

# We need a complicit police!

## Political policing then and now

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*South Africa is witnessing a build-up of cases of public order policing gone wrong, in fact deadly wrong. Even the police are willing to admit that something is amiss. Yet the police response is a short-sighted one, which places the responsibility for the eruption of violence squarely with the people protesting, and underestimates its own role in aggravating the situation. I argue here that if the police wish to break the patterns of their long history of protecting a government and its partisan interests, and do not want to be misunderstood in their intention to serve the people, then simply increasing the capacity of public order policing will not help. On the contrary, we might end up (again) with a permanent occupying army. Instead the police have to become more explicitly partisan towards the citizens they serve, and help deliver the message inherent in each protest.<sup>1</sup>*

### The demise of public order policing

On 13 April 2011 Andries Tatane, a teacher and local activist, was killed by officers of the South African Police Service (SAPS) during a protest in Ficksburg, a small town in the Free State, South Africa. Although the killing was captured live on video, all seven police officers involved in the incident were acquitted of the killing, as the state failed to prove beyond reasonable doubt who exactly had fired the deadly rubber bullets, and that there was 'common purpose' among the police officers involved in killing Tatane. This tragic and brutal killing is seen by many as a watershed moment, marking the definite return of police violence (repressive violence), well known from apartheid times.<sup>2</sup> It brought broad public awareness – not least because the event had been captured on video – to a chain of similar incidences of police brutality during protests both prior to and after that of Tatane.<sup>3</sup> This includes the Marikana shootings, where the police,

armed with live ammunition, killed 34 striking miners who refused to disperse. Together these present a frightening picture of police failure to deal with public protests in a democratically acceptable manner.

In this article, I do not discuss what is behind such policing, or whether the police are political instruments to suppress dissent, or even whether these incidences reveal police incapacity. While these are important questions that should inform our research agenda, I consider the issue from a different perspective: refracting the response by government to this crisis of protest policing firstly in the light of a long history of (public order) policing going back to the inception of policing in the 19th century, and secondly by comparing it to other more intimate forms of policing, such as the policing of domestic violence.

The government's public response to incidents such as those described in the introduction to this article has been to announce a steep increase in the capacity of public order policing. Through the

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refraction I show that such a policy decision not only risks repeating history in the short term but also places the SAPS at risk of falling back into the same purpose and patterns of policing as those that informed its inception in the 19th century. From the very beginning, South African policing has been over-invested in public order policing to protect a partisan government and specific societal interests.

Secondly, I show that a policy focused on increasing the capacity of public order policing is likely to further disappoint citizens' wish for an effective police. I end this article with an aspirational call – that if the SAPS wishes to break these patterns of its long history and does not want to be misunderstood in its intention to serve the people, the service cannot hide behind the rule of law, neutrality or questions of capacity, but has to be more explicitly partisan towards the citizens it serves.

This article is intended to stimulate thinking and debate about political policing. Drawing on Brodeur,<sup>4</sup> and how Steinberg<sup>5</sup> has recently applied Brodeur's idea of 'high policing', political policing can be explained as the explicit protection of government through the use of intelligence and extralegal force against people challenging government from outside or from within. Political policing, however, is also the biased enforcement of laws, or the enforcement of laws that are biased against a certain group or interest. In contrast to the idea of high policing, such notions of political policing diffuse the questions of agency, conspiracy and intentionality in favour of a more structural perspective. While in tension with each other, I would like to keep both notions in sight.

Aside from the insights offered into the policing of domestic violence, this article is not based on original research but relies on secondary sources. While ethnographic research into the policing of protest would probably complicate the notion of political policing, I use it here in a normative way to stress the contrast with a form of policing that is relatively free from direct political instrumentalism and that accepts a constitutional democratic law as its primary source of authority.

## On a different route

I would like to start by highlighting an irony. While many have condemned the brutality of current public order policing, and in so doing have tended to evoke the spectre of all-encompassing police repression, the SAPS has in fact been disinvesting itself substantially from public order policing in the past 15 years. This has mainly been done in order to deal with the pressure to reduce crime. In an effort to increase its legitimacy with the people of South Africa as well as its administrative accountability, it has allocated the bulk of its resources – both budgetary and personnel – to 'ordinary' crime fighting.

