

A plural view on the regulation of shebeens in Cape Town

Abstract

The regulation of space has increasingly been seen to extend beyond the scope of the State to include decentralised, diffuse non-State actors. The regulation (or formalization?) of shebeens in South Africa has long been a key focal point for the State, as a means for regulating behaviour, controlling crime and disorder and generating State income. However the post-apartheid State has struggled to find new and effective ways to regulate alcohol in ways that respond to the myriad problems associated with its consumption. In the absence of effective regulation and enforcement by police, we examine four sets of non-State actors who contribute to the regulation of drinking spaces in informal settlements in Cape Town. We examine the particular strategies through which neighbors, shebeen owners and community leaders attempt to regulate the flow of alcohol and the effectiveness of such strategies in reducing alcohol-related harm

1. Introduction

The production, sale and consumption of alcohol have long been targets of regulation at diverse scales and from different authorities. Since the emergence of the nation-State, top-down regulation through licensing and law-enforcement has been the dominant method of regulation. Even under such circumstances, however, the State is not the sole regulator; non-State actors including religious organizations, NGOs and self-help groups like Alcoholics Anonymous also intervene (Valverde, 1998). Alcohol sales, consumption and alcohol related harm in the global South have recently drawn attention from international health organizations including the World Health Organization (WHO 2011a; 2011b). The radically different context for regulation in the South- including the limited capacity of the State to enforce regulation and the critical role of non-State actors in shaping drinking practices- creates a need to understand the particular, diverse and often unofficial mechanisms through which alcohol is regulated.

In South Africa, national, provincial and local State legislation has attempted to intervene in the sale and consumption of alcohol, but this appears to have had limited impact in informal settlements². Researchers, particularly from the broad field of public health, have examined these policies and their effectiveness in terms of their impact on health outcomes (Parry, 2005; Parry, 2010). However, we suggest that this single lens provides limited insight into how alcohol regulation actually works in practice in the sites most often noted as points of concern by public health practitioners- sites where the State has limited impact. Given the limited role of the State and in light of recent scholarship on legal pluralism, we suggest that the regulation of alcohol can be better understood through the lens of legal pluralism, which calls attention to the range of actors involved in regulation.

There has been limited interest by scholars of regulation theory in alcohol, although scholars of addiction have examined the question of self-regulation (see Ritter 2010 on regulation theory and drugs). Geographers have recently taken an interest in alcohol, showing how it plays a role in social and economic urban life and shapes the use of space and sense of place (Latham 2003; Jayne et al. 2011) however, such studies have typically been undertaken in the global North.¹ There remains a critical gap in our understanding of operation of alcohol regulation, and specifically of how

regulation operates in global South contexts. Attending to regulation in these diverse spaces, we suggest, can enhance our understanding of how plural regulation operates in cities in the South. It calls our attention to situated forms of regulation, specifically, the ways in which regulation is highly subject to place and relationships with State and non-State actors. Further, such work also has practical implications as it can help us refocus our efforts on the types of regulation which actually do reduce alcohol related harm.

This paper is part of a broader research effort to begin understanding the relationships between alcohol, alcohol control, poverty and development in Cape Town. Here, we provide one lens through which to examine these interactions by articulating a variety of strategies used to regulate illegal alcohol outlets in informal settlements- sites where State law enforcement is particularly difficult. In the following section, we review the literature on legal pluralism and different forms of regulation. After a brief note on the context and methods in Section 3, in Section 4 we identify some of the key concerns of residents living near shebeens. In Section 5, we articulate four different sets of actors who regulate shebeens³ in the study sites: neighbours, shebeen owners⁴, the police, and community leaders. In Section 6, we specifically articulate the challenges associated with each of these forms of regulation and some of the forms of collaboration and competition between regulators. We argue that in the case of shebeens in informal settlements, coordination and collaboration between regulators is necessary for successful regulation- however defined- but raises numerous questions regarding legitimacy, effectiveness, and the negotiation of values.

2. Theorizing Regulation

Law-making and regulation have long been considered the most basic of State responsibilities, as evident in Weber's commonly used definition of the State as the entity that successfully claims the monopoly of use of legitimate use of violence, through the practice of legal-rational dominance. Further, since the establishment of the State and what Hobbes termed 'the social contract', State law has been assumed to be the main regulator. The regulation of alcohol in South Africa has largely been examined through this type of lens.

Since the 1980s, however, empirical insights have emerged which conflict with assumptions of State hegemony, leading to reconsideration of the role of the State and interest in decentralized forms of regulation. This shift is often represented as a move from *government* to *governance* (see e.g. Kooiman 2003; Rhodes 1996). State centred analyses of 'command and control' government regulation has largely given way towards research that explores networks, the role of non-State actors, and self-regulation. Much of the work on governance is linked to a deeper, interpretive Foucauldian discussion of governmentality (for such an analysis of alcohol see Valverde 1998). The concept of governance has been noted to accord with neoliberal "hollowing out of the State" and is not without critics (cf Heynen and Robbins, 2005; Guthman, 2007; Jordan et al. 2005; Olsen, 2005). Rather than engage in this normative debate, we examine a particular aspect of governance: plural regulation. Specifically, we are interested in the mechanisms through which actors regulate, how effective these alternative mechanisms are, and how they work in collaboration or conflict with State regulation (for more of the relationship between governance and legal pluralism in Africa, see Zips and Weilenmann, 2011).

