

# Making further inquiries

## Policing in context in Brixton and Khayelitsha

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*Only rarely do inquiries into policing investigate the social context within which it takes place. This article looks at two inquiries that chose to take on this task: Lord Scarman's into the Brixton disorders in London in April 1981; and Justice Kate O'Regan and Advocate Vusi Pikoli's into the current state of policing in Khayelitsha in the Western Cape. It argues that they should be applauded for doing so, but draws attention to how difficult it can be to persuade governments to address the deep-rooted social and economic problems associated with crises in policing rather than focus on reforming the police institution, its policies, procedures and practices.*

In his book *The politics of the police*, the British police scholar, Robert Reiner, makes the point that 'the police are marginal to the control of crime and disorder' while 'public peace and security are primarily a function of deeper processes in political economy and culture'.<sup>1</sup> He argues that indulging in what he calls 'police fetishism' – the assumption that the police are the 'thin blue line' that preserves society from dissolving into a state of violent chaos – is implicit in most if not all public discussion of policing, and a good deal of academic writing on the subject too.<sup>2</sup>

It is also widely recognised that their relationship with the public – the people who are policed as well as those on whose behalf policing is done – is critical to everything that the police do. This view is shared by observers whose perspectives on policing differ sharply in other respects. Thus the 'broken windows' theorists George L Kelling and James Q Wilson

emphasised that scarce police resources need to be deployed to support citizens in neighbourhoods at 'the tipping point' where public order is 'deteriorating but not unreclaimable'.<sup>3</sup> Herman Goldstein, the founding father of problem-oriented policing, insisted that the police should focus on problems identified by the communities they serve, and seek to mobilise the public in resolving them.<sup>4</sup> Writing in 1979 as an Assistant Commissioner of London's Metropolitan Police, John Alderson argued that providing 'leadership and participation in dispelling criminogenic social conditions through co-operative social action' was one of 10 objectives for police in a free society.<sup>5</sup>

Similar considerations are relevant at a societal level. Looking forward to the post-apartheid era in South Africa in 1994, John Brewer argued that the legacy of oppressive colonial policing could not be overcome in the absence of a wider process of social change. 'No amount of police reform' would, he wrote, 'alter the nature of police-public relations' unless the 'structural inequalities and problems of South African society' were addressed.<sup>6</sup>

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There is then a large measure of agreement over the need to recognise three things: the limitations of the police (and, to be more specific, the public police) as guarantors of order in the face of social forces well beyond their control; the centrality of the relationship between the police and the public to effective policing; and the urgency of social and economic change if meaningful police reform is to be achieved. So it is surprising how rarely inquiries into policing take account of the social context within which policing is done, and attend to the social conditions that gave rise to the issues the police have been charged with investigating.

## Case studies

The purpose of this article is to look at the work of the Commission of Inquiry into Allegations of Policing Inefficiency and a Breakdown in Relations between SAPS and the Community of Khayelitsha ('O'Regan/Pikoli'), which attempted to do this,<sup>7</sup> and to compare its efforts to set policing in its social context with those of the inquiry into the Brixton disorders conducted by Lord Scarman in 1981 ('Scarman').<sup>8</sup> These two inquiries have been chosen as case studies because, though they took place over 30 years apart and focused on policing in cities (Cape Town and London) on different continents in countries (South Africa and the United Kingdom) with contrasting, if overlapping, histories, they have much in common. Both were set up in response to what seemed to be a chronic breakdown in trust between police and policed (albeit with more or less acute symptoms); and both were led by senior members of the judiciary (one a recently retired judge of South Africa's Constitutional Court, the other a serving member of what was until 2009 his country's highest court, the House of Lords).

Scarman was asked to inquire into three days of public disorder on the streets of inner city London in which 279 police officers and at least 45 members of the public were injured; O'Regan/Pikoli into complaints of inefficiency and a breakdown in relations between the community and the police in what apartheid-era administrators liked to call a 'high density township'. Both inquiries decided to set the policing issues they had been asked to consider in their social context. O'Regan/Pikoli devote one

of their report's 15 chapters to 'understanding the context of Khayelitsha'; parts II and VI of Scarman's nine-part equivalent are concerned with 'social conditions' and 'the disorders and social policy' respectively.

