'This democracy is killing us': perceptions of rights and democracy in the South African Police Service*

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A B S T R A C T

Police reform in South Africa has been a crucial component of democratic consolidation. Yet recent research presents a contrasting set of opinions, indicating low levels of public trust in the South African Police Service (SAPS), but continued belief in their right to enforce the law, and a strong sense of isolation amongst officers themselves. As police are constitutive of the officers who populate their ranks, attention should be given to how 'democracy' is perceived by those charged with its protection. Through a series of interviews, this article examines how SAPS officers understand and experience 'democracy'. Situating officers in the broader society and communities in which they work, it shows that officers conceive of democracy predominantly through the lens of 'rights' and that their role in protecting rights is complicated by the transitional nature of South Africa's democracy. It also provides insight into a sense of disempowerment amongst officers, suggesting negative conceptions of the *quality* of democracy and of the *balance* of liberal constitutionalism with the democratic impetus of building safer communities.

Keywords: Democratic policing, rights, democracy, police, justice.

INTRODUCTION

Existing literature on democratic policing has focused on the police as an institution and, in the case of South Africa, on the South African Police Service (SAPS). To this end, valuable work has taken place to reframe policing through the lens of democracy. Yet a preoccupation with institutional reform, while valuable for the establishment of norms and standards and inculcation of organisational culture, risks overlooking the nature of the police service as an institution comprised of individuals, with their own backgrounds, perspectives and experiences. Through a series of in-depth interviews with officers themselves, as well as examination of literature on policing, this article explores how police officers understand and experience democracy, as officers and as citizens. It suggests that the subjectivities of officers with regard to democracy are shaped by their experience and observations of the exercise of freedom and by the value placed by post-1994 South Africa on the protection of individual rights.

The article seeks to contribute to a bottom-up analysis of democracy by deepening our understanding of the way in which local contexts can impact and shape popular perceptions of the democratic space. In so doing, it also hopes to contribute to a decolonised literature on democratisation which takes into account the lived realities of policing in South Africa and the intersection of history and structural inequality with the demands of legislation and policy. The analysis adds to the existing body of work on the SAPS by authors such as Altbeker (2005), Marks (2005), Hornberger (2007, 2010), Steinberg (2008) and Faull (2017a), each of whom reveals the importance of history, social complexity, personal identity and human fallibility in intersecting with the nature of police work. It also makes a contribution to literature on policing and democracy more broadly by highlighting, as Manning (2010) does, the importance of theorising police–democracy relations and the complexity of the police role in realising justice.

The article also brings to the fore the need for greater cognisance of challenges to human rights orthodoxies (Buur 2008) and the 'contradictions of democracy' (Smith 2019) manifest in transitional societies. Dominant notions of democracy, drawn largely on the experience of the global North, often overlook the challenges to democratic transition in societies where the popular will and extension of rights sit far more starkly in tension with the experience of citizens. The article does not, therefore, draw on literature on decoloniality as such, but seeks to contribute to literature from the global South that problematises dominant narratives of liberal democracy.[1] In particular, it highlights the requisite of understanding the views of rank and file police officers, not *even* when but *especially* when they do not 'fit' with accepted liberal democratic frameworks and human rights standards. The existence of an unheard set of voices from officers who comprise the bulk of SAPS personnel, demands attention if we are to understand the challenges and weaknesses in contemporary policing.

Democratic policing, according to Manning 'in some ways reflects and refracts the state and its interests' (2010: 37). If 'the legitimacy of the police', as Bradford *et al.* (2014) argue, 'is a vital element of the wider legitimacy of democratic states', this article suggests that its legitimacy stems, not only 'from assessments of and trust in its own behavior' (Bradford *et al.* 2014), but from the broader experience amongst South Africa's citizens of democracy, governance and justice.

