

REFLECTIONS ON THE CAPACITY OF POLICING COMMUNITY PROTESTS: A SOUTH AFRICAN PERSPECTIVE

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ABSTRACT

South Africa has historical experience of protest actions mainly directed at the state against a myriad of social issues. This article examines the current levels of public services-based protests which profusely put the South African Police Services' Public Order Police to the test. This study seeks to evaluate the capacity of public order police to deal with the soaring level of violence during public protests. The study is grounded in a qualitative approach and brings to the surface pressure faced by the police to manage dissatisfied members of communities in various municipalities over lack of provision of basic services – pressures that exist as a by-product of underlying attributes of municipal challenges motivated by corruption and mismanagement of state resources. Following the qualitative approach, news reports and documents were analysed to offer insight into these reflective thoughts about the police and violent protests. The data suggests that poor services lead to an increased sense of disempowerment, frustration, and, ultimately, anger. Managing disorderly protests is challenging and subsequently left to over-strained Public Order Police and disconcerted leaders in various communities. Protests demonstrate that police have much to deal with, outside of their capacity. Crowd management has never been an easy task for police in developing countries. However, the police's response to managing protests must go beyond operational matters, including establishing community ties and support, maintaining open lines of communication with the media and the public. The best methods of policing protests are encapsulated in three best practices: recognising politics, facilitating communication, and defusing violence.

Keywords: Non-violent protests, policing capacity, public disorder, public service delivery, violent protests

JEL Classification: Y8

1. INTRODUCTION

Although the history of protest and public demonstrations (also called civil resistance, remonstrance) is dated back to the 16th century, literature reflection grew from the 1960s (Giugni, McAdam & Tilly, 1999, Della Porta, 1995:9 & Della Porta, 1999: 66). Alexander, Runciman, Ngwane, Moloto, Mokgele, and Van Staden (2018:28) define protest as ‘a popular mobilisation in support of a collective grievance’. South Africa has historical experience of protest actions mainly directed at the state (Steyn & Ngwenya, 2015). Public protest is a very complex phenomenon that interplays historical-political legacies, cultures of violence, corruption, and lived experiences of poverty that create in citizens a dependency on the state for improvements in their living conditions (Steyn & Ngwenya, 2015). There are occasions when people disagree, oppose, or complain about, something. Decades ago, the cause of protests was different from the 21st century’s socio-economic needs and demands (Steyn & Ngwenya, 2015). This can be exacerbated by people's existing trauma, stress, and discontent (Lancaster & Malaudzi, 2017: 4–6). In 2018, the number of service delivery-related public protests was estimated at 144 (Makhafola, 2018), and this stretched the policing capacity of the South African Police Service's (SAPS).

This study seeks to evaluate the capacity of public order police to deal with the soaring level of violence during public protests. Public violence is defined as the 'unlawful and intentional performance by several persons of acts which assumes serious proportions and are intended to disturb public peace and order by violent means or to infringe the rights of another' (Lancaster 2016:2). The current wave of protests across the globe has a lot to do with a lack of accountability in delivering proper basic services, the scourge of corruption, and political impotence (South African Institute of Race Relations [SAIRR], 2015; Volkov, 2012:55–62). Community members feel that resorting to violent protests is the only way of putting pressure on decision-makers to meet and deliver on its promises (Della Porta, 2013). The Green Paper on Policing (Ministry of Police, 2013) highlights some of the shortcomings of the SAPS concerning policing of public protests. Frequent protests place stress on the police to manage and monitor multiple public demonstrations across the country. The slow pace of development, service delivery

and the widening inequality gap has resulted in the upsurge in mass protests since mid-2000s. The SAPS is continually called upon to respond to public manifestations of discontent with government service delivery and labour disputes (Ministry of Police, 2013:28).

2. RESEARCH METHODOLOGY

This paper is qualitative research relying on secondary data derived from existing selected literature related to the research topic of public order policing. Secondary data sources, which included books, journals, official documents, media reports, newspapers, and internet sources (Creswell, 2014:190; Kumar, 2011:163; Mills & Birks, 2014:40). The use of secondary data by the authors relieves both of them the burden of participation with research participants, who to identify, access to, and limited time frame available to conduct the research. Secondary data in the context of this study is limited to the following: data collected from previous qualitative studies; data collected may be shaped by the researcher's socio-cultural, political norms, and biases. The researcher's main task was to ensure that the data analysed is not subject to any form of misinterpretation. In doing so, the researcher can rely on critical and reflective constant comparison of previous and present secondary data collected to arrive at an objective conclusion.