The approach adopted by O'Regan/Pikoli, and by Scarman, can be contrasted with the narrower scope of inquiries into the fatal consequences of events at the Marikana platinum mine in South Africa's North West province in August 2012 and the death of the black teenager Stephen Lawrence on the streets of Eltham in south London on 22 April 1993.<sup>9</sup> The Marikana Commission of Inquiry, chaired by a retired judge of the Supreme Court of Appeal, Ian Farlam, noted the 'squalid' conditions prevailing in Nkaneng and other informal settlements around the mine, but was more concerned with a forensic dissection of the mine owner's obligations to provide housing to its workers under the terms of a legally binding 'social and labour plan' than with detailed analysis of the workers' circumstances and what might be done to improve them.<sup>10</sup> Though it identified 'institutionalised racism' (of which more below) as an important factor in the Metropolitan Police Service's mishandling of the investigation of his death, the Stephen Lawrence Inquiry (also led by a retired judge) has been criticised by one well-placed observer for failing 'to place [the murder] in the broader historical context of black/police relations' and disconnecting it from 'the local contexts of racial violence'.<sup>11</sup>

## Commissions of inquiry

Part of the explanation for this unwillingness to explore the social context of policing may lie in the nature of commissions of inquiry, defined by Raanan Sulitzeanu-Kenan as time-limited institutions external to the executive but set up by a government or a minister at her/his/its discretion and charged with the principal task of investigating past events.<sup>12</sup> At times of crises, he suggests, inquiries are seen as 'possessing the unique capacity to provide an impartial assessment, and bring certainty and closure in situations of doubt and conflict'.<sup>13</sup> They serve as 'instruments of accountability and policy learning'.<sup>14</sup> But, in doing so, they represent a threat to politicians playing a 'high-stake game of political survival' in which avoiding blame for the event or crisis under

investigation may be as urgent a priority as finding out what happened, or making sure that it does not happen again.<sup>15</sup>

For the pragmatic politician establishing an inquiry into an aspect of policing, the advantage of limiting its scope to the police – a bureaucratic organisation staffed by a disciplined body of public servants – may appear obvious. Deftly conducted by someone with a suitably safe pair of hands, an inquiry may serve to shift the focus of government policy from issues of social structure to what at least appears to be a less intractable set of problems to do with the direction and operations of the police. In this ideal world, the police can be both blamed for what went wrong and made responsible for putting things right. Without being too cynical about the motivations of those behind the O'Regan/Pikoli and Scarman inquiries, it is tempting to see this kind of thinking behind the terms of reference they were given, the way those mandates were interpreted and, more obviously in the case of Scarman, government's response to their findings. The appointment, terms of reference, findings, recommendations and impact of these two inquiries are the subject matter of the next three sections of this article.

## Appointment and terms of reference

The background to the appointment of the O'Regan/Pikoli and Scarman inquiries has been referred to briefly above. A little more needs to be said at this point if their appointment and the task with which they were entrusted are to be understood.

The O'Regan/Pikoli inquiry was appointed by Helen Zille, the Premier of the Western Cape, on 24 August 2012 to investigate allegations of:

- Inefficiency on the part of the South African Police Service (SAPS) operating from the three police stations in Khayelitsha and in the area more generally
- A breakdown in relations between the Khayelitsha community and members of the SAPS<sup>16</sup>

These allegations had been made by non-governmental organisations (NGOs) working in Khayelitsha. The NGOs referred to eight cases that illustrated the problems with policing in the area.

They ranged from inadequacies in visible policing to shortcomings in the investigation of crime (particularly crime committed against foreign nationals, lesbian, gay, transgender and inter-sex [LGBTI] people and members of other vulnerable groups) and the response to specific policing challenges such as illegal liquor outlets, youth gangs, vigilantism and domestic and sexual violence.