The analysis begins by setting out the concept of 'democratic policing' and the SAPS' mandate, vision and code of conduct. It then examines the way in which SAPS officers understand 'democracy' and what it means in their everyday life and work. Identifying a predominance amongst the officers interviewed of the notion of *democracy-as-rights*, it explores the ways in which the claiming of rights shapes officers' views of the quality of South Africa's democracy and its intersection with their role in the SAPS. Drawing on the longstanding challenge in democratic theory of balancing liberty and democracy, the article highlights the tension felt by many officers between post-1994 constitutionalism and the need to make South Africa a safer place.

A NOTE ON METHODOLOGICAL APPROACH

In depth, semi-structured interviews were conducted by the author with a total of 36 officers at four police stations in the Johannesburg metropolitan area. In order to capture some of the diversity of precincts in the city, the stations covered, respectively: residential and largely middle to upper-middle class neighbourhoods with some commercial activity (station one); inner city areas of urban density and neighbouring residential suburbs (station two); a township area covering neighbourhoods of formal, informal and state-provided ('RDP'[2]) housing (station three); and a large precinct of middle class suburbs, low-cost and RDP housing development, and a substantial area of informal settlement (station four).

In terms of composition, 31 of the 36 officers interviewed were non-commissioned officers (in the ranks of Constable, Sergeant and Warrant Officer). Non-commissioned officers, overall, comprise the majority (83%) of all SAPS officers (SAPS 2017). Non-commissioned officers have regular face-to-face contact with members of the public, either on patrol, on call-out, or in the station's community service centre. Of the commissioned officers interviewed, two were Lieutenant Colonels and three were Captains. Most of the interviewees (83%) were uniformed officers, the vast majority of whom work in visible policing, while the remaining 17% work in the detective branch. All interviewees were guaranteed anonymity and, as such, their names are not referred to here. Notably, while officers often proffered views and anecdotes reflective of the crime and demographics particular to the sectors they police, on the whole their views in terms of *democracy* did not differ substantially across the four stations.

T H E　I D E A　O F　D E M O C R A T I C　P O L I C I N G

Policing scholar, David Bayley, argues that 'The most dramatic contribution police can make to democracy is to become responsive to the needs of individual citizens … A police force whose primary business is serving the disaggregate public … [demonstrates] daily and practically that the authority of the state will be used in the interests of the people' (Bayley 2001: 13–14). 'Democratic policing', therefore, provides a 'normative framework for police agencies in a democracy to adhere to' (Bruce & Neild 2005: 15). It is also a concept that, as Marenin (2000: 311) describes, 'can only be defined by standards embodied in democratic theory' but must be adapted and incorporated to 'local policing conditions and needs'.

Drawing on what has been an expansion internationally of the idea of 'democratic policing' (Marenin 2000; Bayley 2001; Sklansky 2005; Manning 2010), valuable work has taken place to instil its values in the South African context specifically. In 2007, an oversight framework for South Africa was operationalised in a document entitled 'In the service of the people's democracy: an assessment of the South African Police Service' (Bruce *et al.* 2007). Its point of departure was the concept of 'democratic policing', covering four key norms or standards: (1) operational priority to servicing the needs of individual citizens and private groups; (2) accountability to the law rather than to government; (3) the protection of human rights; and (4) transparency in activities (Bayley 2001). The document provided key areas and indicators to assess the performance of democratic policing, one of which is 'service delivery for safety, justice and security'. This includes: 'service to the public and the protection of the human rights of all'; to 'reduce crime, disorder and fear, and promote public safety'; 'bring offenders to justice'; be 'responsive to vulnerable groups'; and 'work in cooperation with other agencies and groups including active support to crime-prevention activities' (Bruce *et al.* 2007: vi). The vision of the SAPS, accordingly, is 'to create a safe and secure environment for all people in South Africa' (SAPS 2017).

