

# WAITING FOR FARLAM

## Marikana, social inequality and the relative autonomy of the police

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*Although the Farlam Commission of Inquiry is yet to report, it has been widely assumed in the blogosphere, across large sections of the traditional media, and in some preliminary academic analyses too, that the shootings at Marikana on 16 August 2012 are symptomatic of a police force in thrall to a political elite intimately connected to international capital and increasingly corporatised and unrepresentative trade unions.*

*Against this background, this article looks to the notion of 'relative autonomy', considered in a classic discussion of 'the concept of policing in critical theories of criminal justice' by Otwin Marenin, to suggest that critics of the SAPS should not be surprised if, in moments of crisis, the police act as the agents of 'specific domination' rather than as guarantors of a 'general order'. It will go on to argue that, even if their worst fears are confirmed by Farlam, their conclusion about the nature of the relationship between the SAPS and a political elite may be too sweeping. Using insights from recent studies of everyday policing, it will suggest that the way in which the police respond to strikes, service delivery protests and other politically charged incidents may tell us surprisingly little about what officers actually do, and why they do it, in the course of their everyday interactions with individual citizens and interest groups less politically well-connected than the main protagonists at Marikana. In conclusion it is argued that, in the absence of significant social change to remedy the structural inequalities bequeathed by apartheid, the SAPS has not been able to transcend its colonial inheritance, leaving the business of police reform begun over 20 years ago unfinished.*

### WAITING FOR FARLAM

For many observers the events at Marikana in August 2012, when 44 people died – 34 of them at the hands of the South African Police Service (SAPS) in a single day – represent a turning point in South African policing. For the more implacable critics of the African National Congress (ANC) and its allies in government, the events of 16 August were the result of what Dali

Mpofu SC, counsel for the injured and arrested miners and their families, has described as the 'toxic collusion' between the police, the state and capital in the shape of the Marikana mine's owners, Lonmin.<sup>1</sup>

Appointed by President Jacob Zuma on 23 August 2012 with Ian Farlam, a retired judge of the Supreme Court of Appeal, as its chairperson, the Commission of Inquiry into the events at Marikana was due to complete its work by the end of October 2013. At the time of writing in early August 2013, with issues surrounding the funding of the legal team representing the injured and arrested miners unresolved, it seems increasingly

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unlikely that this deadline will be met. Inevitably perhaps, commentators in the media (new and old) have been disinclined to wait for Farlam's official account of what happened on 16 August and in the days leading up to it. On the contrary, they have picked over the evidence presented to the Commission at more than a hundred days of public hearings like hungry vultures gorging themselves on a particularly tasty carcass, the rhetorical flourishes of Mpfu and his fellow advocates reproduced in countless headlines, news reports and commentaries.

## 'TOXIC COLLUSION'?

It is impossible to give more than a flavour of the narrative evident in the media coverage and the blogosphere here. Suffice to say that the search for smoking guns in the hands of senior politicians, union leaders, international capital and its domestic allies began within days of the shooting and has scarcely abated since. Writing in *Business Day* five days after 34 striking miners lost their lives, under a headline putting 'Ramaphosa in the Marikana crossfire', Sam Mkokeli noted that the businessman and ANC stalwart's Shanduka Group was an 'empowerment partner' of Lonmin.<sup>2</sup> 'Considered one of SA's most respected leaders', Mkokeli went on, 'Mr Ramaphosa has now been lumped with union bosses and owners criticised for their poor response to the labour unrest at the platinum mine that turned deadly.' But perhaps the unkindest cut of all came later in the article in a quotation from Julius Malema, the former leader of the ANC Youth League: 'Lonmin had a high political connection. That is why our people were killed. They were killed to protect the shares of Cyril Ramaphosa.'

Some five months later, following Ramaphosa's election as deputy president of the ANC and the revelation that he had been in touch by email with government ministers and senior executives in Lonmin in the days preceding 16 August, David Bruce was more measured in his criticism.<sup>3</sup> As an authority on policing, Bruce was anxious to set Ramaphosa's intervention in the context of a policy of 'maximum force' first adopted by Minister of Safety and Security Nathi Mthethwa a year earlier

at a summit on police killings held on 8 July 2011. According to Bruce, Ramaphosa's characterisation of the miners' action as 'plainly dastardly criminal', and his call – in an email to a senior Lonmin executive – for 'concomitant action', may have had a more dramatic impact than he intended when, as seems to have been the case, he made similar comments about the strikers' criminality to Mthethwa.