This is a reflective paper to examine what are the identified shortcomings of public order policing in South Africa. Both authors have over 30 years of policing and academic experiences behind them. They are also trained in two countries, South Africa and the United Kingdom for public order. The police killing of 34 miners at Marikana (2012) is a focal point for the authors to reflect on the operational factors that may be wrong with the South African Police Service (SAPS). In looking at how this incident was handled, one can safely argue that either the police did not follow or understood the importance of the following public order related concepts of communication, de-escalation, crowd management, negotiation, reasonable force, justifiable force, lethal force, and force continuum were not followed or understood. The authors based on their policing experiences are opined that the loss of lives at Marikana was a very costly exercise that could have been avoided.

As part of the reflective process, the authors developed a thorough outline comprising of the basic information they wanted to convey to their audience. To achieve this, the authors consulted existing literature, searched for international best public order policing model to explore what we could do differently concerning reducing deaths during public protests in South Africa to the barest minimum.

By examining their policing experiences, the authors can critically engage with the social problem of public order to find ways of improving it or providing a platform for further research.

3. THEORETICAL FRAMEWORK (AUTHORITY MAINTENANCE THEORY)

This article is informed by that theory, which postulates the following propositions (Alpert & Dunham 2004):

- Proposition One: Police–citizen encounters must be understood as interactive processes, rather than discrete events.
- Proposition Two: Police–citizen encounters are a unique type of social interaction because the major criterion regulating the interaction is the balance of authority or power among actors. One way to accomplish this is to exert a force (Alpert & Dunham, 2004:179).
- Proposition Three: Police–citizen encounters are more asymmetrical with respect to authority than most other types of interactions.
- Proposition Four: Police–citizen encounters are a unique type of social interaction because expectations and behaviours often violate the Principle of Reciprocity.

Alpert and Dunham (2004:183) argue that “these sequences usually begin with negotiation, proceed to lower levels of force and resistance when negotiation fails to reach any mutually acceptable outcome and may escalate into higher levels of force until one party is willing to change his or her expected goals ... voluntarily or involuntarily”. To understand the dynamics of collective social behaviour resulting from public disorder, the researchers took a step further by relying on the work of two theorists, Le Bon (1895) and Smelser (1967). Le Bon’s (1895) major work, explains that whenever people form crowds, their conscious personalities automatically disappear to be replaced by a sinister, uncivilised and potentially barbaric ‘group mind’. There are three reasons for this: 1) the anonymity derived from crowd membership separates individuals from any personal responsibility for their actions; 2) being part of a crowd makes people less resistant to ‘hypnotic’ powers of suggestion that may compel them to behave in reckless and unsavory ways, and 3) crowd behaviour and the powerful emotions it evokes tend to spread contagiously, causing virtually everyone present to recklessly join in. Smelser (1967) identified five determining factors contributing to public disorder: structural conduciveness; structural strain; the growth and spread of generalised hostile

beliefs; precipitation factors; and the mobilisation of participants for action and social control.

4. UPSURGE OF PUBLIC PROTESTS IN SOUTH AFRICA

It would be misleading not to discuss the current pervasive violent culture in our societies. As mentioned earlier, protests are not only on the rise locally (Masiloane & Pillay, 2017:128– 146), but remain a contentious issue in several countries. For example, there have been protests in Brazil, Venezuela, France, Kenya, Angola, Mexico, the USA, Zimbabwe, Belgium, Canada, Egypt, Sudan, Saudi Arabia, Tunisia, Algeria, and Nigeria. These have become a global phenomenon, particularly the ‘Yellow Vest’ and those championed by students protesting the rising cost of tuition fees, etc. Between 2005 and 2017 (Alexander et al., 2018:27), South Africa’s local municipalities have experienced a range of protests against the pitiable provision of essential services on the part of local governments (Tsheola, 2012). This has occurred despite the promise of a “better life for all”, made by the African National Congress, South Africa’s ruling party, in its 1994 National Election Manifesto (Twala, 2014). Contrarily, the South African Police Service’s Public Order Policing units are profoundly in demand to manage protests that pop up every now and then because of the unresolved social, economic, and political issues. Police have limited resources and allocated budgets (policing costs) (Ministry of Police, 2011; News24, 2014). The key issues which were identified and raised during current and past protests have been documented during the World Summit on Sustainable Development in 2002 (Shah, 2002). Protests offers the only way for members of the society to air their grievances, voice their dissatisfaction, and make demands for enhanced service delivery (Hartley, 2014). The SAIRR (2015) quotes Mackay, the institute’s research analyst, who notes that “multiple factors play a role in service delivery protests”. Communities are denouncing mismanagement (high levels of fruitless and wasteful expenditure), financial misconduct, and corruption related to municipal resources (Lues, 2007:219–238; Masiloane & Pillay, 2017:128; SAIRR, 2015).