In terms of the fulfilment of its mission, the SAPS also commits to a code of conduct which, while upholding the Constitution and the law, includes: 'participation in all endeavours aimed at addressing the root cause of crime; preventing all acts that may threaten the safety or security of any community; investigating criminal conduct that endangers the safety and security of the community; and bringing the perpetrators to justice' (SAPS 2017). The legislated mandate of the police service is thus one of crime prevention and investigation, law enforcement, maintenance of public order, and the security, safety and protection of rights for all people. Democratic policing, as such, is part of the post-1994 propagation of a conciliatory and rights-based order. It involves the prevention and combating of crime through upholding the law, *alongside* the guarantee and protection of individual rights and freedoms.

Despite this overarching framework of democratic, service-oriented policing, the pervasiveness of crime has shifted the SAPS towards a greater law-enforcement focus and a more aggressive approach to policing. Such a stance is, of

course, a consequence of realities in South Africa – a country beset by extreme structural inequality and continued high levels of violent crime. Yet it also brings to the fore the challenge of balancing *liberty* and *democracy*: protecting rights and freedoms (and thus limiting the police's use of force), while locating policing as a public service, responsive to issues of community safety.

Democratic theory has celebrated the centrality of rights to democracy's foundation: Indeed, mechanisms and provisions for their protection have become synonymous with democracy itself. Yet, as Smith (2015: 342) argues, the acceptance of rights is not inevitable and their effects not necessarily progressive. Rights are, in fact, being contested as a foundational value of democracy. Buur (2008: 573) also suggests that challenges to human rights in South Africa are not merely a response to the application of the law (and thus the failure of the state) but a challenge to the very correctness of the law itself.

This article extends this analysis to the implications for democratic policing: by examining the intersection between *rights* and *democracy* through the lens of police officers themselves, it brings to the fore concerns about the meaning and substance of democracy often overlooked in democratic theory, and the popular challenge to liberal values shaped by lived experience of the democratic space.

MEANINGS OF DEMOCRACY

In asking SAPS officers about their conceptions of 'democracy', it was notable that this did not automatically precipitate the idea of the election of government. Most interviewees related democracy to the notion of freedom and equality, including political choice and association. Political rights and multipartyism, however, did not appear as the most relevant aspects for policing. Incidentally, Afrobarometer's (2015) national survey of South Africans found that, for only 8% of respondents, did democracy meant voting, elections and/or multi-party competition. Several officers in my study, however, associated democracy with socio-economic as well as political rights, referring to the importance of basic needs provision such as sanitation, housing, education and jobs. As one Warrant Officer remarked, although democracy is 'rule according to the will of the people … [it also] goes hand in hand with delivering' (WO5 2018, Int.).

For the majority of officers, the experience of democracy was inconsistent, especially when viewed from their broader perspective as citizens. Over a third referred to the problem of government corruption and/or a lack of delivery as deficits of democracy. The same Warrant Officer referred to above, remarked: 'I do see democracy but not to the full extent. The government has promised a lot of things that they're not fulfilling and they've never fulfilled' (WO5 2018, Int.). Another Warrant Officer, for whom democracy was about putting citizens first, remarked: 'This has failed. The leaders and politicians are only concerned about themselves … democracy has failed people, they've failed us' (WO3 2018, Int.).

Notably, many officers identified the inadequacies of democracy in their own home communities and neighbourhoods, not just those in which they work. A young female Constable at station three, who had joined the SAPS in 2009, remarked: 'Where I stay, things take long to be done. The only time they [the government] are going to do something is maybe when it's towards the elections … But besides, you need to protest and protest and protest. Without the protest, ahh, [they think] everything is fine. So I wouldn't say the government is doing much' (C8 2018, Int.). Another Constable similarly remarked, 'This democracy, it's just talking' (C14 2018, Int).