[T]hough Ramaphosa's intervention might have been in some respects critical to what happened, it does not mean that he should be held responsible for the massacre. In the absence of Mthethwa's unlawful doctrine [on the need to use maximum force against criminals] Ramaphosa's emphasis on the miners' alleged criminality would not have had the same devastating implications. Far more than Ramaphosa, it is therefore Mthethwa who urgently needs to account for the role he played in relation to the massacre.

Sipho Hlongwane, writing for the *Daily Maverick*, cast his net even wider, asking 'how much, and when, did Zuma know'? After quoting Dali Mpfu's striking phrase about 'toxic collusion', Hlongwane takes Bruce's argument a stage further, implicating not just the Minister of Safety and Security in the Marikana killings, but the President himself:

The chain of command from the police officers on the ground in Marikana, right up to the president of the country, will be of great interest to the Commission, as it will establish who knew what and most importantly, who decided to carry out the operation in [the] deadly manner that it was.<sup>4</sup>

Commentators in the traditional and online media have not been alone in following the trail laid by Mpfu and others at the Commission's hearings. In his conclusion to the most substantial piece of academic research published on events at Marikana to date, Peter Alexander has this to say about the network of relationships between the police, Lonmin, the National Union of Mineworkers (NUM), and the government:

There is what one might call a *triangle of torment* linking Lonmin, the police and NUM. This extends beyond Marikana to include the government/ANC, big business (especially mining capital) and [the trade union federation] COSATU.<sup>5</sup>

Like many other commentators he too sees Ramaphosa, a senior figure in the ANC and the owner of a 9,1% stake in Lonmin, as the personification of these links.<sup>6</sup>

What then to make of all this controversy in the absence of Farlam's report? My intention in the rest of this article is to provide some context to a debate that is unlikely to end when the Commission's report is eventually published. I start with Otwin Marenin's classic analysis of the relationship between dominant groups and the police, memorably titled, 'Parking tickets and class repression: the concept of policing in critical theories of criminal justice.'<sup>7</sup> I then move on to place the shootings, and what they may or may not reveal about the connections between the police, the state and dominant social groups, in the context of the history of state policing in South Africa and the everyday practice of the SAPS today in less highly charged circumstances than those prevailing at Marikana in August 2012. My contention is that, armed with Marenin's conception of the police as relatively autonomous, we should not be too surprised if, in the light of South Africa's history, leading politicians and their friends in business did indeed play a significant role in events at Marikana. But nor should we assume that it follows from this that the SAPS is a mere puppet in the hands of the state and a political-industrial elite. What Marikana shows, I will argue, is that, insofar as the deeply entrenched social inequalities evident at the end of the apartheid era have persisted into the second decade of the twenty-first century, they have undermined the basis for police reform, much as John Brewer warned as he reflected on the prospects for democratic policing back in 1994.<sup>8</sup>

## RELATIVE AUTONOMY

Marenin's article is based on a reconceptualisation of the state as something rather more and rather

less than (in Marx's formulation) the executive committee of the ruling class.<sup>9</sup> Drawing on developments in critical theorising about the state, its policies and the agencies through which they are put into effect, he suggests that the state should be seen as relatively autonomous, no longer simply an instrument of class rule but a 'powerful and independent actor in the political economy of social formations.'<sup>10</sup> Having established this, he extends the analysis to the police as the principal bearers of the state's monopoly on the use of coercive force,<sup>11</sup> and one of the agencies whose feet are used when the state steps in to the lives of its citizens.<sup>12</sup> To see the police as relatively autonomous implies that, even in former colonies like South Africa, where police forces were established to pacify the population and maintain colonial rule, they are not simply the obedient servants of an oppressive state but also act as defenders of a wider range of social interests, including, crucially, their own:

It is clear ... that the police developed for numerous reasons and served numerous interests and that the police themselves are capable of shaping both the development of police work and their relations to the social formation in which they are anchored.<sup>13</sup>