In terms of the Constitution, everyone has the right of access to healthcare, food, water, social security, and proper housing (Department of Cooperative Governance and Traditional Affairs, 2009; Lues, 2007). In the face of urban expansion, population growth and migration, the government’s obligation is to action those promises, and provisions contained in the constitution, to address the poor state of many municipalities (Du Plessis, 2015; Steyn & Ngwenya, 2015). The argument, though, is that to receive continuous services, end-users must pay (Twala, 2014).

The government's difficulty in providing fundamental services, as enshrined by section 27 of the constitution, has led to the disruption of prevailing social order, thereby creating a workload for police.

Current interventions are inadequate and demonstrate ineffectiveness in identifying the cause of problems in service delivery protests. According to the South African Press Association (SAPA, 2014), "every household should have access to water, electricity, decent schools, clinics, and an economy that creates jobs". These very same basic services have prompted recent protests (Tait & Marks, 2011). While these demands continue, the money allocated to render public services continues to disappear. Du Plessis (2015) notes that municipal leaders have accused the government of using municipal monies meant to provide services to poor communities, to attempt to address Eskom's woes (the country's cash-strapped power utility).

Amid public protests, Narr, Toliver, Murphy, McFarland, and Ederheimer (2006) point out that the police must be mindful that a crowd can consist of a variety of persons, who are present for a range of reasons. According to Narr et al. (2006), the police are caught between a rock and a hard place. This means that they are obligated to protect those who are not involved – as well as their businesses – from chaotic behaviour displayed during the protests. In a watershed event, a protestor whose name has become synonymous with protests, Andries Tatane (a 33-year-old from Ficksburg), police action led to his death (Masiloane & Pillay, 2017:128; Tait & Marks, 2011). In extreme situations, the police are forced to use maximum force to prevent public violence, malicious damage to property, arson and any form of destructive behaviour (Alexander et al., 2018:27–42; Daniel, 2018; Masiloane & Pillay, 2017; Steyn & Ngwenya, 2015). Depending on predisposing factors, these situations are difficult for the police – for example, in life-threatening situations, they are required to use a certain degree of force, in line with section 49 of the Criminal Procedure Act, 51 of 1977 (RSA, 1977) in response to protesters going berserk.

It is increasingly obvious that these mistakes can have even more harmful effects over time, especially when there is no effective plan in place (Narr et al., 2006). Although the South African government has been undergoing a major transformation post-democracy (Davis, 2014), it is evident that these transitions have taken place in all spheres of government institutions, but the intended purposes collapsed along the transformation process. Police use force in the absence of alternative measures to control a crowd of protesters.

4.1. Protest (crowd) management

Policing research has been taking stock of the flows and control of public protests in South Africa. The SAPS's POP unit was established to deal with public order policing, but numerous restructuring exercises carried out post-1994 have impacted its ability to effectively execute its mandate and functions. The addition of crime-combating responsibilities as part of these restrictions has stymied its attempts to fulfil its core responsibility, which is crowd management. Effective crowd management that is informed by constitutional and legal imperatives is dependent on several factors. Internationally recognised practices involving the ability of the police to negotiate with the parties involved are another important aspect of public order policing (Ministry of Police, 2013:28).

The Association of Chief Police Officers, ACPO (2010) notes that public order policing "is centered on the management of crowds and includes the policing of planned and spontaneous public events, including protest, and the policing of any events which result in, or may result in, public disorder". A considerable disparity exists between legal and unregulated protests; however, both gatherings are capable of producing irreversible aftermaths, such as disorderly conduct arrests, the use of force, assaults, and costly property damage, as well as the death of participants, non-violent protestors and bystanders (Alexander et al., 2018). According to Tait and Marks (2011), "community groups fail to apply for permission to protest in accordance with the Regulation of Gatherings Act, 205 of 1993." Though some protests do not meet the requirements, Paret (2015) states that illegal protests are more effective; in the sense that local government leaders give them attention. However, most of the damage caused during public protests is attributed to illegal and unregulated gatherings. According to Page, An, Whitely, West, Davis, and Davis (2013, in Mally-Morrison, Mercurio & Twose, 2013), the police are allowed to be present only at public assemblies and are authorised to intervene in certain circumstances only if public security and social and economic life are under serious threat (Tsheola, 2012). The police should be involved very early on in crowd management, to provide expert advice. The mere presence of the POP at community protests is, however, perceived as a provocation (Paret, 2015; Tait & Marks, 2011) on the part of protestors, and this often creates animosity between them and the police. De Lint and Potts (2004) contend that violence is an unpredictable and dynamic contingency that may badly harm the image of both the police and the protestors.