2.1 *Plural Regulation*

While governance points to broad coalitions, often working in formal collaboration with the State, the concept of regulation points us more narrowly to the actual real-world acts of guiding change (Braithwaite et al., 2007). According to Black (2008: 139), regulation entails “sustained and focused attempts to change the behavior of others in order to address a collective problem or attain an identified end or ends, usually through a combination of rules or norms and some means for their implementation and enforcement, which can be legal or non-legal.” Such a perspective clearly includes both State laws as well as wider non-State attempts at changing behaviour which affects collective problems.

Traditionally, a central point of disagreement in regulation theory is between advocates of State and market regulation (Ayres & Braithwaite 1992). However, the ‘new generation’ of regulatory theories, including the approach of plural regulation, takes us outside this binary and instead looks at regulation by diverse actors (Black 2003; cf Ayers and Braithwaite, 1992; Gunninham et al., 1998; Pattberg, 2006). Plural regulation considers hybrid or indirect strategies of regulation in which the State is one among other actors and State law one of many mechanisms. Good policy analysis, in this framing, is no longer about choosing between the State and the market, but instead about understanding the interplay and relation between public and private regulation (Ayers and Braithwaite, 1992). Gunninham et al. (1998: 12) similarly advocate for this approach because “scholars within a legal pluralism focus on the interaction between State law and private forms of social control and conflict resolution, and recognize that law is just one element in a web of constraint on behaviour, some of whose stands are barely discernible, and many which are non-governmental.”

Examining regulation through this lens provides a more nuanced understanding and better representation of how regulation actually works in practice. New mechanisms of regulation might include externally developed standards, audits, economic regulation and self-regulation. The role of the government within these regulation mechanisms varies, as many of them are developed in the private sphere; even though many regulation mechanisms occur without State intervention, scholars working within this framework still consider the State to have an important role. Importantly, scholars note that plural regulations can at times create conflict, as different orders of regulation may undermine each other (Sachs, 2001).

2.2 *Pluralism in South Africa: Popular justice and nodal governance*

In South Africa, engagement with international theory and local context has led to the development of the concepts of ‘popular justice and the other law’ (Schärf and Nina, 2001) and ‘nodal governance’ (Burriss et al. 2005, Shearing, 2001) in the fields of law and criminology. Common in these accounts is the assumption that the South African State is unable to singularly provide security. Notions of both popular justice and nodal governance are normative, but the former is more descriptive while the latter seeks to derive strategies for more successful plural regulation.

Many works on *popular justice* give descriptive insights into how communities regulate or govern internal security matters. These largely entail discussions of neighbourhood-watch or community policing organizations initiated in response to

the apartheid State's lack of engagement with everyday crime as the police were primarily concerned liquor or pass raids (Seekings, 2001). These accounts underline that South Africans are not passive victims of the regulatory system, but are involved in popular informal or extra-State forms of settling disputes and policing. Seekings (2001: PAGE) argues that, during the Apartheid years, "Faced with an chronic need and desire to maintain some kind of 'order', African people formed vigilante groups to patrol township streets, and sometimes to re-educate and rehabilitate them." Older accounts describe community policing and security groups, for example the informal settlement Crossroads in the 1970s "had an elected governing committee and a self-appointed police group – 'peacemakers' – about 400 adult men patrolled the camp each weekend" (Kirkwiel and Weichel, 1980: 64).

These organizations continued in the post-apartheid era and are still active in many townships (Buur and Jensen, 2004). While most scholars appear supportive of such community regulation during the apartheid era, their presence then and now is not without problems, including vigilantism and mob justice (ibid). The most infamous case may be the murder of Stompie Moeketsi by the "coach" of Winnie Mandela's "soccer club" (Horowitz and Squires, 2011) and more recent xenophobic attacks have at times been framed as acting on behalf of a State unable to repatriate illegal foreigners. Efforts have been made to blend these community efforts with formal State regulation, and indeed community policing forums are mandated in South African (Steinberg, 2011).

The *nodal governance* approach argues that a better understanding of how complex systems produce order is needed in order to improve security governance (Burriss et.al 2005, Shearing and Wood 2003). Similar to the main argument in the general governance literature, the focus is on the complexity of possible regulative actors and networks. One of the main contributions is a methodological approach to uncover varieties of 'nodes' as sites of knowledge, capacities and resources that function as governance auspices or providers (Wood and Shearing, 2007). A case study of security governance the township of Zwelethemba, through which the concept of nodal governance was developed, describes internally established 'peace committees' with locally evolved peace-building mechanisms as governing nodes (Shearing, 2001). These are described as effective nodes in part because of well-functioning connections to the district council and the police. Importantly, communities differ in their capacities and strategies through which to regulate matters. As Oldfield (2000: 859) shows in her study of which contrasts two community's paths towards accessing formal housing, "capacity is unevenly endowed in communities" and residents draw on linkages and external resources which are highly situated.

A major constraint in applying plural regulation theorizations or normative prescriptions to informal settlements is their fundamental difference from formal, legal settlements, including townships. They are, by definition, illegal and unplanned as they have emerged outside the regulative arm of the State (with the exception of some ironically named planned informal settlements (Huchzermeyer, 2004)). Researchers in various fields have described the formation of supportive communities despite their heterogeneous populations (Smit, 2006). There are differences between community capacities (Oldfield, 2000), but these capacities are

fragile and public intervention can lead to community division (Bénil, 2002; Oldfield, 2002).