The commission was appointed under section 1 of the Western Cape Provincial Commission Act 1988 (10 of 1988) and was intended to give effect to powers contained in section 206(3) of the Constitution, permitting provinces to, among other things, 'oversee the effectiveness and efficiency of the police service' (section (3)(b)) and 'promote good relations between the police and the community' (section (3)(c)). The somewhat fractious relationship between the African National Congress (ANC) administration at national level and the opposition-led government of the Western Cape, combined with the fact that, under the terms of section 206(1) of the Constitution, policing is primarily but not exclusively a national competence, meant that the commission's appointment soon became mired in political and legal wrangling. The dispute between the two levels of government was only resolved when the Constitutional Court ruled that:

[W]hilst a province has no control over the policing function, it has a legitimate interest that its residents are shielded from crime and that they enjoy the protection of effective, efficient and visible policing.<sup>18</sup>

It was common ground between the parties to the case that, under section 206(5), establishing a commission of inquiry was a constitutionally proper way of pursuing that interest and O'Regan and Pikoli were eventually permitted to complete their investigation.<sup>19</sup>

What is important to note from this is that O'Regan/Pikoli's mandate was derived from constitutional provisions that relate specifically and exclusively to the police. They were not asked to conduct a more broadly based inquiry into whether residents of Khayelitsha were being afforded the socio-economic rights set out in Chapter 2 of the Constitution (the Bill of Rights) relating to housing (section 26), health

care, food, water and social security (section 27) and education (section 29).

Equally significant is the question of political responsibility for the police, and where the blame for any shortcomings in their performance would lie. The effect of sections 205–207 of the Constitution, confirmed by the Constitutional Court in *Minister of Police and Others v Premier Western Cape and Others*, is that national government in the shape of the minister of police ‘must determine national policing policy’ (section 206(1)). The national commissioner appointed by the president must then exercise control over, and manage the police service in accordance with that policy (section 207(1) and (2)). From the point of view of the premier of the Western Cape, most, if not all, of the blame for any crisis in policing in Khayelitsha that O’Regan/Pikoli might find would lie with her opponents in the ANC, and the national minister of police in particular. A wider ranging investigation into social conditions for which the provincial government could also be held responsible might prove more awkward, but for the premier, establishing an inquiry into policing must have seemed a relatively safe political bet.

The constitutional and political background to the appointment of Scarman’s inquiry into the Brixton disorders of 10 and 12 April 1981 could hardly be more different. The disorders took place almost two years after the election in May 1979, with a majority of 43 seats in the House of Commons, of the first Conservative government led by Margaret Thatcher. As Scarman himself acknowledged in his report, 1981 was a time of ‘general economic recession’ and the polling company, Ipsos MORI, records that, in March of that year, the month preceding the Brixton disorders, public satisfaction with Thatcher’s government was at its lowest ebb.<sup>20</sup> Britain’s famously unwritten constitution and highly centralised system of government made it almost inevitable that her government would sustain some political damage resulting from an inquiry into the disorders, particularly insofar as the social effects of its radical economic policies were implicated in the origins of the disturbances. It may well have been that, by indulging in what Sulitzeanu-Kenan calls a ‘venue alteration exercise’, replacing a more volatile critical audience (the media, opposition politicians and the

public) with the more predictable one of a judge-led inquiry, the government was merely choosing the lesser of two evils.<sup>21</sup>

The constitutional position was also relatively clear. Under arrangements unique to the Metropolitan Police, the Home Secretary, William Whitelaw, was responsible for policing in London not just as the government minister responsible for the police nationally, but also as the local police authority for the Metropolitan Police District. These arrangements were to be hotly debated throughout much of the next decade but, as things stood in 1981, political responsibility for policing in Brixton lay squarely with the home secretary. His response to events in Brixton was to establish an inquiry under section 32 of the Police Act 1964, which provided that the home secretary ‘may cause a local inquiry to be held by a person to be appointed by him into any matter connected with the policing of any area’.<sup>22</sup> Scarman’s terms of reference were straightforward: ‘to inquire into the serious disorder in Brixton on 10 to 12 April 1981 and to report, with the power to make recommendations’.<sup>23</sup> Though his inquiry was established under legislation providing for the governance of the police, he was invited, at least by implication, to range more widely in investigating the origins of the disorders. Unlike O’Regan/Pikoli, Scarman’s terms of reference made no explicit, and possibly constraining, references to the police institution. While the SAPS looms large in the mandate of the former, the Metropolitan Police is not mentioned in the appointment of the latter.