At stations three and four, where incidents of community protest over service delivery are common, officers were largely sympathetic to the demands of protestors and their need to be heard by government. Many officers who join the SAPS do so to put food on the table, and are by no means immune to the social and economic challenges affecting South Africans. Based upon his research in Cape Town, Faull (2017a: 39) highlights that SAPS officers 'are recruited from and often remain residents of some of South Africa's most violent and precarious communities'. As such, 'narratives of hardship, unemployment, violence and crime are part of many officers [sic] lives long before they join the SAPS' (Faull 2017b: 4).

In contrast to Steinberg's research on the SAPS in Johannesburg, in which 29 of the 37 officers he interviewed (78%) had bought houses in the suburbs after joining the SAPS (Steinberg 2012b: 351), my own research, notably, did not reveal such a suburban–township divide between officers and the communities they serve. Amongst my interviewees, 55% either stayed in the township in which they grew up, or had moved from another province to a township in Gauteng. It is notable that one Sergeant, who lived in a township but worked at station one, serving a suburban and largely middle class community, remarked on the starkly different service received at suburban versus township police stations. While he said that he enjoyed his job and worked hard to serve the community in which he worked, he remarked that he would never expect the same level of service at his own local police station (S1 2018, Int.). This, for him, reflected the inequality of South Africa's democracy and his own lack of access to the very rights that he spent his time ensuring were received by others.

From this perspective, understandings of democracy held by SAPS officers do not seem vastly different to those we might hear from many South Africans. In a nationally representative survey carried out by Afrobarometer (2015), 48% of people described democracy as relating to civil liberties and/or personal freedoms. Research also suggests that South Africans are much more likely than citizens of other African states to emphasise 'the realisation of socio-economic outcomes as crucial to democracy' (Mattes *et al.* 2000). Amongst my interviewees, more junior police officers and those who work in poor communities, not unsurprisingly, linked democracy more directly to the provision of basic needs, educational opportunities and socio-economic development than did those in higher ranks. Yet, what was particularly notable was the additional

'rights' inflection given to democracy by officers across all of the stations and ranks, especially, but not exclusively, when they reflected on the intersection between democracy and police work. A clear theme highlighted by over half of my interviewees was the notion that democracy had given people license to do what they want.

DEMOCRACY AS RIGHTS, RIGHTS AS LICENSE

Existing research suggests the presence of opinion in the police that criminals have too many rights (Faull 2017b): that the prevention and combating of crime through law enforcement is stymied by the protection of the rights of offenders. However, amongst my interviewees, this was interestingly located in a broader discourse that saw South Africa's democracy as granting too many freedoms without responsibilities. A running theme was that rights were abused or taken advantage of. At station two, one Sergeant – a single mother who had been in the SAPS for 15 years – located rights, firstly, in relation to equality: for her, this had a positive impact, particularly as a female now able to enter a previously male-only profession. It included freedom of movement and being able to own her own home (S4 2018, Int.). However, she counter-balanced this with the negative impact of rights in the wider context of society, community and family:

People must know that democracy is working in hand with responsibility … Even if I do things, I have to be responsible for everything I'm doing … Because most of the time you find that some of our children are going out of hand now because [of] democracy …. I don't know if it's a democracy because children can say that I want to do this, I don't want to do this. And then at the end, because we don't know exactly what democracy means, we end up misleading ourselves, doing the wrong things, and not taking responsibility for what we are doing. (S4 2018, Int.)

In this way, rights were perceived as being in some way responsible for societal breakdown, for a decline in accepted responsibilities and for challenging established lines of authority. A Warrant Officer at station three, who joined the police in 1991, remarked that he had seen positive transformation in the SAPS as a result of democracy. However, while he conceived of democracy as being free to do what you want, he emphasised that this must be within the confines of the law. As he saw it, 'People today just do what they want, they have too many rights' (WO4 2018, Int.).