Even though informal settlements might be splintered, and lack a formally recognized 'community', a general longing for order and decency has been indicated in anthropological works such as Ross (2010; 2005). She suggests the importance of the norms of *ordentlikheid* meaning respectability or decency in Afrikaans. Ross's work details numerous examples of small actions- turning of a cap, tidying of the front lawn, hiding of a beer bottle- taken by residents of informal settlements to show respect. Not all residents adopt this attitude towards each other nor seek to identify with it, but Ross's articulation suggests that this provides a normative framing which shapes everyday life for many residents. *Ordentlikheid* is often contrasted with drinking, which is seen to represent spontaneity and carefreeness (Ross 2010).

One point which we argue is underexplored in both the pluralist regulation (including popular justice and nodal governance approaches) and informal settlement literature is the role of community leaders. We consider informal settlement community leaders to be members of the community with influence who are not formally connected to the local government system (local government, subcouncils and ward councils). Many have varying connections to these scales and to actors such as NGOs and social movements. Some of the fundamental tasks for many community leaders include regulating migration to the informal settlement and keeping internal peace. Not all community leaders use the same mechanisms, all have differing networked relationships, and some- as in any position- abuse their power.

Additionally, we suggest that the plural regulation approach has been limited in the topics examined. Alcohol is a particularly challenging issue for formal regulation, as there are widely conflicting social norms surrounding its consumption. While some believe in the need for the outright ban of alcohol, others fight against any type of regulation (Lawhon and Herrick, 2012). Further, it is fairly easy to move around existing regulations, particularly in the poorer areas of Cape Town (Lawhon, forthcoming). Given its significance to everyday life in places like Cape Town and the inability of State regulation to successfully reduce alcohol related harm, we believe that an examination of alcohol through the lens of plural regulation can both advance theories of plural regulation and help to improve the regulation of alcohol to reduce alcohol related harm.

3. Alcohol and Regulation in South Africa

The South African State has been engaged in top-down regulation of alcohol since the 1900s, including the legal establishment of a State monopoly on the sale of traditional sorghum beer (Rogerson, 1986; Rogerson and Hart, 2001). Township protests occurred throughout the twentieth century, and alcohol formed a critical part of this. For instance, a wave of protest by women against police raids and municipal brewing monopolies occurred in the late 1930s (Bundy, 2000). Shebeens became a central location for resistance movements, but also were the targets of student protests in the 1970s (Mager, 2010). Since this time, shebeens have been targets of State action through frequent raids by the police, liquor confiscation and, most recently, policies of "formalization". The enforcement of alcohol legislation was and continues to be one of the main means through which black urban residents experience the intervention of the State (Crush and Ambler in Bundy, 2000).

This history and its continued relevance to current practice suggests that considering the interaction between State and community regulation is particularly important, but provides no easy answers regarding the regulation of alcohol. Debates over shebeen regulation may simply contrast a need for State regulation with a community right to liberty, yet accounts highlighting shebeens solely as sites of resistance have been critiqued for romanticising this history. They ignore the pervasive and persistent social problems related to alcohol, including crime, deepening of poverty through addiction, violence against children and women (Sittert, 1995: 536). By contrast, other accounts, particularly from the health literature, emphasize the negative impacts of alcohol. Representative of this is Parry's (2005) account titled "South Africa: alcohol today" which notes various problems- including alcohol related mortality, trauma, foetal alcohol syndrome- but glosses over possible positive social and economic impacts⁵. In this paper we seek avoid this polarization by applying a plural and decentralised perspective on regulation without making judgments regarding the means or extent to which alcohol *should* be regulated. In other words, rather than position ourselves normatively regarding the risks and value of shebeens, we seek to identify the networks and mechanisms behind their regulation. We seek to shift the debate away from issues of increasing or decreasing access and formal regulation and towards ways through which to reduce harm.

Debates over alcohol in the Western Cape have largely centred on new means for increasing regulation (Lawhon and Herrick, 2012). Early drafts of the Western Cape Liquor Bill included efforts to license shebeens so as to bring them into existing regulatory frameworks, however, this provoked extensive opposition from religious and community leaders as well as the opposition political party. Opponents alleged that this would result in an uncontrolled mushrooming of the number of shebeens (implying that the existing bans did have some impact on limiting the number of shebeens). This debate- and, likely, a change in the political party at the provincial level- led to extensive reworking and new proposals which more clearly sought to reduce the prevalence of shebeens. In recent years the City of Cape Town has also sought to use State regulation as a means through which to reduce consumption. Their efforts to decrease hours of operation also resulted in significant opposition. Most importantly for this paper, as best can be understood, the debates around alcohol policy focus on different types of State regulation. There is no mention by politicians- and possibly limited awareness- of existing pluralist regulation despite requests by shebeen owners and the police for more consultation and cooperation.

4. Methods

This paper forms part of a collaborative research project on alcohol control, poverty and development and is based on one year of field visits to seven informal settlements in one section of Cape Town. Community leaders, shebeen owners, neighbours of shebeens and other were interviewed on the broad topic of community regulation. Further interviews specifically on the topic of shebeens were conducted with ten community leaders, eight neighbours (mostly non-drinkers), two former neighbourhood watch members and seven shebeen owners. Additionally, community research assistants who are also residents of the informal settlements interviewed eight shebeen owners operating in their area.