## Findings

Scarman’s response to this brief was bold. He made the case for understanding policing in its social context in the introduction to his report in a passage that deserves to be quoted in full:

Policing policy and methods, it is obvious, reflect in part a reaction by lawfully constituted authority to the society which is being policed. A ‘Section 32 inquiry’ is primarily concerned with policing but, because policing methods operate in and are influenced by the social situation, it cannot stop at policing. In this Inquiry, therefore, I have sought to identify not only the policing problem specific to the disorders but the social problem

of which it is necessarily part. The one cannot be understood or resolved save in the context of the other.<sup>24</sup>

Although they were no more responsible for the social and economic problems besetting the ethnically diverse communities that live in inner city areas such as Brixton than other citizens, the police had to 'adjust their policies and operations ... with imagination as well as firmness'.<sup>25</sup> If they did not, Scarman feared that 'disorder [would] become a disease endemic in our society'.<sup>26</sup>

The profound and wide-ranging nature of Scarman's concerns about social conditions in Brixton was evident throughout Part II of his report.<sup>27</sup> As he described it, Brixton in 1981 was a once prosperous, now decaying, commercial and residential centre with very serious housing problems and a lack of recreational facilities appropriate to the needs of young people forced into the idleness that goes with unemployment.<sup>28</sup> The people of Brixton were more likely to be young, working class and transient than in either the rest of London or in the London Borough of Lambeth, the local authority area of which Brixton formed (and still forms) part.<sup>29</sup> They were more likely to be members of a one-parent family and to suffer from mental illness or have a mental or physical disability.<sup>30</sup> Finally, and perhaps most significantly for the debate that swirled around the disorders and Scarman's response to them, Brixton was one of the most ethnically diverse parts of London: 36% of the population of its five council wards was 'non-white', rising to 49% in two of them.<sup>31</sup> Moreover, in the two wards at the centre of the disturbances, black people of West Indian or African origin formed 30% of the total population, but as many as 40% of 0–18 year olds and 50% of those between the ages of 19 and 21.<sup>32</sup>

Scarman offered a stark analysis of the state of the black community in Brixton, leading one critical commentator to accuse him of adopting a 'pathological approach' and downplaying the impact of both police and societal racism.<sup>33</sup> In summary, he found that British social conditions had fractured the extended matriarchal structure of the West Indian family, leading to high proportions of children finding themselves either in local authority care or in

households headed by a lone parent.<sup>34</sup> Young black people had been failed by the education system and lacked the language and other basic skills needed to find work in a technological age.<sup>35</sup> Combined with the effects of the 'general economic recession' and a 'contraction in the economic and industrial base of the inner city', this meant that young people generally, and black youth in particular, faced unemployment, often for long periods.<sup>36</sup>

With the benefit of hindsight, Scarman's most controversial finding was that, though young black people experienced (mainly indirect) discrimination by employers in the workplace and elsewhere, Britain was not 'an institutionally racist society' – at least if that phrase was taken to mean that it was one that 'knowingly, as a matter of policy, discriminates against black people'.<sup>37</sup> Summing up, Scarman found that the black community in Brixton faced similar problems to those of their white neighbours.<sup>38</sup> But they were more severe and were exacerbated by racial discrimination.<sup>39</sup>

As a result, young black people may feel a particular sense of frustration and deprivation. Spending much of their lives on the street, they are there bound to come into contact with criminals and with the police.<sup>40</sup>

The police appeared to many young black people 'as the visible symbols of the authority of a society which has failed to bring them its benefits or do them justice'.<sup>41</sup> His conclusions on the nature of the disorders flowed from this:

The disorders were communal disturbances arising from a complex political, social and economic situation ... There was a strong racial element in the disorders, but they were not a race riot. The riots were essentially an outburst of anger and resentment by young people against the police.<sup>42</sup>

O'Regan/Pikoli made much less of their efforts to contextualise policing in Khayelitsha. Instead of explicitly asserting that problems in policing can only be seen as part of a much more extensive set of social problems, they assumed that an understanding of context is essential to the successful completion of their inquiry. The sub-headings in the chapter of their

report on 'understanding the context of Khayelitsha' give an indication of the issues they considered: geography, history, demographics, social and economic conditions and, finally, crime.<sup>43</sup>