Empirical and comparative studies of policing reveal wide variations in patterns of policing and forms of police organisation. Taken together, Marenin argues, they demonstrate that the police are able and willing to resist external control, including by the state, and exercise wide discretionary powers in ways that are informed by personal as well as organisational factors.<sup>14</sup> As a result of the relative autonomy of the state from dominant groups, and of the police in relation both to those groups and to the state, the police act to protect not just the specific order that reflects the interests of the socially dominant, but also to maintain a general order that serves the interests of all citizens – the ruled as well as the rulers – in peace, regularity and public safety.<sup>15</sup> It is particularly important to bear this final point in mind before we assume, based on the evidence of events at Marikana, that ordinary members of the SAPS are in thrall to a political elite intimately

connected to international capital and increasingly corporatised and unrepresentative trade unions. But before I return to how this general order is maintained in the second decade of the twenty-first century, a brief reflection on the colonial origins of policing in South Africa and the legacy of apartheid is called for.

## HISTORICAL CONTEXT

The South African Police (SAP) came into existence just over 100 years ago, on 1 April 1913. As John Brewer records, it was only a matter of months later that the new force was called into action to deal with a wave of strikes among 19 000 white miners on the Rand.<sup>16</sup> In the course of two days of unrest, seven members of the SAP were hospitalised. But, out of a total of 161 people injured, over half (88) suffered gunshot wounds as a result of police fire, and no fewer than 22 strikers were killed. From the moment of its foundation then, there could be no doubting that the SAP would defend the interests of the mine owners, capital and the colonial state – and resort to lethal violence in doing so. The colonial style of policing persisted into the second half of the twentieth century when the pattern of discriminatory and oppressive activity hardened still further under apartheid. Throughout the late colonial and apartheid eras the primary task of the SAP was ‘to contain and control black South Africans by keeping them in their political, economic, social and moral place as a subject population.’<sup>17</sup> As Mike Brogden and Clifford Shearing observed in the early 1990s:

[W]hat the SAP shares with state police elsewhere in the world is its access to, and use of, coercion. What sets it apart is the systematic use of extreme and bizarre forms of terror-invoking violence to promote compliance through intimidation with an extraordinarily oppressive order.<sup>18</sup>

But this is only part of the story, for, notwithstanding its abiding commitment to maintaining the specific order demanded by the colonial and apartheid regimes, the SAP also preserved at least the semblance of a general order.

It did so mainly by responding to ordinary crime in the white suburbs in the manner of a regular civil police force. But it also maintained a vestigial presence in the townships, where much of the responsibility for managing behaviour that did not threaten either the security of the state or the safety of whites was sub-contracted to a range of paid and unpaid, official and unofficial proxies.

The relative autonomy of the old SAP, and the ability of its members to follow their own political instincts, was very clearly evident in the large number of officers who refused to fight on the side of Britain and her allies in the Second World War. As Brewer indicates, many preferred instead to join the Afrikaner cultural organisation, the *Ossewabrandwag* (OB), and serving SAP officers were implicated in protests against the pro-war government of the day, involving the armed wing of the OB, the *stormjaers* (or storm troops).<sup>19</sup> Half a century later similar signs of disloyalty emerged in response to then-President FW de Klerk’s reforms in the early 1990s. Once again, the sympathies of many members of the SAP led them to side with conservative opponents of the National Party and turn a blind eye, if not lend active support, to the activities of the *Afrikaner Weerstandsbeweging* (AWB) and other far-right organisations in the violent run-up to the 1994 elections.<sup>20</sup>

Looking forward to ‘policing the new South Africa’, Brewer was worried that the relative autonomy of the police would delay, if not derail, the changes to its ‘role, style, organization, and structure.’<sup>21</sup> To prevent this from happening he believed that the state would have to ‘assert complete control over the police, at least in the short term.’<sup>22</sup> He was also concerned with the broader context of police reform. Unless deep-rooted political and economic problems were addressed, the police would be left to deal with the consequences of structural inequality.<sup>23</sup> Under these conditions, even the most thorough programme of reforms would do little to improve relations between police and policed.