These follow up interviews which focused on alcohol were particularly challenging as shebeens are a controversial subject. For some interviewees, our questions raised emotionally challenging subjects as respondents associate alcohol with family problems and economic challenges. Additionally, some shebeen owners had concerns regarding confidentiality (despite the researcher's assurances), and feared that their comments and identity would be given to the police and have negative impacts on their business. Such fears and associations resulted in some individuals being unwilling to engage with the research and others gave responses which appeared contradictory.

In selecting stories to report below, we have attempted to choose those that represent common phenomena repeated by multiple different kinds of interviewees. We believe the results below represent general trends in the sites studied and quite possibly for shebeen regulation more widely in South Africa. However, further research is certainly required in order to understand the generalizability of our findings.

5. Shebeens and Neighbour's Concerns

In this section, we discuss the key problems identified by respondents regarding shebeens in their community. A wide variety of shebeens can be found in informal settlements such as those examined in this research, a point clearly evident early in our fieldwork. We found some large shebeens, built up over time with income largely generated from the business. Such sites can include benches for customers, television, loud music and pool tables or other games. The owners of larger shebeens may own a bakkie (truck) which they use to buy stock for themselves as well as to sell to other shebeens within the settlement. Other outlets are smaller, with limited space and few or no chairs such that customers typically stand and drink. They may look like any other shack, making it difficult for an outsider to know whether a site is a shebeen or simply holding a private party. Another type of shebeen caters for off-site drinking. Such variation leads to diverse public consequences, social relations, associated problems and regulatory strategies and underscores the importance of thinking about the variety of shebeens rather than casting them as a single entity.

Shebeens have been noted to be associated with a number of problems by both the academic literature and local residents. While health concerns (including high rates of association between blood alcohol and non-natural deaths, foetal alcohol syndrome, increased sexual risk behaviours form the focus of other works) form the basis of a number of works (cf May et al., 2005; Parry and Bennett, 1998), we instead highlight the key concerns raised by respondents themselves: noise; hygiene; security; and family problems. For neighbours, one of the main problems of living next to a shebeen is noise, including late night music and loud conversation in the site and spilling over into the streets. Hygiene is another common concern as shebeen guests often urinate next to or onto their shacks, causing unpleasant smells (and occasionally involving exposure to women and children). Family problems related to alcohol, including domestic violence, the exacerbation of poverty, youth drinking and setting a poor example for youth also concern many inhabitants. Even though none of the shebeen owners admitted that youth drink in their shebeen, some indicated that they cannot always control this. In one of the settlements where the

problem of children in shebeens is pertinent, a community leader describes it in the following way:

“The shebeens give the mother and the father credit on wine. But when the children come they don’t get credit on food. They live in a small room in the shebeen. And kids grow up there, these kids all have babies” (Inhabitant, settlement 2, 3.8)

Lastly, many inhabitants were worried about crime and safety, and often linked this to shebeens that open all night. Inhabitants also argued that people from other areas drinking in shebeens in informal settlements largely contribute to crime. This is because they think they can do what they want without the police noticing. The extent to which these assertions are true is outside the scope of the research, and likely differs from settlement to settlement, but is raised here to indicate perceptions of the manifold problems associated with drinkers and drinking places in informal settlements.

6. Regulative Actors and Strategies

In this section, we describe some of the common responses of residents, shebeen owners, police and community leaders to the problems described above. We focus on the mechanisms used in order to show how different actors participate in plural regulation.

6.1 Residents: Limited mechanisms for regulatory capacity

Neighbours are often the first to become aware of and concerned with shebeens, largely since they can both see what is going on and often are affected by the noise, hygiene, family problems and security concerns. Residents typically respond in one or more ways: talking to the shebeen owners or guests, contacting the police, contracting community leaders.

In the first instance, one family living next to four shebeens tried to tell the owners and the guests not to urinate onto their home:

When the people finish dancing they come out and are fighting and shouting at each other. And then they pee at my fence, and it stinks. This child [pointing at her six year old daughter sitting next to her] had to tell them last week that ‘you cannot pee here’... they don’t mind how they stand when they pee, so the children can see everything.
(Neighbour 3, settlement 2, 5.10)

In this and most cases, respondents reported that complaining directly has little impact. One community leader noted that if neighbours complain, they can be accused of being ‘jealous’ of the business. Furthermore, some neighbours reported fearing direct confrontation because drinkers can be aggressive. Consequently, given the inefficacy and fears associated with direct confrontation, neighbours typically seek regulation mediated via other actors.

Respondents reported that the police were very rarely contacted to mediate conflict in the study site. One of the key reasons is a fear of repercussions, as one neighbour in settlement 6 explains:

We do not call the police... people who own other shebeens they ask who reported, and they can come and shoot you. So if you want to report you have to go come together as a group, to report together.
(Neighbour 4, settlement 6, 20.9)

Another neighbour added that if you go to the police station with complaints, they send you away again and tell you to first talk to the community leaders. We return to the topics of police and community leaders below.

6.2 Self-regulation by shebeen owners

Shebeen owners' regulatory strategies are focused on the problems most directly associated with alcohol and its consumption. Importantly, many of the problems outlined earlier are largely due to physical constraints. For example, close proximity and the use of light construction materials make it difficult to limit noise. Access to toilets is a pervasive problem in informal settlements generally, not just as regards drinking spaces. Despite these limitations, shebeen owners employ different strategies to respond to different kinds of problems, including: adjust the rules; adjust the behaviour and type of patrons; and/or get help from family members. These are discussed in turn below.