The picture of Khayelitsha that emerges is of a place that has varying levels of disadvantage. It is home to almost half a million people, over half of whom live in informal dwellings.<sup>44</sup> Ethnically and linguistically homogenous – 98.7% of residents surveyed for the 2011 census described themselves as black/African; 89.8% spoke isiXhosa at home – over two-thirds of adults had been born in the Eastern Cape.<sup>45</sup> In some of the newer settlements this proportion rose to over four in five.<sup>46</sup> Well over a quarter of the population was under the age of 15.<sup>47</sup> On average, Khayelitsha residents had completed no more than nine years of schooling and less than 5% had a tertiary educational qualification.<sup>48</sup> Over 50% of young men up to the age of 23 were unemployed and three-quarters of all households had incomes that meant they were unable to meet the cost of food and sustain the necessities of life.<sup>49</sup> The number of households in Khayelitsha with on-site access to electricity, water and a toilet doubled between 1996 and 2011, but sanitation and street lighting remained especially contentious issues.<sup>50</sup> In spite of a small drop in crime rates per capita since 2003/4, the commission concluded that levels of crime made it unsurprising that 'a very high proportion of residents in Khayelitsha feel unsafe.'<sup>51</sup>

In short, '[deep] levels of poverty, poor levels of infrastructure and very high crime rates' made policing Khayelitsha 'profoundly challenging'; it was, the commission found, 'a particularly difficult place for [the] SAPS to operate [in]'.<sup>52</sup> If social and economic conditions provided the background to the many inefficiencies in policing identified in their report, O'Regan/Pikoli traced the roots of the breakdown in relations between the SAPS and members of the community of Khayelitsha back to its fiercely contested development in the final days of apartheid.<sup>53</sup> The SAPS's predecessor, the South African Police, had been deeply implicated in pursuing the goals of apartheid, including controlling the 'influx' of people from the rural Eastern Cape, and fostering the violence that surrounded the creation of their 'new home' outside Cape Town.<sup>54</sup>

This history imposes a particular burden on SAPS to demonstrate its fairness, even-handedness and respect for the residents of Khayelitsha in order to win the trust of the community. Unlike in other parts of the world, SAPS cannot draw on a reservoir of good will that historical acceptance of the legitimacy of police work creates.<sup>55</sup>

## Recommendations and impact

The extent to which the reports of the two inquiries made recommendations in relation to the context of policing reflected the different approaches to presenting their findings. Scarman devoted Part VI of his report to 'the disorders and social policy'. He began it by rehearsing why 'recommendations about policing ... must embrace the wider social context in which [it] is carried out' before going on to call for a more coordinated approach to tackling the problems of Britain's inner cities, as well as measures to meet the housing, education and employment needs of ethnic minorities.<sup>56</sup> He also recommended that 'positive action' (defined as 'special programmes in areas of acute deprivation') be taken to address the problem of racial disadvantage.<sup>57</sup>

Far-reaching though his proposals were in some respects, he was careful to avoid saying anything about the 'scale of resources which should be devoted to inner city or ethnic minority needs'.<sup>58</sup> This, he said, was a matter for government and Parliament.<sup>59</sup> Reflecting on the response to his report at a conference held a year after the riots in April 1982, Scarman offered an upbeat, not to say bullish, assessment. His conclusion about the disturbances, having complicated political, social and economic roots quoted earlier had been accepted as 'beyond challenge' and had 'become one of the unspoken assumptions upon which social and police reforms are discussed and promoted'.<sup>60</sup> He was pleased with the government's response to the needs of ethnic minorities, but disappointed by the continued lack of coordinated action on inner city problems and uncertain about the fate of his recommendation on positive action.<sup>61</sup>

Four years later, in 1986, at another conference held after more rioting in British cities the previous year, much of Scarman's optimism had evaporated

and he was moved to agree with another speaker, Usha Prashar, that his social and economic recommendations had not been implemented.<sup>62</sup> As Stuart Hall commented over a decade later, Scarman's findings were notable for breaking the 'prevailing law-and-order consensus' over the origins of disorder, but the social and economic reforms he had proposed were 'seriously out of key with the times and [had] triggered no significant political or policy response'.<sup>63</sup> Worse still, though his advocacy of a community-oriented approach to policing had become the dominant philosophy of police leaders in England and Wales by the end of the 1980s, his findings on racism failed to stand the test of time and were flatly contradicted in the report of the Stephen Lawrence Inquiry published in 1999.<sup>64</sup> This stated that institutional racism (defined as 'the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin') existed not just in the Metropolitan Police Service and other police services, but in other institutions across Britain.<sup>65</sup>

There is no equivalent to Part VI of Scarman's response to the Brixton disorders in the report of the Khayelitsha Commission. The recommendations set out in Chapter 15 of O'Regan/Pikoli touch on some of the problems – vengeance killings and attacks, youth gangs, unlicensed liquor outlets and domestic violence – that make policing in the area so challenging. But their emphasis is very much on the style, organisation and delivery of police services by the SAPS: on committing to community policing, reviewing the deployment of human resources and adopting a model of policing based on procedural justice.