## CONTEMPORARY POLICING

An equally complex picture emerges if we take a more rounded view of contemporary policing than

is summoned by Mpfu's allegations of 'toxic collusion' between the SAPS, the state and local and international capital. Hard though it is to put them to one side, the shootings at Marikana, the SAPS's response to protests by farm workers in the Western Cape, and its reaction to the slow-burn crisis of service delivery protests, are not typical of day-to-day police activity. In fact, if recent ethnographic research is to be believed, one of the most remarkable features of police work in the townships of Gauteng and inner-city Johannesburg is how, in the normal course of members' interactions with the public, the relationship between the SAPS and the state recedes into the background, almost to the point of vanishing.<sup>24</sup>

In a series of publications over the last decade, Jonny Steinberg has documented how members of the SAPS interact with the public under conditions in which popular consent to policing is at best conditional, at worst entirely absent.<sup>25</sup> This is in part a consequence of the breakdown in relations between the police and black South Africans under apartheid and in part a result of the unattainable middle class aspirations of a new generation of officers raised in the townships but eager to leave them for the suburbs. In Toekomsrus, a coloured township outside Randfontein, he found that the introduction of a new style of sector policing had encouraged local residents to use the police, not as their first port of call when, in Egon Bittner's words, 'something-that-ought-not-to-be-happening-about-which-someone-had-better-do-something-about-now' occurred, but as 'a kind of surety, an underwriting of the private and informal justice process.'<sup>26</sup> In places like Toekomsrus, where the old SAP had been seen not as a guarantor of residents' safety but a major source of insecurity, and where protection had long been 'bought, sold and bartered' in a multiplicity of transactions between individuals and groups in civil society, free of state intervention, Steinberg argues that the new SAPS has failed to find the 'moral authority to rise above the logic of this terrain', leaving its members to 'negotiate their way into it and join its other players' by acting as enforcers of last resort in a system of 'informal delict.'<sup>27</sup>

For Steinberg, the reduction of the SAPS to the role (sometimes literally) of hired guns to be deployed at the whim of citizens seeking to settle disputes they have been unable to resolve by other means, and the ability of individual police officers to oblige them by bringing the authority of the state to bear on private problems, underlines how blurred the lines between the state police and private enforcers have become.<sup>28</sup> This privatisation of state policing, and the degree of autonomy that state officials are able to exercise as a result of it, are graphically illustrated by a case discussed at length by Julia Hornberger in her study of policing in inner-city Johannesburg.<sup>29</sup> A woman she calls Peggy makes the first move in a protracted tale by opening a case against a man identified as Sam, to whom she had sub-let her space in a cramped two-bed apartment. When a white detective, Sergeant Klopper, and a colleague arrive at the apartment to arrest Sam (ostensibly for intimidation), Peggy is roundly abused by Sam's girlfriend:

So, you damn bitch, you called *your* police to throw us out of this house! But this is our place and you will regret this, because I will now call *my* police! You will see what comes from this ... don't you think that we don't have our own police?<sup>30</sup>

Sometime later she carries out her threat by opening her own case against Peggy with different officers based at the same police station as the detectives who had arrested her boyfriend.

Hornberger calls this notion, captured in the words of Sam's angry girlfriend, the 'your police – my police imaginary.'<sup>31</sup> In the case discussed by Hornberger, its origins lie in Peggy's concern to reclaim her space in the apartment from Sam – something she was unable to do using the civil law. The criminal process is initiated 'to mobilise the police to intervene in a case in which they would otherwise refuse to do so.'<sup>32</sup> For those living on the margins in a world where rules are 'flexible, imprecise and contested', and where 'the formal dichotomies of criminal and lawful, private and public are blurred and no longer hold', calling the police is one way of advancing individual claims to space or property.<sup>33</sup> Thus, Hornberger suggests, the

coercive power of the state vested in the hands of its police becomes a resource of private power to be deployed by the multiply disadvantaged in circumstances where the state has failed to provide alternative means by which they can resolve disputes and meet their basic needs for shelter and security.

Hornberger also shows how poor people like Peggy and Sam's girlfriend are able to take advantage of fractures within the police along 'racial fault lines' and exploit 'differences in interests, loyalties and organisational and individual rationales'.<sup>34</sup> Sam's girlfriend's contacts are black, while Peggy's police are white. Peggy's police are also led by a detective who is affronted by Sam's lack of respect for her and keen to gain the kudos to be had from finding an illegal weapon after recently transferring from a unit dealing with more serious crime.