In 2000, under the Thabo Mbeki government, which was often accused of not taking crime seriously, the police released the National Crime Combating Strategy (NCCS).<sup>6</sup> This self-assertive reaction of the police to shift towards a results-driven crime combating strategy was a way to show that they were serious about crime.<sup>7</sup> Soon after, in 2002, the dismantling of the Public Order Policing (POP) units began. First the POP units were turned into a 'reaction force' of sorts, to be called on to respond to major crime operations such as bank robberies.<sup>8</sup> But the dismantling did not stop there. By 2007 the POP personnel were reduced by nearly two-thirds.<sup>9</sup> Officers were transferred to bolster daily police work at station level. Those who remained in the renamed Crime Combating Units, while nominally still responsible for public order, were also in practice re-deployed, more or less full time, to major crime-fighting operations.<sup>10</sup>

This left the public order police understaffed and undertrained, and unable to deal with the public dissatisfaction with a government failing to live up to expectations. In the light of history this change could be considered an unprecedented and even a *progressive* move, since policing in South Africa before the end of apartheid was generally characterised as being overused for crowd control purposes and underused for crime-fighting purposes. In that era, even where the police concentrated on responding to crime, the criminal offences often served as yet another way to keep black South Africans in a subjected state (e.g. pass laws). This bias was accentuated by the fact that police were

thinly spread, forcing difficult choices as to where to deploy their resources.<sup>11</sup>

## Political policing in the past

From their inception in the 19th century, one of the primary roles of the police in South Africa, mounted and in paramilitary attire, was not to keep peace among people but to police territory and suppress internal resistance to colonial rule.<sup>12</sup> These colonial regiments of mounted riflemen – at least in the British territories of Natal and the Cape – followed the model of the Royal Irish Constabulary, which had a long history and proven record of suppressing civil unrest and political agitation.<sup>13</sup> Prior to Union in 1910, there was also no single police force. Mounted regiments were complemented with a potpourri of other police forces, such as special police for key infrastructure: railway police, private police for the mines, native administration police and town police. Each of the colonies had one such set of multiple police forces. But even where there were ‘town’ police, accountable to and paid by the respective town councils, like the one set up in Johannesburg at the turn of the previous century and which supposedly subscribed to a more civilian outlook, police officers were placed in service of the mining industries to forcefully manage their workforce.<sup>14</sup> Three laws deserve particular mention here: the liquor laws, gold laws and pass laws. Together, their enforcement led to the mass incarceration of an otherwise innocent black population.<sup>15</sup>

With the forging of Union, the plan was to have a highly centralised, single police force. At least, that was the fantasy of newly appointed Police Commissioner Theodorus Truter and people close to him who had the modernisation of the police at heart.<sup>16</sup> Truter succeeded in centralising the force with control located firmly in Pretoria.<sup>17</sup> However, the second aspect of the plan, to have only a single police force, was thwarted by the government (particularly the Ministry of Justice), which insisted on keeping a dual system: the South African Police (SAP) for the burgeoning cities, and the South African Mounted Riflemen (SAMR) for the countryside and to control ‘tribal rivalry’ and resistance to white rule.

To leave no doubt about the role and methods of the SAMR, it was promulgated under the Defence Act of 1912 instead of the Police Act of 1913. The SAMR was finally absorbed into the SAP after World War II. By then, however, unrest had in any event become a phenomenon of urban areas rather than rural areas, and the SAP had already taken over many internal security tasks, such as the quelling of protests and strikes.<sup>18</sup> In fact, from its inception in 1913 the SAP was fully absorbed by such tasks.

Consider a year such as 1914, in which the SAP first helped to suppress a railway strike, which turned into a general strike by white workers and was swiftly crushed by the police and military, acting with powers under martial law. In the same year the police were involved in suppressing the De la Rey rebellion, and, finally, the police helped with the conquest and occupation of German South West Africa. On the side of the police this drove a process of militarisation, with a bias towards drill and weapons training and the introduction of military ranks in 1919.<sup>19</sup> By 1922 it had even become thinkable to use the police in combination with air force bombings to end a strike by white workers.<sup>20</sup> Still, the number of people killed in those interventions pales by comparison with how the police dealt with black resistance. In 1920 the SAP, led by the Commissioner himself, killed 200 black people in an uprising in Bulhoek.<sup>21</sup>