A Warrant Officer at station three, who lived in a neighbouring township felt that communities needed to be taught what democracy means and what it involves: 'At the moment, the government and the educated are the only ones who understand it. In the community, there's lack of schooling, drop-outs, drugs, *nyaope*[3] … The community see democracy as doing what they want. It's freedom to do what they like and then they clash with police' (WO5 2018, Int.). His comment was both an indication of a degree of resentment towards government and its 'rights' commitments, which make policing

harder, and of officers' proximity to the challenges facing poorer communities. The prevalence of drugs, in particular, and the ease with which they had entered the country since 1994 and exacerbated social decay, was lamented by many interviewees. Yet his reflection also signals the perceived incompatibility of democracy in its liberal form and the reality of life on the ground.

It is not surprising that the problematic nature of rights was frequently related specifically to offenders. These reflections related to the challenge of preventing crime, enforcing the law and achieving justice in the context of the legally guaranteed rights of suspects and defendants. It is here that the views of SAPS officers are perhaps most controversial. In the context of a commitment to constitutional rights standards, officers' views appear both unduly punitive and unavoidably anti-rights. As such, their perspectives can easily be attributed to moral and political conservatism. A handful of participants in my study certainly carried nostalgia for a more centralised society when police officers were respected, punitive measures could more easily be taken, and police work wasn't constrained by the demands of democracy. Faull (2013: 10–11) also reports a similar idealising of the past. One Sergeant in this study, who only joined the SAPS in 2002, also felt that punishment, safety, and respect for the police was greater before 1994 (S1 2018, Int.).

More common in my interviews, however, was a sense of frustration and disempowerment amongst officers in being charged by the democratic government with the responsibility of providing safety while being constrained by the same government from doing so. A Lieutenant Colonel at station one, who joined the SAPS in 1994, described the challenge as follows:

[There is a] misunderstanding that people have to say that I have rights [and] I forget that the other person has got the same rights that I have. Now that's where you will find that people are doing things and claiming rights that come with democracy. They forget, whatever rights they have, the other person does have those rights. Now, if people were respecting those rights along those lines, then we were going to have a peaceful country … [But] people want to kill; they are killing, unfortunately. And, out of that they will claim a right to life, having taken somebody's right to live. Now, people do commit crimes and then they will claim that they have got the right to bail. They will claim all these rights that they already contravened of other people's. (LC1 2018, Int.)

His view was not uncommon. Officers' perspectives on rights and their impact on police work were linked to the SAPS' mandate to address the root cause of crime; prevent acts that threaten the safety or security of communities; investigate criminal conduct; and bring perpetrators to justice (SAPS 2017). The perceived challenge posed by rights to the SAPS' ability to do its job was, notably, not peculiar to veteran officers, but could be found amongst more recent recruits and non-commissioned officers. According to Bruce's research, 'a large proportion of SAPS personnel are now people who have joined since 1994, and particularly since 2002' (Bruce 2013: 17). Generational difference or a resistance to change are therefore not sufficient factors in explaining the incongruity in

individual positions and the formal commitments of policy statements. Of the officers interviewed for this study, 58% joined the police after 1994.

Complaints about the rights of suspects and offenders, while certainly difficult to hear, are reflective of what Hornberger (2010) has described as the 'incongruity' of everyday policing realities and the liberal, human rights frameworks of policy experts. Shearing & Marks (2011: 132) highlight the importance of understanding the police's 'working reality', especially in periods of transition 'when police are expected to act differently in response to legal and policy changes that they (generally) had no place in creating'. The idea of transition applies both to the broader reform of the police post-apartheid and to the incomplete adaptation of the SAPS to a culture of rights-based policing.

