Colman, in press). In the late 1980s South Africa defence lawyers - Advocates David Soggot and Martin Luitingh in particular - began to call social psychologists as expert witnesses in extenuation, but at first the experts relied exclusively on de-individuation. The cases of *S. v. Sibisi and Others* (1989) and *S. v. Gqeba and Others* (1990), in which I testified, were the first in which a wide range of psychological processes, including not only de-individuation, but also conformity, obedience to authority, group polarisation, frustration-aggression, relative deprivation, bystander apathy, the fundamental attribution error, and Latané's law of social impact, were put forward and accepted by the courts as evidence of extenuating circumstances. That is why those cases are historically significant.

Crowd psychology

Reicher alleges that my evidence "was clearly based on presenting collective action as irrational". He seems to think that I described the murders as both irrational and haphazard. He points out that "in both cases ... the attacks were not haphazard. Rather, they constituted violence against those who, in aiding the 'enemy', were seen to put the category represented by the crowd under threat." It should be clear from my article that I agree with this. I and the other expert witnesses said something similar in our evidence, although we used simpler language. Reicher's well-worn criticisms of

the irrational aspects of de-individuation theory may be justified, although experts on crowd psychology seem to ignore them, but whatever their merits they are clearly irrelevant to the other psychological processes I referred to. Understandably, the only psychological process that Reicher mentions in his reply is his favourite bugbear, de-individuation.

Reicher also attributes to me the contention that my testimony involved "the role of a scientific psychology in determining issues of responsibility". This shows a profound misunderstanding of the purpose of my evidence. I thought I had made it clear that I testified in the extenuation proceedings after the issues of responsibility

had already been decided by the courts. I was not even present during the responsibility phase of either trial. Defence counsel made no attempt to argue that the psychological evidence had any relevance to the question of criminal responsibility. My evidence was intended solely to prove the existence of extenuating circumstances which helped to save several convicted men from the gallows.

References

- Colman, A.M. (in press). Crowd psychology in South African murder trials. *American Psychologist*.
 McKenzie v. van der Merwe, 1917 SA 41 (AD).
 Sturge, L.F. (1950). *A Digest of the Criminal Law (Indictable Offences) by the Late Sir James Fitzjames Stephen, Bart (9th Ed.)*. London: Sweet & Maxwell.

THE TENOR of Andrew Colman's reply does suggest that he takes my article as a personal attack. However, as I tried to make clear from the start, one can only applaud the fact that he helped save men from the gallows. My aim was not to question the specific actions, but to explore a more general conceptual dilemma which arose out of them. If this did not come over, it does support Colman's criticism that my piece lacked clarity - though to attack phrases such as "ideological project" and "decontextualising crowds" while using terms such as "fundamental attribution error" and "Latané's law of social impact" does rather suggest that one person's jargon is another person's ordinary language. Let me, then, try and correct some of the misapprehensions that seem to have arisen.

The reply characterises my argument concerning the usage of psychological evidence as a "historical conspiracy theory". This implies a motivated collusion between different sides in the use of the expert testimonies. However, I am not suggesting any sort of conspiracy. I am not impugning nor even addressing the motivations of the defence camp. Rather I am asking the more general question of what are the conditions under which particular forms of knowledge become accepted? Is it due to their inherent truth-value or their congruence with prevailing social structures and ideologies?

I argue that the renewed status of psychology in the courts relates to the upsurge of "common purpose" cases in the second half of the 1980s. I am well aware that the "common purpose" doctrine is very old. My point was that its recent employment in South African crowd cases stems from the case of the "Sharpeville Six". However, while we could have a prolonged debate about the precise legal significance of that case, we all seem to agree that the increased use of "common purpose" coincides with the period of mass unrest - and it is the use which is central to my position.

The significance of "common purpose"

The Logic of Psychology, not the Intentions of the Psychologist

Stephen Reicher clarifies his argument

is that it rules out a defence which says "they didn't do it" because simply being in the crowd that did it is enough to ensure guilt. All one can do is question whether the defendants knew what was going on - whether they knew what the crowd was doing; whether they knew what they were doing themselves. Luitingh's and Colman's criticisms only confirm the point: the logic of "common purpose" impels strategies which turn on issues of understanding and rationality. These are pre-eminently psychological questions and therefore pull psychology into the courtroom. My use of Foster's review - which I use because it is the only one I know to exist - was to demonstrate that this logical connection is also an empirical connection. Again, we could debate the finer points of Foster's analysis. We could also debate the precise meaning of his words (though I would defend my interpretation and certainly strongly reject the implication that I am using selective quotation in order to distort). However, what he unquestionably shows is that there are a whole raft of cases in which psychological evidence concerning crowd action is accepted as relevant either in principle or in practice.

Having shown that the use of psychology relates to the use of common purpose, the second part of my argument is to suggest that the acceptance of the actual ideas may have to do with their broader ideological implications and to demonstrate what those implications are. In a nutshell, my argument is that to argue that crowd members are not in control of their actions may get individuals off the hook, but at the cost of discrediting crowd action in general. It does not just condemn those who hack strike-breakers to death as mindless; it suggests

that all mass action is mindless. It is precisely because the theory has such a general sweep that it is so attractive to authorities in periods of collective unrest. In putting my case, I concentrate on deindividuation, not because it is any sort of personal bugbear. Rather it is the clearest and most longstanding expression of the notion that collective behaviour is inherently irrational. What is more, when the psychological evidence is discussed in the press, the notion that people may lose control and act barbarically is clearly to the fore.

I accept that the defence tried to portray the social backdrop to crowd behaviour. However, to say that they were concerned to challenge the brutalities of apartheid, and that much emphasis was laid on these brutalities in their case, does not answer the argument that the psychologies they used undermined this task. Nor does it rebut the suggestion that the judge accepted the psychological evidence for precisely this reason.

Of course it is hard to disentangle the various factors which go into judicial decisions. However, if we go beyond the motives of individual judges, one central point remains. The arguments of the trial were public, not private. While the intentions of the defence are unimpeachable, to release notions of inherent "mob madness" into the public arena may well have unintended costs.

Ted Hughes refers to his poems as "my sad captains" which, once written, may travel to unsuspected destinations with unforeseen consequences. Our psychological arguments do likewise. The question is whether we can foresee their voyages and, if so, whether we should take responsibility for their outcome.