Meanwhile, where the police were trying to deal with so-called ordinary crimes that threatened white people’s lives and property in the growing and industrialising cities at the beginning of the 20th century, and which were rife, especially on the Witwatersrand, they were deeply caught up in inefficiency. This was shaped especially by corrupt entanglements with the various gangs and gangsters who – attracted by the unruly, male-dominated capitalist precious metal business of early Johannesburg – populated the Reef.<sup>22</sup> Also, the main efforts of the Criminal Investigation Department (CID) of the SAP were still focused on disciplining a mining workforce and the enforcement of the gold, liquor and pass laws.<sup>23</sup> In fact, the ongoing raids on mining compounds and black living quarters in the city by the specialised Liquor and Gold branches could be considered an everyday version of crowd control.

Implausible as it might seem, police management tried to maintain a language of modernisation and an aspiration towards professionalism and independence by trying to secure better-educated recruits, by insisting on a civil police spirit, through technological advances in the field of forensics, and by maintaining the principle of the use of minimum force.<sup>24</sup> However, these efforts only appeared in pure form in the wishful language of commemorative albums<sup>25</sup> and the recommendations of various Commissions of Inquiry (e.g. the 1913 Commission of Inquiry into the Witwatersrand Riots and the 1926 Water Commission). And while these might explain why a purely instrumental understanding of the police as the agent of dominant interests falls short, the police force itself often failed to concede its highly compromised character and its fundamental role in political policing. This is evident in budgetary priorities. Brewer shows that '[t]he proportion of the police budget spent on detective services, a measure of expenditure on civil police work, had fallen by a third in the 1926/7 financial year compared to the 1914/15 financial year, while overall the police budget had doubled'.<sup>26</sup>

And even where white middle-class citizens, who might have had some influence on what kind of police they wanted, expressed their unease about armed police officers patrolling their area, such liberal concerns were quickly overruled – with the consensus of these very citizens – when confronted with a growing urban under- and working class.<sup>27</sup>

This structural constellation of bias toward crowd control – in its exceptional form mainly directed at white industrial strike action and Afrikaner rebellion, and in its mundane form mainly directed at a black working force – was at the root of the SAP from its inception. It reproduced itself over the years in different variations, strengths and proportions.<sup>28</sup>

To mention one more important event in this long history: the 1976 Soweto student protest. Like today, riot policing as it was called then had been in a kind of slumber. Political resistance had been quelled in the early 1960s (after Sharpeville), and the previous years had been relatively quiet in terms of public protest. When the protest happened, police intervened brutally. This was partly the effect

of its ongoing political policing mission. But it was also a consequence of sheer incompetence and unpreparedness.<sup>29</sup> The reaction of the police in the following months and years was to deal with this unpreparedness by increasing its riot police manpower, and strengthening its chains of command and protective measures for police officers.<sup>30</sup> This culminated in the highly militarised police of the 1980s, with very little capacity and will to respond to ordinary crime.

## The desire for a strong state

It is necessary to remember that the political bias in policing largely left black areas to their own devices in creating a means of safe living.<sup>31</sup> This gap was filled at different times with different formations of informal justice. It was a form of self-rule that was sometimes politically (locally) legitimate, but at other times highly divisive in inter-generational and class conflicts. It often got out of hand and turned from sanctioned force to menace; sometimes it was initiated and even paid (or rather, underpaid) for by the state. Sometimes it was reined in by the state. Mostly, though, it was just ignored as a necessary if not useful evil in a divide and rule policy.<sup>32</sup> This normalised the experience of a lack of security as public good, and of highly authoritarian and rather immediate forms of punishment.<sup>33</sup>

Together with post-apartheid's democratic promises of inclusion and new infrastructure, such as community policing, to bring the police closer to the people,<sup>34, 35</sup> this has produced a highly ambiguous yearning for the force of the state, which can be otherwise read as a yearning for a private relationship with the state.<sup>36</sup> The expectation is that policing intervenes forcefully (not particularly constrained by human rights) in one's own favour and for one's own protection.<sup>37</sup>