Different types of respondents typically agreed that closing early can help reduce fights and violence. Closing at nine in the evenings was suggested by many of the respondents as a reasonable time, sometimes a bit later in weekends. Some shebeen owners who supported such self-regulation themselves admitted that it is difficult to uphold these rules, however, as they are dependent on the associated income.

Other rules are constructed which arguably help create order. For example, in one shebeen, a handwritten said:

“Beer 12.50 on credit and 10 R cash, crackling 45 credit 35 cash. On Sundays no credit. You must not come here on Sundays if you don't come on Friday. Because you disturb those who drink here every day. We close at 9:00.”
(Shebeen 12, settlement 3, 21.9, translated from Xhosa)

Toilets are generally limited in informal settlements and the problem of public urination is ubiquitous. People often fear using established toilets at night because they are dark and far away. Some owners acknowledge the problem and dig holes in the ground for the guests to use, or encourage guests to urinate inside in a bucket which is emptied in the morning. These actions are intended to limit the impact of public urination, although not all shebeens offer this and not all guests make use of the available facilities.

Other owners reasoned that keeping problematic customers away would reduce harm. For example, a significant mechanism for avoiding noise, fighting and under-age drinking is to not play loud music (as respondents suggested that this attracted both the under-aged and criminals. A community leader commented, “There are some shebeens that are nice, only big men who sit and talk nicely go there, but some play loud music and criminals go there” (Community leader 4, settlement 3,

31.8). In settlement 4, an owner claimed that since she stopped playing music, there was less fighting:

We had music before but the community complained that it brings the robbers... The neighbours and the community leaders called a meeting for all the shebeens. There they addressed all the issues like loud music, for all the shebeens... it is better here now when we quit playing music... Ever since the music is off we did not have fights.

(Shebeen 15, settlement 4, 28.9)

Finally, since shebeens typically do not have bouncers and cannot call the police for assistance, they have to apply other mechanisms to ensure the security of the shebeen and its guests. There were no 'guards' in any of the places visited in this study, but guests or family were noted to be a first point of assistance when there is trouble. For example, one female shebeen owner's husband assisted her by throwing out people who fight.

These examples show that some shebeen owners seek to keep good relationships with neighbours and community leaders by adapting to community norms and by attempting to set up and enforce informal rules. Importantly, our results are unlikely to be broadly representative; we were only able to interview shebeen owners willing to engage with researchers. We were unable to triangulate their claims through personal experience or interviews with shebeen customers, but nonetheless these findings suggest that there is at least some interest in and efforts towards self-regulation. The shebeen owners themselves were well aware of their limited capacity and the many incentives to break the rules that exist, however, awareness of their contribution to plural regulation is essential for understanding alcohol in the informal settlements.

6.3 Top-down regulation: Police and law enforcement

Police carry out direct top-down regulation by enforcing State law. The sale of alcohol is illegal without a license, and shebeens by definition lack this permit. One of the main strategies which the State has attempted to employ is to legalize shebeens by encouraging them to apply for licenses. However, given that the settlements themselves are illegal, shebeens in informal settlements are likely to remain without permits no matter what new regulation is passed. We focus here on how the police seek to regulate the consumption of alcohol by enforcing existing regulations, either by arresting the owners or closing shebeens and confiscating their stock. Steinberg (2011: 357) notes the troubles with police raids: "Patrons customarily attack police who attempt to close down a drinking establishment; as a result, police seldom embark upon this work in teams of less than 30."

Police may decide to arrest the owners of shebeens, and this strategy may be repeated over time. As one shebeen owner claimed, "I have been arrested seven times" (shebeen 13, settlement 3). Arrests may be in response to complaints from community leaders or neighbours. One leader tells of an incident in which, after direct confrontation:

We called the police, but when they came he was fighting with them. The sector manager came but the guy beat him. So the police had to call more people and

they sprayed him with spray guns and they managed to arrest him. He came back from jail now, but the case is still on, because he assaulted a police officer.

(Community leader 8, settlement 5, 5.10)

Many respondents reported that shebeens are regularly closed down by the police, but that this has only a short term impact as they are simply opened again. The threat of closure may be somewhat of a deterrent, but as one owner states, confiscation is the greater fear. He reportedly closes "at nine, because of the police. They come here, and when they come they take my stuff and sometimes they break it" (Shebeen 14, settlement 3, 5.10).

6.4 Community leaders: Banning and regulating shebeens

Community leaders are often called upon by residents to respond to the concerns of neighbours of shebeens since neighbours and 'regular' inhabitants are often scared to take the cases further. This form of popular justice can likely be traced back to the tradition that emerged in townships during the apartheid era when formal State policing of crime was limited (cf Schärf, 2001; Burman and Schärf, 1990). As one neighbour suggested, "If someone doesn't like the noise, they go to the committee to report. The committee then calls the community leaders to discuss. The community leader decides if breaking down the shebeen or not" (Neighbour 4, settlement 6, 20.9). Many community leaders perceive themselves as moral leaders and believe that they themselves should abstain from drinking to set a positive example. "You cannot sit in a shebeen and be drunk, we cannot show in public that we are drunk. If we drink we go to another place (other settlement) and come back sober" (community leader 4, settlement 3, 6.4). This relates to the norms of '*ordentlikheid*' (Ross 2010), and was repeated in multiple incidents. Importantly, it is difficult to understand to what extent community leaders are actually able to intervene. Interviews identified two strategies which can be used at least with some degree of success: the ability to provide or deny permission for shebeens and the establishment and enforcement of rules.