Reaction to the O'Regan/Pikoli report after it was published on 25 August 2014 had been muted until shortly before the anniversary of its publication. Then, on 7 August 2015, Zille issued a statement giving vent to her frustration at what she evidently saw as the failure of the national Minister of Police, Nkosinathi Nhleko, to respond to it, and of the SAPS to sign a memorandum of understanding with the provincial Department of Community Safety (DoCS), clarifying their respective roles and responsibilities in relation to policing in Khayelitsha.<sup>66</sup> Such a memorandum was, she said, essential to taking action on the majority of

O'Regan/Pikoli's recommendations, although progress had already been made on community policing forum (CPF) elections, providing training to their members, bringing civil society groups together to prevent vengeance attacks and creating awareness about crimes against women and children.<sup>67</sup>

In her statement, Zille also announced that, having received no response to inquiries about the status of a 'strictly confidential' response to the Khayelitsha Commission's work handed over by the National Commissioner of the SAPS, General Riah Phiyega at a meeting on 8 June, she would make the document available to the media and the public at large.<sup>68</sup> This document, signed by Phiyega and dated 5 June 2015, but issued 'by direction of the Minister of Police', contains an uncompromising defence of the SAPS.<sup>69</sup> It criticises the commission for adding to negative public perceptions of the SAPS and dismisses its work as an unnecessary distraction: 'The commission highlighted what was already known and buttress [sic] what the SAPS has been talking about all along and dealing with.'<sup>70</sup> There is little evidence in the SAPS's response thus far to suggest that either the bitterness surrounding the commission's establishment has diminished with the passage of time, or that the ANC and national government are prepared to take sole responsibility for the social and economic conditions prevailing in Khayelitsha. On the contrary, Phiyega notes that,

[W]hile its mandate was only to investigate policing, the Commission also found that a lack of proper investment by the [opposition-run] City of Cape Town and the Provincial Government in infrastructure such as toilets, street lights and roads had made policing more difficult and increased residents [sic] vulnerability to violent crime.<sup>71</sup>

With the premier of the Western Cape and the national commissioner (with the minister, apparently, behind her) drawing their rhetorical daggers, the prospects for political consensus over the future of policing in Khayelitsha, and how the circumstances under which it takes place might be improved, appear bleak. Yet, if the response to Phiyega's document drafted by the provincial DoCS is to be believed, relationships on the ground may be rather more productive than the

political war of words would imply, as progress is already being made by DoCS, the SAPS and other role-players in turning policing in Khayelitsha around.<sup>72</sup>

## Conclusion

The central argument of this article is that, as Scarman had done over 30 years before, O'Regan/Pikoli acknowledged that problems in policing (whether they present as acute in the case of Brixton or chronic as in Khayelitsha) are only fathomable if they are set in their wider social context. The approaches adopted in the reports of the two inquiries differ: where Scarman emphasised the connection between social and economic conditions and policing as a, if not the, guiding principle of his work, O'Regan/Pikoli were more understated in their commitment to understanding the context of policing. This may well reflect differences in the salience of policing and the police institution in their respective terms of references, but it can also be surmised that these approaches owed something to the political conditions under which the inquiries were appointed. In the light of the reticence shown by other inquiries, set up under not dissimilar circumstances, the fact that both Scarman and O'Regan/Pikoli chose to address these issues at all is a testament to their willingness to seek explanations for poor policing beyond the actions of those responsible for delivering it, and to interpret their respective terms of reference in such a way as to permit them to do so.

What emerged from both inquiries was that people who lack a significant stake in society and feel that they get little or nothing from the state are likely to lack the trust and confidence in its agents on which public policing in a democratic society depends. And, at times of crisis, when people's only point of contact with the state may well be with the police – police that are seen as routinely acting against rather than for them – protests against the police and their actions become freighted with anger stemming from a much wider set of frustrations and resentments.