This is apparent, for example, in the policing of domestic violence, where a call for the police is often an expression of the desire for a protective but authoritative figure, who can at least match a husband's violence and rein him in on behalf of the wife or partner. But it also comes through in the policing of public protest. In fact, I would propose, to put matters starkly, that public order policing

is not very different from, and just as protracted, as the policing of domestic violence. The violence itself is the result of a failure of communication and symptomatic of conditions of (gender) inequalities and economic disempowerment. Most importantly, it is the epiphenomenon of a structural situation, which the police alone cannot change. In many domestic violence cases, most women do not want to get rid of their husbands,<sup>38</sup> but simply want them to behave differently. We could say the same about municipalities. It is mostly not the legitimacy of the government as such that is at stake, but rather how things work, or not, that leads to protest and the involvement of the police. In the case of domestic violence, police intervention is often desired in the hope that it will change the behaviour of the husband, at least in the moment, as the fight is happening.<sup>39</sup>

When it comes to public protests, calls are sometimes made directly to the police to deal with a particular case creating insecurity within a community. Even when the call goes to other divisions of the local council, the police remain the most tangible visible manifestation of the state, and become the frontline recipients of the message (of anger).<sup>40</sup> Policing thus serves as a rallying point to hold government accountable and make people's suffering heard. This is important, as it marks a difference between policing now and in the late apartheid era: there is a demand for actual policing. While this demand might be misplaced at times in its wish for violence against others, it remains a hope for an effective police service. I posit that this offers an opportunity for the police to win over and build legitimacy among a populace calling for more security and a functioning state.

Yet the manner in which this demand is responded to leads to constant disappointment, and instead produces antagonism towards the police. As with domestic violence, when the police intervene in public protest they often appear to be intervening on behalf of someone else.<sup>41</sup> This may be a real or imagined other. There is a spectrum of possibility between a police force instrumentalised to crush a protest with well-known apartheid policing methods, and a police service 'merely' acting biased towards its own occupational rationale of self-defence and the preservation of its authority, but with such

incompetence that it translates into policing-against-the-people.

Either way, the intervention of the police mostly disappoints and in fact aggravates the situation.<sup>42</sup> It is not only that the police cannot solve the situation, but that the very act of policing provokes retaliation. Protesters may feel violated and silenced, and the sense of violence suffered is recast as a form of political sacrifice,<sup>43</sup> leading people into subsequent protests with the expectation that further sacrifice might be necessary. If nothing else is solved, police intervention will certainly only produce an increased need for intervention.

## **Making things worse**

The ability of the police to aggravate the situation is often highly underestimated and misunderstood by those who order the police to intervene, and even more so by the police themselves.<sup>44</sup> There might be some theoretical awareness that the police can choose between a calming or escalatory approach, between a minimum of force and a maximum of force approach.<sup>45</sup> And to be fair, the police have been retrained in public order policing and this has been seen as one of the successes of transformation,<sup>46</sup> at least before the public order police unit was dismantled. But the police are still used as if they are outside of the conflict, and as if they are a surgical instrument that can repair the situation by removing the trouble or quelling the spilling of blood. They are not sufficiently seen as an integral element of the conflict itself.

A recent ethnographic description of protest against the hosting of the World Cup in Brazil remarks how quickly protesters' sentiments regarding the police can turn. When the protest started, people mixed their anti-FIFA messages with the message of 'sem violencia' (without violence), hoping for a pact of solidarity with the police. But the police did not respond to the call and instead used a pre-emptive display of might and violence, occasionally throwing stun grenades and preventing the demonstrators from moving to the centre of town to deliver their message. While the demonstration did not turn violent, the author powerfully describes a sense of disenchantment about what is politically possible:

'While the chant "without violence" didn't lose its poetry, it didn't move me the way it did before the interruption. The pact seemed to have been broken'.<sup>47</sup>

So-called crowd psychology has provided substantial insights into these sometimes very subtle, but potentially highly consequential dynamics, described here from an ethnographic perspective. It shows how police intervention is absolutely crucial to what happens at a gathering; how police have the possibility of either giving people the sense that movement is possible or that a horizon is closed; and how police themselves are mainly responsible for escalating hostility. An important point is that crowds are hardly ever homogeneous. There is always a broad spectrum of people in a crowd, from those who are willing to police themselves, to people who are prepared to use violence.<sup>48</sup> It is police action, which confuses the acts of a few with the acts of a whole crowd, and which imagines the crowd as a homogeneous (and violent) entity, that leads a crowd to unite and halt communication. This was certainly the case in Marikana, where the criminal acts of some tainted the whole group of demonstrators as criminal.<sup>49</sup> To avoid an escalation of violence – in the moment as much as over a long period of time – the police need to always assume that the crowd is there to deliver a message and that the primary role of the police is to facilitate the deliverance of that message.