Based on “effective violent protest tactics”, the POP will always be involved in confrontations with furious protestors during public protests, if peaceful protests have failed to bring their grievances to the fore (Paret, 2015). Considering the danger of police work, violent protests not only affect police resources but bring physical danger and psychological effects on individual members in the prevailing situations.

4.2. Police reaction to violent protests

Figures show that there were 4 721 POP members countrywide: 325 members allocated to the Western Cape, 994 to KwaZulu-Natal, 605 to the Eastern Cape, 525 to North-West Province, 507 to the Free State, and 484 to Limpopo. (. Gatherings may be illegal, unregulated, or formal gatherings of people who wish to hand over a request to their local government representative. During 2013/2014, POP members dealt with 13 575 protests, of which 1 907 were unrest-related incidents (SAIRR, 2015). The highest number of violent protests recorded was in Gauteng (528 incidents), followed by the Eastern Cape (324), the Western Cape (272), KwaZulu-Natal (266), NorthWest Province (137) and Limpopo (135). The remaining three provinces recorded two-digit figures, namely Mpumalanga (97), the Free State (96), and the Northern Cape (52) (SAPS Annual Report, 2013/2014). In these types of situations, police conduct is always under scrutiny (Saad-Filho, 2013). In these incidents, deaths and serious injuries caused by police at all levels of protests are unprecedented in South Africa’s history. Public protests present one of the most challenging democratic policing problems in the world (Davis, 2014; Narr et al. 2006). Roberg, Kuykendall, and Novak (2002) draw our attention to the fact that when the police engage in proactive law enforcement, it is because they believe they have evidence that a crime has been committed. In this instance, the method of carrying out their duties should be appropriate, if public order is to be restored and peace maintained. If prevailing conditions delay the POP from discharging their duties, officers must make the best decisions they can, based on their training and experience, the available staff and resources, and their assessment of the disorderly conduct (Narr et al., 2006). According to the Global Protest Suppression Report entitled “Take back the streets: repression and criminalization of protest around the world”, “these cases collectively illustrate the use of lethal and deadly force in response to largely peaceful gatherings seeking to express social and political viewpoints” (International Network of Civil Liberties Organizations [INCLO], 2013).

Wiatrowski and Goldstone (2010:79) point out that “the role of the police in a healthy democracy is radically different from their role in authoritarian societies”. Several instances, though, have raised concerns about the way the police have responded to recent protests, using violence to an end. The Municipal IQ (XXX) notes that after three deaths following protests in Mothutlung (due to the use of banned SSG 12-gauge shotgun rounds), as noted by News24 (2015a), protestors were killed at the West Rand's Durban Deep mine, and outside Tzaneen in Limpopo. Many community members dare to confront heavily armed police, which is why the POP must be prepared to counter and handle public demonstration incidents. However, various critics have condemned the police's response, which involves increasing levels of brutality (beating up demonstrators and passers-by indiscriminately) (Saad-Filho, 2013).

Since the beginning of service delivery protests, the management of the SAPS should have strengthened and capacitated the POP across all spheres, to enable them to discharge their duties effectively. Their lack of crowd management skills should have been identified and dealt with, before this new era of intensified protests, which allow citizens to gain the upper hand over the police. As stated, that police must be extremely careful not to initiate or encourage illegal behaviour from within the service itself (Narr et al., 2006). Commanders – especially those at the forefront of crowd management – must also understand the importance of recognising when a group is not a threat to public safety, and when an operation should be curtailed. In most cases, however, the police response is moderated by the degree to which a dissident group appears to be threatening the government.

4.3. Model of policing public protest

Below is the international best practice model of policing public protest, from the United Kingdom (UK) and Canada respectively.

Kettling or containment

Mawby (2008) argues that the concept of containment or kettling is something new to the policing of disorder in the UK, and that “mass containment tactics developed as a result of the Para militarisation of protests in the 1980s and 1990s”. Police in the UK adapts their public order strategies to “contain disorderly gatherings within tight but essentially static cordons” (Waddington & Wright, 2008). UK Police's arguments in support of kettling are that it is a vital tactic. The strategy works on the simple principle that police officers are in physical contact with the outer circle