What the contemporary ethnographies of policing produced by Steinberg and Hornberger suggest is that, far from acting as the praetorian guards of a proto-authoritarian political-industrial elite, police officers in Toekomsrus and inner-city Johannesburg have taken a central tenet of democratic policing – that priority be given to servicing the needs not of government but of individual citizens and private groups – some way beyond its ideal conclusion by exploiting their relative autonomy to compete alongside other enforcers in a ruthlessly competitive market for security.<sup>35</sup>

## CONCLUSION

The main argument presented here is that, as we pore over the evidence being presented to Farlam, we need to keep in mind the historical and contemporary context of policing. The Commission may well find evidence of the 'toxic collusion' alleged by Mpfu, but the history of South African policing should make such a discovery rather less than surprising. Instead of wondering how things can have come to such a pretty pass less than 20 years into South Africa's new democracy, we should perhaps be wondering whether the old connections between the police,

the state and a ruling elite were ever broken, even as that elite metamorphosed to accommodate the likes of Ramaphosa and the government ministers who may (or may not) have had a hand in directing the brutal suppression of the Marikana protests. If such a finding is made, we also need to recognise that strikes and service delivery protests, though commonplace in some respects, are exceptional in others. If the evidence collected by Steinberg and Hornberger is anything to go by, the state's writ does not run far when it comes to everyday policing across large swathes of urban South Africa. The relative autonomy enjoyed by SAPS members, together with an underlying lack of consent to state policing inherited from the dismal days of apartheid, make it relatively easy for those at the opposite end of the social scale to Ramaphosa to manipulate officers into supporting their efforts to resolve disputes when informal means have failed, and formal mechanisms of civil process remain both unintelligible and unaffordable. In the end, the tragic events of 16 August 2012, and the yawning gap between a share-owning elite and the striking miners, and between the police and the policed, as exposed by events at Marikana, may best serve to confirm the truth of Brewer's observation that the legacy of colonial policing cannot be overcome in the absence of a wider process of social change, and no amount of police reform will succeed in reconfiguring police-public relations if the structural inequalities of a society remain unaddressed.<sup>37</sup>



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## NOTES

1. Politicsweb, Toxic collusion between state and capital caused massacre – Dali Mpfu: points to be made in the opening address on behalf of the injured and arrested protestors, 24 October 2012, <http://www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71619?oid=335155&sn=Detail&pid=71619> (accessed 9 September 2013). For a flavour of the arguments presented to the Inquiry by Mpfu see the notably testy exchanges between him, counsel for Lonmin, Schalk Burger SC, and the Chairperson at the public hearing held on 4th June (Transcript, Day 101, pp. 10828-10849, <http://www.marikanacomm.org.za/transcripts.html>, accessed 9 September 2013).

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12. Marenin, Parking tickets, 249.
13. Marenin, Parking tickets, 254.
14. Marenin, Parking tickets, 257.
15. Marenin, Parking tickets, 258-9.
16. Brewer, *Black and blue*, 54-5.
17. Brewer, *Black and blue*, 333.
18. M Brogden and C Shearing, *Policing for a New South Africa*, London: Routledge, 1993, 25.
19. Brewer, *Black and Blue*, 149-166.
20. See Brewer, *Black and Blue* for a more detailed account of these examples of the relative autonomy of colonial/apartheid SAP.
21. Brewer, *Black and Blue*, 347.
22. Ibid.
23. Brewer, *Black and Blue*, 348.
24. In the wake of Marikana, the protests by farm workers and the violence surrounding them received international coverage: BBC, South Africa vineyard clashes leave one dead, 14th November 2012, <http://www.bbc.co.uk/news/world-africa-20328701>, (accessed 9 September 2013). For more on service delivery protests by the leader of the team responsible for the book on Marikana referred to earlier (n. 5), see P Alexander, Rebellion of the poor: South Africa's service delivery protests – a preliminary analysis, *Review of African Political Economy*, 37, 123: 25-40.
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28. Steinberg, *Thin blue*, 22.
29. J Hornberger, *Human Rights and policing: the meaning of violence and justice in the everyday policing of Johannesburg*, Kindle version retrieved from Amazon.com, 2011.
30. Hornberger, *Human rights and policing*, chapter 5, section 5.1, emphasis in original.
31. Hornberger, *Human rights and policing*, chapter 5, section 5.2.
32. Hornberger, *Human rights and policing*, chapter 5, section 5.2.3.
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