Some community leaders attempt to forbid the building of shebeens. One leader claimed, "We don't beg them, we just give them orders. If they don't do as we say he must leave" (Community leader 4, settlement 3, 31.8). Being forced to leave on bad terms is particularly problematic, for different kinds of non-state regulations apply to moving into a new informal settlement. Recommendation letters are often required, and the same community leader reported that one way community leaders can punish shebeen owners is that, after making them leave, they do not provide the recommendation letters typically needed for resettlement.

Both community leaders and inhabitants suggest that their first priority is to prevent or limit the number of shebeens in their community. Failing this, they concede that they would at least like to attempt to enforce a closing time and restrict entrance of under-age drinkers. These strategies may include fines for offences. As one community leader notes,

"We used to control the shebeens. We controlled that they must close at 12, and that there was not children there. And we would give them fines if they had children there...we would use this money to buy chips for the children because

their fathers and mothers drink all the money there” (inhabitant, settlement 2, 6.8).

In this section, we have shown that there are several mechanisms through which different actors seek appropriate and effective strategies for regulating shebeens. A common strategy is for neighbours try to talk directly to the owners and guests. However, this creates difficult social relations and rarely has the desired effect. Getting assistance from the police is reportedly uncommon; although the police are a regular presence their role is generally seen to be unrequested and ineffective. Intervention by community leaders was generally seen to be the most effective and fair solution, despite widespread commentary about and frustration with its limitations.

7. Challenges of sector-based shebeen regulation

Although the section above is divided into discrete regulatory actors, the mechanisms they apply are interwoven with the wider plural regulatory context. For example, despite their generally negative attitude towards the shebeens, community leaders are also critical of police raids on shebeens. Some leaders want the police to shut down the shebeens while at the same time expressing distrust over giving them this authority. Having introduced the different strategies for regulation, here we reflect on some of the challenges of regulation by owners, the police and community leaders. Our aim is not to define the most appropriate strategy for regulation, but to tease out some of the tensions between the different forms.

7.1 Challenges of State regulation

The current mechanisms for regulation, based on the illegality of shebeens, present many challenges for formal regulation. The same shebeen owner described above who had been arrested seven times continued, “But every time you are arrested the court does not find you guilty. If you can’t pay the fine, you stay at the police station over the weekend, the court don’t find you guilty because you don’t have any job” (shebeen 13, settlement 3). An alternative story is presented by a shebeen owner who claimed to bribe officials to avoid arrest: “If we have 150 Rand (about \$20) we give it to them because you are afraid of being arrested” (Shebeen 12, settlement 3, 21.9). There certainly are competing narratives regarding the impact of arrests and how to avoid being arrested, but this nonetheless this strategy appears to have relatively limited impact on the sale of alcohol. Instead, it forms part of a portfolio of mechanisms for regulation.

Shebeen owners have also developed strategies to reduce the risk associated with confiscation of stock. In order to avoid losing all their stock at once (as well as mask the fact that they actually are a shebeen), several shebeen owners explained that they hide liquor. For example, they might hide six of the seven cases of beer they bought in nearby neighbours' shacks. This seemed to be most common in settlement 3 where police interventions were expected every weekend. This willingness of neighbours to engage in a criminal act in support of shebeen owners indicates a general scepticism if not disapproval of the actions of the police. This lack of effective intervention and interaction has opened the space for intervention by other regulative actors and through alternative mechanisms.

7.2 Challenges of owner regulation

Shebeen owners, our research suggests, generally have limited income and live in impoverished situations. Despite awareness of the problems associated with drinking in their communities, shebeen owners engage in this entrepreneurial activity to generate a basic income. There are motivations for self-regulation, including keeping peaceful relations with neighbours. However, economic pressures are reported to often result in shebeen owners breaking the rules they would otherwise prefer like to keep. For example, as one owner explains, "Sometimes, if people knock at our door, we open at five. We don't have a specific closing time, if people want to stay then we keep open....sometimes until 2" (Shebeen owner 15, settlement 4, 28.9).

Other owners admitted that despite their interest in regulating the behaviour of guests, it is difficult to regulate and control behaviour of the guests. "There are many challenges when people are drunk; they get out of control" says one shebeen owner (Shebeen owner 2, settlement 7, 15.9). Some neighbours confirmed that owners would chase under-age youth and children away, while in other shebeens, owners would let children in, even sell liquor to them. Reportedly, this can be difficult to control since older people at times buy alcohol for the under-aged. In some shebeens, owners themselves do not mingle much in the shebeen-room but sell beer out of a hole in the wall, and therefore cannot oversee everything that is going on. Another related problem is that shebeens are some of the only public places that offer entertainment, so youth may come to play pool or socialize. One owner noted that most children come during the day time, and that he tries to chase them away in the evening. This lack of alternative spaces means that youth get habituated to the shebeen culture quickly, and often begin drinking at an early age. Economic pressures to sell alcohol combined with limited alternatives spaces for socialization therefore make it difficult for shebeen owners to regulate their own spaces despite often sharing the same wider concerns of their community.