Delivering the message is not simply a question of sticking to the rule of law. As many people writing about the police have shown, the police work according to a set of informal organisational rules, while the law is often only evoked in retrospect.<sup>50</sup> It is here in this informal operational realm that bias creeps in, often leading to disappointment because demonstrators are being vilified. In the case of domestic violence, to pick up the analogy again, the police lose patience with women who do not follow through with the law and the charges they laid against their husbands or partners. But this is where the police have to anchor the bias to make their intentions to serve the people explicit. It is in this informal realm, where neutrality doesn't exist anyway, that the police have to make their choice.

The police cannot change inequality and unemployment, but in the case of domestic violence they can arrest a perpetrator, whose release the wife or partner may well demand the next day, without retaliating against her and not ignoring her call the next time she seeks help. In the case of public protest it means explicitly – if not complicitly – choosing the side of the protestors and helping to deliver the message.

An example of how this might work is taken from Waddington, who observed the negotiations between representatives of a far-left anarchist group and Metropolitan Police officers in Britain during the early 1990s. The declared aspiration of the protesters was to 'tear down the fabric of capitalism', to which the Superintendent conducting the meeting replied, 'And how can we help you?'<sup>51</sup>

## Quo vadis, political policing?

There appears to be little chance of such a radical mind shift in the current approach to police intervention. Instead, like after 1976, the primary reaction to police failure to deal with public protest has been the promise to bring back and build even more public order capacity than ever before. Admittedly this will be done under a paradigm of the rule of law,<sup>52</sup> but soon there are supposed to be 9 000 police officers ready to deal with public protests all over the country.<sup>53</sup> It is clear that since nothing is likely to change in terms of people's demands, the role of the police is pretty much set to become that of an ongoing occupying army – unless, perhaps, they stay on their difficult course, seeking to get their response to ordinary crime right, and making sure that protest does not increase because of their interventions. In this way they might learn to do the impossible: making protest effective, even if they have to insist that they can only do their job if they put themselves behind the demand of the protesters, for example by having the councillor receive a memorandum. What we need is a complicit police, complicit not in the inertia, but complicit in bringing about change.



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## Notes

- 1 An earlier version of this paper was commissioned and presented at the 'Public positions in history and policy' series at the University of the Witwatersrand, <http://wiser.wits.ac.za/publicpositions>. The author would like to thank the organisers of the event, Shireen Hassim, Keith Breckenridge and Jonathan Klaaren, for encouraging her to take up this topic.
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- 5 Jonny Steinberg, Policing state power and the transition from apartheid to democracy: a new perspective, *African Affairs* (2014).
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- 12 John Brewer, *Black and blue: policing in South Africa*, New York: Oxford University Press, 1994.
- 13 David Killingray, The maintenance of law and order in British Colonial Africa.
- 14 Keith Breckenridge, *Biometric state: the global politics of identification and surveillance in South Africa*, 1850 to the present, Cambridge: Cambridge University Press, 2014.
- 15 Ibid.
- 16 Marius de Witt Dippenaar, *The history of the South African Police 1913–1988*, Silverton: Promedia Publikasies, 1988.
- 17 This is a rather unusual development in comparison with police forces globally, and not without consequences: it means that police stations and all other units are primarily accountable to police headquarters rather than municipalities (Breckenridge, *Biometric state*). It is very different, for example, from what happened in other colonies such as India, where local elites collaborated with the police to define what constituted criminal activity (Radhika Singha, Punished by surveillance: policing 'dangerousness' in colonial India, 1872–1918, paper presented at the Centre for Historical Studies, Jawaharlal Nehru University, New Delhi, 2013). Although decentralisation could exacerbate local despotism, it could also mean that police were much more accountable to the locality in which they were operating.
- 18 Brewer, *Black and blue*.
- 19 Ibid.
- 20 Killingray, 'A swift agent of government'.
- 21 Brewer, *Black and blue*, 100.
- 22 Charles van Onselen, Who killed Meyer Hasenus? Organized crime, policing and informing on the Witwatersrand, 1902–8, *History Workshop Journal* 67 (2009), 1–22.
- 23 Breckenridge, *Biometric state*.
- 24 Brewer, *Black and blue*.
- 25 De Witt Dippenaar, *The history of the South African Police*.
- 26 Brewer, *Black and blue*, 67.
- 27 Ibid., 91.
- 28 Due to space limitations I tried to highlight the less-known early beginnings of political policing in South Africa. There are, of course, many other important moments that could be discussed here, showing the kind of decisions the police made in terms of choosing to protect a government and its partisan interests versus building up the capacity for ordinary crime fighting. Keith Shear discusses conflicts over political loyalties within the police in the following articles: Keith Shear, Colonel Coetzee's war: loyalty, subversion and the South African Police, 1939–1945, *South African Historical Journal* 65(2) (2013), 222–248; and Keith Shear, Tested loyalties: police and politics in South Africa, 1939–63, *Journal of African History* 53(2) (2012), 173–93. Other important moments are the militarisation of the police through its participation in South Africa's counter-insurgency border wars. For more detail on these developments see, for example, Gavin Cawthra, *Brutal force: the apartheid war machine*, International Defence and Aid Fund, 1986; and Kenneth Grundy, *The militarization of South African politics*, Oxford: Oxford University Press, 1994.
- 29 Anthea Jeffery, *Riot policing in perspective*, Johannesburg: South African Institute of Race Relations, 1991.
- 30 Brewer, *Black and blue*.
- 31 The same analysis does not apply to the apartheid rule of coloured areas, where police played a much more crime control-oriented role, but in the process subjected coloured families, especially coloured men, to a carceral/reformatory regime. See Steffen Jensen, *Gangs, politics and dignity in Cape Town*, Oxford, Johannesburg and Chicago: James Currey, Wits Press and University of Chicago Press, 2009.