Although he did not say so in quite so many words, Scarman implied that genuine and sustainable police reform was impossible if the conditions under which policing was done remained unchanged. Reading the conclusions reached by O'Regan/Pikoli on the long

shadow cast by the history of Khayelitsha, and the extremely testing environment in which the SAPS currently operates, it is hard to see them disagreeing. Yet, if Scarman's experience is anything to go by, persuading governments to rethink their economic and social policies is some way beyond the compass of any ad hoc body with a mandate limited to policing. The complexities of the constitutional and political situation in South Africa, with the opposition-led City of Cape Town and Western Cape provincial government having appointed the O'Regan/Pikoli Commission against the wishes of the ANC, the SAPS and the national minister for police, make it unlikely that either side in an increasingly bitter war of words over its findings and recommendations will be anxious to tackle the contextual issues identified in their report. With political survival at stake, and the diktats of neo-liberalism so firmly implanted in the minds of early Thatcherite true-believers and more recent South African converts among the ANC and its political rivals in the Western Cape alike, the temptation to tinker with the police institution and scratch at the surface of the social problems to which it alone cannot offer a remotely adequate response becomes hard to resist.



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## Notes

- 1 Robert Reiner, *The politics of the police*, 4<sup>th</sup> ed., Oxford: Oxford University Press, 2010, 22.
- 2 Ibid., 3, 22.
- 3 George L Kelling and James Q Wilson, Broken windows: the police and neighborhood safety, *Atlantic Monthly*, March 1982, <http://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465/> (accessed 19 June 2015).
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- 5 John Alderson, *Policing freedom: a commentary on the dilemmas of policing in Western democracies*, Plymouth: Macdonald & Evans, 1979, ix.
- 6 John Brewer, *Black and blue: policing in South Africa*, Oxford: Oxford University Press, 1994, 348.
- 7 Kate O'Regan and Vusi Pikoli, *Towards a safer Khayelitsha: Report of the Commission of Inquiry into allegations of police inefficiency and a breakdown in relations between SAPS and the community in Khayelitsha*, Cape Town: Commission of Inquiry, 2014, <http://www.khayelitshacommission.org.za/final-report.html> (accessed 19 June 2015).