7.3 Challenges of community leadership regulation

As with police and self-regulation, community leaders face numerous challenges in their attempt to regulate alcohol in informal settlements. As illustrated in Oldfield (2000), communities' abilities differ and they have different networks and resources on which to draw. Our study of seven informal settlements confirms this as regards the capacities of the community leaders to regulate alcohol. In settlements 1 and 4 and 6 and 7, the leaders had some success in regulating shebeens. For a period, some managed to forbid the establishments of shebeens, but the bans have proven difficult to uphold over time, as this quote from settlement 1, which had such ban until 2007 but has now two shebeens indicate:

What happened when we started living here is that we had an agreement that there must be no shebeens here because we have no toilets and it would make the place more dirty. We, the committee, came up with the agreement because we did not want the place to be dirty and we did not want people to be robbed. And we have a settlement next to us that also have shebeens, on the boundary between this and the other settlement. But we ended up losing it because people had no jobs. So we could not control people that are unemployed... we managed to close some... We ended up letting them sell.
(Community leader 1, settlement 1, 23.8)

Similar processes have happened in some of the other informal settlements. One of the main reasons for the breakdown of the 'ban' on shebeens is that people simply need an income. Almost all of the community leaders interviewed have identified poverty and lack of jobs as the underlying problem regarding shebeens, and most show some sympathy for the shebeen owners' position. Therefore, since enforcing bans became increasingly difficult, shebeens owners in these settlements came to agreements with leaders and neighbours on certain rules that are informally enforced by the community.

Examples from settlement 1 and 5 illustrate that popular justice is difficult to uphold when it counters State legislation. In settlement 5, the community leader structure came to a major breakdown after the leaders were arrested for punishing an inhabitant the community had deemed to be criminal. One consequence was that the community leaders unintentionally lost some of the control in the settlement:

They had a certain rule before if somebody did something... there was one incident where they destroyed one person's shack who was criminal, but then they (the community leaders) got arrested. We used to be united but then we got divided because of incidents like that. So now we let people do what they want.

(Community leader 8, settlement 5, 5.10)

So although community leaders have some sort of popular legitimacy, they do not have the formal authority to carrying out policing. As discussed by many criminologists, non-State justice is common in most townships, but can lead to troublesome outcomes when taken too far (see e.g. Schärff and Nina 2001).

Another reason for the breakdown of the ban of shebeens is that community organizations are not stable structures (Oldfield 2002). In settlement 2, a change in the regulation occurred as the leadership changed. Inhabitants explain that before 2008 there were fewer, more regulated shebeens:

When I moved here, when a person wanted to build a shebeen they asked the committee for permission. But today, since 2008 everything became lawless. Because we used to patrol the place. There were a few shebeens but they had rules. They closed in the week at 9 and in weekends at 12. And they had age limits. Now, even small children are there.

(Inhabitant, settlement 2, 3.8)

Further, not all leaders are capable of such intervention. Shebeens tend to cause problems late in the evening, and one community leader reported that he typically could not intervene because he needed to be sleeping (Community leader 1 settlement 1, 23.08.2011). Another frustrated community leader noted, "if I go out of here they throw the bombs of the mouth (swear) at me" (Community leader 2, settlement 2, 3.8). In another area, a shebeen owner simply refused to listen to either community leaders or the police (Community leader 8, settlement 5, 5.10).

Additionally, it must be underscored that it is not always clear who the leadership is, as became evident in settlement 3. While some of the leaders claimed to have control, shebeen owners interviewed were unsure who the community leaders were

and that they seldom visited them. One owner reported “There is a lot of different community leaders and committees here... so I don’t understand where to go, because everyone is a leader... We call the people involved – the neighbours- and we solve the problem” (Shebeen 12, settlement 3, 29.9).

7.4 Challenges of collaborative regulation

Despite the ineffectiveness and concerns with corruption, respondents report both a need and a desire for improved collaboration with State regulative mechanisms. Even though most shebeen owners dislike the police, some pointed out the desirability of collaboration. While shebeens in formal areas of townships can get licensed, this is almost impossible for shebeens in informal settlements. Informal settlements are pervaded by illegality, and shebeens engage in illegal practises in illegal settlements. Some shebeen owners are interested in legalization; one owner explained he wanted to upgrade the place in order to get a license. He thought that this license would make it easier for him to enforce rules as he would get ‘more respect’ from the guests:

Also after improving the looks of this place we would like to have a license. Then we would also get more respect with the people, we found have strict closing times because the license would State that. Because when you don’t have a license people come and knock any time.
(Shebeen owner 15, settlement 4, 28.9)

Another described how a license would change his relationship with the police. “I would love to see the police making round if I have licence but unfortunately we are not allowed licences in the informal settlements” (Shebeen owner 1, settlement 1, 14.9). Yet, getting a license is very difficult, as some of the owners have experienced:

It is too much stuff that is needed so it is difficult to get the license. And there is an inspector that would come around and check....The system was supposed to be helping us. But they take our beer instead of helping us get a license. Because we do have plans. The government is supposed to help us instead of taking the little that we have.
(Shebeen owner 15, settlement 4, 28.9)

These last claims indicate that some shebeen owners would prefer to be part of the ‘formal economy’ and follow State regulation, but certainly in a different form than today. Instead of working against them, they often suggest that the police should support them in improving the regulatory and self-regulatory mechanisms explored in this paper.

One attempt at combining the benefits of police and community regulation is the establishment of neighbourhood watches. In settlement 3, a neighbourhood watch was established as an interaction between State and community policing. As mentioned earlier, establishing neighbourhood watches have been practised in townships since at least the 1980s. One of the main tasks was to close the shebeens in the evening, regulate the music, under-age drinking, and occasionally help drunk people home. One volunteer reports, “We closed the shebeens at nights, and helped drunk people to get home... it was very difficult, sometimes they [the guests] threw

stones at us.” Despite these challenges, the volunteer wishes this system was still in place. It “would be better if it could come again, because now we don’t sleep” (Neighbourhood watch volunteer member 3, 13.10).