of contained protesters. Those in the centre are surrounded by other protesters and therefore effectively self-policed if protesters do not turn on one another (Murray, 2015). After a series of legal challenges to the police, claiming that containment was unlawful and an abuse of human rights, especially freedom of movement (as some protesters were denied access to toilets during protest marches), and that the right to assembly had been violated as a result of such denial, the UK court finally ruled in 2005 that containment during the public protest is lawful (see Hoggett & Stott, 2010; HMIC, 2009). The use of kettling is not without controversy within legal jurisprudence. It has been challenged, as reported in the case of *Austin and Others v United Kingdom*, held in the European Court of Human Rights. Four UK citizens were held in a crowd of more than 1 500 people, from around 14:00 to 21:30. Even people not involved in the protest were refused permission to leave the area. The four litigants argued that their detention in the kettle meant they were deprived of their liberty, which is contrary to Article 5 (1) of the Human Rights Convention which states that “everyone has the right to liberty and security of person”. The Court ruled that kettling “as a crowd control measure was necessary, proportionate and lawful”. The police had imposed their cordon to isolate and contain a large crowd in dangerous conditions. This had been the least intrusive and most effective means of protecting the public from violence.

4.4. Comparative analysis of policing disorder

De Lint and Potts (2004) argue that, in Canada, there has been a low tolerance of public disorder and strong support for government's use of coercion in the maintenance of public order, even at the expense of civil liberties. This line of argument is supported by Torrance (1986). A case in point occurred on September 6, 1995, when an Ontario Provincial Police (OPP) sniper shot and fatally wounded an unarmed indigenous man, Dudley George after police had moved to forcibly end a land rights protest at Ipperwash Provincial Park. On two occasions, in 2007 and 2008, the OPP had responded to protests over a longstanding land claim in the Tyendinaga Mohawk Territory near Belleville, by mobilising the Tactics and Rescue Unit, commonly known as the sniper squad.

Humphreys (2012) argues that “police forces are considering standardising public order units and responses to major events, swapping information and experiences on reconciling Charter rights with public peace and dealing with the financial impact of burgeoning disorder”. Concerning the G20 protest in Toronto, it was found that police “violated civil rights, overstepped authority, detained people illegally and used excessive force” (Ibid).

De Lint and Potts (2004) introduce us to three concepts of order production: the politics of law, enforcement, and consent. Collectively, they help us to understand the dynamics and complexities of maintaining law and order.

- *The politics of law* refers to the legitimacy of rule-making or the legislative function. Is the law-making function well-grounded constitutionally, representative, and well-founded in liberal democratic values?
- *The politics of consent* refers to the legitimacy of rule-following or the value of strong compliance with the polity. This orientation may be consensual; i.e., the politico-legal environment may reinforce the relationship between institutions and individuals.
- *The politics of enforcement* refers to the legitimacy of the enforcement function.

The best methods of policing protests are encapsulated in three best practices: recognising politics, facilitating communication, and defusing violence. De Lint and Potts (2004) draws the conclusion that Canada has, over the years, developed a hybrid police form in which control and service are practiced simultaneously in a morphing of intelligence-led and community policing orientations (see also Baxter, 2001). Canada has several well-trained police departments dealing with public disorder. Baxter (2011) presents some of these departments as follows: Dominion Police, Northwest Mounted Police, Ontario Provincial Police, the British Columbia Police and the Royal Canadian Mounted Police (RCMP), who were all instrumental in quelling the general strike of 1919 in Winnipeg.

The same force (RCMP) was called in to deal with a public disorder on July 11, 1990, in Quebec, where they successfully dealt with a 78-day stand-off known in the history of Canada as the “OKA Crisis in Quebec”. This paper draws the reader’s attention to the “78 days”, as they doubt whether members of the SAPS would have been able to persevere with policing demonstrators for this length of time. The use of excessive force has cost many lives in South Africa. The police need to change to a tolerant public order unit to deal with protests. Second, looking at how the police deal with disorder in Canada, it is evident that the number of deaths during protests is reduced to the bare minimum; the SAPS should determine whether this model might be compatible or translated into South Africa’s public order policing context.

5. CONCLUSION

Crowd management has never been an easy task for police in developing countries. However, peaceful protests are a sign of a healthy democracy with an active citizenry. It is proper that the police's response must go beyond operational matters, including establishing community ties and support, maintaining open lines of communication with the media and the public. To alleviate the burden on Public Order Policing, the government must address service delivery issues and come up with ideas that can be implemented effectively. By attending to the essential service delivery issues raised by various communities, the police can meet citizens' crime prevention needs without diverting their limited resources to by-products of service delivery issues. As such, many policing resources will be correctly assigned and tapped into when necessary

Until robust interventions in public policing strategies are realised, POP will need to work around the clock to manage day-to-day protests and security concerns in open public spaces. In closing, the wave of protests has had a significant impact on POP officials, their strategies and the organisation, threatening internal security, worsening economic conditions, and raising concerns on the part of the international investor community.

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