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- 33 Kelly Gillespie, Myopic justice: ‘mob’ killings and the surge in popular punishment, paper presented at the Wits Anthropology Seminar, Johannesburg, 20 March 2014.
- 34 Julia Hornberger, From General to Commissioner to General: the state of popular policing in South Africa, *Law and Social Inquiry* 38(3) (2013), 598–614; Julia Hornberger, *Policing and human rights: the meaning of violence and justice in everyday policing in Johannesburg*, Law, Development and Globalization Series, London: Routledge, 2011.
- 35 Also see Gail Super’s article in this edition of SACQ.
- 36 Hylton White, A post-Fordist ethnicity – insecurity, authority and identity in South Africa, *Anthropology Quarterly* 85(2) (2012), 397–428.
- 37 Hornberger, *Policing and human rights*.
- 38 As this is a paper about public order policing, I will not go into too much detail on the complexities of domestic violence and, of course, that it not only happens among married heterosexual couples.
- 39 Antony Altbeker, *The dirty work of democracy. A year on the streets with the SAPS*, Johannesburg and Cape Town: Jonathan Ball Publishers, 2005; Julia Hornberger, ‘Matsiaan-Pa dockets’: negotiations at the boundary between the private and the public, in Gorgio Blundo and Pierre-Yves Le Meur (eds), *Governance of daily life in Africa*, Leiden: Brill Press, 2009; Jonny Steinberg, Policing state power and the transition from apartheid to democracy.
- 40 We can also see this idea of development by proxy with regard to the recently held Khayelitsha Commission. The situation in Khayelitsha is about more than just policing, with unemployment and a lack of development also playing a role.
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- 42 Von Holdt, Langa, Molapo et al., *The smoke that calls*.
- 43 Chance, Nqobile’s ‘sacrifice’.
- 44 Donatella Della Porta & H Reiter, *Policing protest: the control of mass demonstrations in Western democracies*, Minneapolis: University of Minnesota Press, 1998.
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- 50 Robert Reiner, *The politics of the police*, 4th ed, Oxford: Oxford University Press, 2010.
- 51 P A J Waddington, Policing of public order: editorial, *Policing* 1(4) (2007), 375–79.
- 52 Note that, according to a strict application of the rule of law, most protests would be illegal as they rarely get the approval of the relevant municipality or councillor.
- 53 Nathi Mthethwa, To protest is a democratic right, to protest violently is a criminal act, advert, *The Star*, 17 February 2014.