This neighbourhood watch lasted from around 2007 to 2009, and was initiated as collaboration between inhabitants and local government. Twenty-two community members received a week’s safety training course, with proof in the form of a certificate signed by the director of Safety and Training Development and Head of Department of Community Safety in Cape Town. Even though these initiatives seemed to have worked well, the project was dismantled. One of the main reasons for the breakdown of this structure was that when the members realised they would not gain permanent employment for their voluntary efforts, they dropped out. In addition, the neighbourhood watch often failed due to a lack of resources. It should not come as a surprise that people who live in poverty have limited means to volunteer and, instead, would rather be in paid employment. Many explained that they worked voluntarily the whole night, sometimes without getting food, and thereafter they had work to earn some money for the families the following days. However, despite the unwillingness to volunteer, several neighbours expressed regret over the loss of the neighbourhood watch / night watch, as the settlement conditions had worsened. They called for a return to the system and extra police resources.

In settlement 2, there had long been problems between the community leaders who initiated the neighbourhood watch process and the police. Further, many of the residents expressed concern that one of the leaders of another internal committee (which opposed the older community leaders) was actually the owner of one of the largest shebeens in the area. Residents had previously received responses from the police when they complained about shebeens, but after the formation of the neighbourhood watch, complaints were no longer addressed (Inhabitant, settlement 2, 6.8).

The comments suggest the outlines of some of the challenges for engagements between communities, community leaders, shebeens owners and police. Importantly given the broad and investigatory scope of our research, we were unable to pinpoint more precisely the dynamics of these changes. Certainly personal interest can create conflict within all of these organizations, but there is also the potential for constructive engagement. We suggest that understanding in more detail when and why success occurs, and what creates positive and negative change to capacity and collaboration, may be important points for further research.

8. Conclusion

The current top-down regulative mechanisms of the State through police enforcement has, thus far, had limited impact on the practices of shebeens, their owners and patrons in the sites studied. A main reason for this might be that the regulatory mandate of the police is not based on needs or norms of the community, but on legislation which makes shebeens illegal. Indeed, the more mundane regulations that most inhabitants request, like making sure that shebeens close early and that children are not served there, are not prioritized by the State. Thus while the State may have some broad level of legitimacy, in the eyes and experiences of communities the actions of the State are largely seen as an illegitimate imposition.

Equally if not more importantly for community members seeking to reduce alcohol related harm, State action is seen as ineffective. Even when individuals are caught, the punishments are not seen as deterrents and allegedly do not change behaviours.

Despite the 'sphere of illegality' surrounding shebeens in informal settlements and the lack of effective formal regulation, there are internal norms that influence self-regulatory and community regulatory processes and the collaboration and conflict between regulatory efforts by different actors. By applying a decentred regulation framework, we have illustrated that sites of alcohol consumption in informal settlements do not operate anarchically. Instead, a range of actors apply varying mechanisms to regulate shebeen practises, ensure community safety and well-being and resolve disputes. This points to the under-explored idea that shebeen owners and their communities often share the same concerns, rather than the former only causing problems for the latter. As such, these multiple strategies of regulation may not supplant the need for a police presence, but they certainly go some way to creating tacit control in a situation where police enforcement is often either heavy-handed or absent. Some shebeen owners thus seek to regulate their practices according to norms in their communities and to rules made by themselves and in cooperation with, or under the threat of punishment from, community leaders. The amount of effort, type of regulation, and degree of success, however, varies significantly across communities as this paper has explored.

Debates on drinking in South Africa have largely been shaped in terms of polarizations: a history of 'civil society' versus the State and more recently the State versus shebeens. We suggest that it is important to overcome these bifurcations in order to more effectively and ethically redress the persistent problems associated with alcohol and develop collaborative regulatory processes. For such processes to be effective there need not only to be capacity within the community, but also improved support from outside actors, including the police. As the instances of neighbourhood watch arrangements illustrate, the most effective regulation of shebeens occurs through collaboration where the police are involved in supporting community efforts. This links back to Ayers & Braithwaite's (1992) argument that research into plural forms of regulation is not about the contrast between State and non-State regulation. Instead, we need to look at inter-linkages, cross-overs and grey areas between the two. This study illustrates that norms in informal settlements may not necessarily conflict with the intentions of a regulatory State. These norms, related to what Ross (2010) describes as '*ordentlikheid*', may be a reason why many of the respondents suggest that shebeens need not necessarily be eliminated, but that the existing systems of formal and informal regulation need to be better brought together and enforced to improve community welfare and reduce alcohol-related harms.

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1 Although Latham's work is in New Zealand, his research sites have limited commonality with much of the global South

[2](#) UN Habitat (2003: 196) defines an informal settlement as “illegal or semi-legal urbanization processes, or unsanctioned subdivisions of land at the (then) urban periphery where land invasion took place – often by squatters, who erected housing units usually without formal permission of the land owner and often with materials and building standards not in line with the criteria of the local building code. This type of slum is usually referred to as a shanty, or squatter settlement.”

[3](#) A ‘shebeen’ an informal, unlicensed drinking space. This contrasts with a ‘tavern’, a term more commonly used to for a licensed establishment.

[4](#) In our research, shebeens were reportedly operated by the owners, although anecdotes suggest this is not always the case.

[5](#) Further, all the recommendations focus on formal policy avenues, with no engagement with alternative, pluralist forms of regulation