- 8 Lord Scarman, *The Brixton disorders 10–12 April 1981*, Cmnd. 8427, London: Her Majesty's Stationery Office, 1981.
- 9 See Marikana Commission of Inquiry, *Report on matters of public, national and international concern arising out of the tragic incidents at the Lonmin Mine in Marikana, in the North West Province [Marikana Report]*, 2015, [www.gov.za/sites/www.gov.za/files/marikana-report-1.pdf](http://www.gov.za/sites/www.gov.za/files/marikana-report-1.pdf) (accessed 21 July 2015); and Sir William Macpherson of Cluny, *The Stephen Lawrence Inquiry*, February 1999, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/277111/4262.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/277111/4262.pdf) (accessed 19 June 2015).
- 10 Marikana Commission of Inquiry, *Marikana Report*, 522–42.
- 11 Stuart Hall, From Scarman to Stephen Lawrence, *History Workshop Journal*, 48, 1999, 194.
- 12 Raanan Sulitzeanu-Kenan, Reflections in the shadow of blame: when do politicians appoint commissions of inquiry?, *British Journal of Political Science*, 40:3, 2010, 613–34, 615.
- 13 *Ibid.*, 613.
- 14 *Ibid.*
- 15 *Ibid.*, 614. See George Gilligan, Official inquiry, truth and criminal justice, in George Gilligan and John Pratt (eds), *Crime, truth and justice*, London: Routledge, 2014, 15, for an analysis of official inquiries in the field of criminal justice as fulfilling both a pragmatic/legal and a political/ideological function for the state, acting as a source of information and recommendations and constituting a governmental technique for the management of a difficult issue or range of issues.
- 16 O'Regan and Pikoli, *Towards a safer Khayelitsha*, 2–3.
- 17 *Ibid.*
- 18 Moseneke DCJ in *Minister of Police and Others v Premier Western Cape and Others* 2014 (1) SA (CC) at para 37.
- 19 *Minister of Police and Others v Premier Western Cape and Others* 2014 (1) SA (CC) at para 41.
- 20 Ipsos MORI, *Margaret Thatcher (1925–2013): public opinion trends*, <https://www.ipsos-mori.com/researchpublications/researcharchive/3158/Margaret-Thatcher-19252013.aspx> (accessed 22 June 2015).
- 21 Sulitzeanu-Kenan, Reflections in the shadow of blame, 617–8.
- 22 The same power is now set out in section 49 of the Police Act 1996.
- 23 Scarman, *The Brixton disorders*, iii.
- 24 *Ibid.*, 2.
- 25 *Ibid.*
- 26 *Ibid.*
- 27 *Ibid.*, 4–12.
- 28 *Ibid.*, 7.
- 29 *Ibid.*
- 30 *Ibid.*
- 31 *Ibid.*, 8.
- 32 *Ibid.*
- 33 Lee Bridges, The Lawrence Inquiry – incompetence, corruption, and institutional racism, *Journal of Law and Society*, 26:3, 1999, 298–322, 306.
- 34 Scarman, *The Brixton disorders*, 8–9.
- 35 *Ibid.*, 9.
- 36 *Ibid.*, 10.
- 37 *Ibid.*, 10–11.
- 38 *Ibid.*, 125.
- 39 *Ibid.*
- 40 *Ibid.*
- 41 *Ibid.*, 11.
- 42 *Ibid.*, 126.
- 43 O'Regan and Pikoli, *Towards a safer Khayelitsha*, 30–46.
- 44 *Ibid.*, 37.
- 45 *Ibid.*, 37, 40.
- 46 *Ibid.*, 37.
- 47 *Ibid.*
- 48 *Ibid.*
- 49 *Ibid.*, 37–8.
- 50 *Ibid.*, 38–9.
- 51 *Ibid.*, 45.
- 52 *Ibid.*, xxiv.
- 53 *Ibid.*, xxv, 35.
- 54 *Ibid.*, 31–5. As the report (p. 30) notes, Khayelitsha means 'new home'.
- 55 *Ibid.*, 35.
- 56 Scarman, *The Brixton disorders*, 100–12, 131–3.
- 57 *Ibid.*, 109.
- 58 *Ibid.*
- 59 *Ibid.*
- 60 Lord Scarman, An epilogue, in John Benyon (eds), *Scarman and after: essays reflecting on Lord Scarman's report, the riots and their aftermath*, Oxford: Pergamon, 1984, 259.
- 61 *Ibid.*, 260–1.
- 62 Usha Prashar, Too much talk and not enough positive action; and Lord Scarman, The quest for social justice, in John Benyon and John Solomos (eds), *The roots of urban unrest*, Oxford: Pergamon Press, 1987, 116, 128.
- 63 Hall, From Scarman to Stephen Lawrence, 189, 190.
- 64 Robert Reiner, *Chief constables*, Oxford: Oxford University Press, 1991, 125.
- 65 Macpherson, *The Stephen Lawrence Inquiry*, paras 6.34 and 6.39.
- 66 Helen Zille, *Release of classified SAPS report on Khayelitsha Commission of Inquiry report*, 7 August 2015, <http://www.gov.za/speeches/premier-helen-zille-release-classified-saps-report-khayelitsha-commission-inquiry-report-7> (accessed 23 August 2015). See O'Regan and Pikoli, *Towards a safer Khayelitsha*, 462–3, for the recommendation that a memorandum be entered into as a matter of urgency.
- 67 *Ibid.*
- 68 *Ibid.*
- 69 MV Phiyega, *The South African Police Service response to the Khayelitsha Commission of Inquiry recommendations*, 5 June 2015, 1 <http://groundup.org.za/sites/default/files/PhiyegaResponseToKhayelitshaInquiry.pdf>. (accessed 23 August 2015).
- 70 Phiyega, *The South African Police Service response*, 21.
- 71 *Ibid.*, 5.

- 72 Department of Community Safety, Western Cape Government, *Response by the Department of Community Safety (DoCS) to the comments received from the National Commissioner, South African Police Service on the Khayelitsha Commission of Inquiry recommendations (dated 5 June 2015)*, 7 July 2015, <http://groundup.org.za/sites/default/files/ZilleResponseToPhiyegaAddressedToNhleko.pdf>, (accessed 23 August 2015).