Comaroff & Comaroff (2006: 24) highlight the emergence in South Africa of what they call a 'fetishism' of the law and constitutionality. They describe South Africans as drawing on their democratic Constitution – '*the* populist icon of nationhood' (2006: 24) – as their 'lingua franca', 'at the same time as they bemoan the criminal violence that imprisons them in their homes and mock the freedoms conferred by the new democracy' (2006: 25). In the context of an upsurge in legal and rights-based claims, the upshot, they suggest, 'is that people, even those who break the law, appear to be ever more litigious' (2006: 25). It is thus quite possible that, as South Africans find their material and socio-economic rights unmet, they seek, at least, to claim the procedural. Yet the broader argument proffered by Comaroff & Comaroff, is that this recourse to 'lawfare' (or political battles fought through the courts) has become a tool of the powerful (2006: 26–31): rights have sometimes been employed in post-colonial societies to accomplish political goals or to 'launder brute power in a wash of legitimacy' (2006: 31). From the perspective of SAPS officers, for whom rights are perceived as disadvantaging the broader public and those they are intended to protect, democracy must appear starkly paradoxical.

On the one hand, some officers' grievances about rights related to amendments to Section 49 of the Criminal Procedure Act, in which the use of force must be both reasonably necessary and proportional (Gordon 2006: 167). Police are thus required to exercise judgement in the absence of a legislative safety net. One Warrant Officer at station two saw the restriction on the police's use of firearms as impacting negatively on victims' rights: 'Democracy can make your life difficult … You have to chase after a criminal, you can't shoot him. But the criminal has a weapon and he turns on you. Because you can't shoot the criminal, you can't protect the victim. And it becomes the police's fault' (WO3 2018, Int.). Another officer at the same station, remarked:

[Democracy] is not working as such, not working for us … because you, as a police officer, your duty is to prevent crime. So, by preventing crime it means you must stop the crime before it happens. You see this person and he's got, let's say, a sharp object or he's got a hammer in his hand. He's going to break somebody's skull. But you can't, you can't act. (CAP1 2018, Int.)

These comments are reflective of a view that legislative restrictions on the police's right to shoot have essentially given criminals the upper hand. While many officers view the restricted use of firearms as an obstruction to their role in crime prevention, Faull (2017*a*) highlights that the South African police still kill at a staggering rate.[4] Yet while we might agree with restrictions on the use of firearms – not only for the protection of human rights but as an absolute requisite for the contraction of violence – it was clear from my interviews that officers experience this as disempowering. Another female Sergeant at station two, who joined the SAPS in 2006, pointing to her firearm, remarked: 'You are carrying this heavy thing but you can't use it. You use that and then they turn it against you. What do you call that? Is that democracy? It's not democracy, no it's not democracy' (S5 2018, Int.). Accompanying her story was a feeling of isolation and that the government was doing nothing to protect them.

Democracy or fighting crime?

SAPS officers' attitudes to democracy are a permutation of their individual experiences of accessing and exercising their own rights and of observing the exercise of freedoms by others. For many interviewees, at the intersection of their public and private roles was the surfacing of a clear tension between democracy and fighting crime. Even for officers who agreed that they saw democracy in action – in their personal circumstances, in the transformation of the SAPS, or through freedom of movement and opportunity – a feeling of disempowerment moved with them from their private to their professional lives. It was clear that a number of officers felt let down by the SAPS, by government and by democracy. Expressing a view that surfaced several times during this research, one officer remarked, 'this democracy is killing us' (PO1 2018, Int.).

Liberty or democracy?

The presence of a tension in the dual tasks of democracy and fighting crime are perhaps usefully understood through a framework of liberal democracy. In democratic theory, liberal democracies contain an important tension, between popular enfranchisement that enables rule by the people, and the principle of individual liberty that provides 'individual autonomy and dignity against coercion' (Zakaria 1997: 26). As such, liberal democratic states accept that government power must be limited in order to protect what are understood as people's natural, or 'inalienable', rights (Zakaria 1997: 26).

In policing, the balancing of liberalism and democracy has largely been encountered in the principle of police independence (Wood 2016). Police forces have sought to balance their independence from political influence with the need for police accountability to citizens and to a democratic elected government (Reiner 2013; Wood 2016: 150). As such, while liberalism provides for a degree of police independence and the recognition of individual rights,

democracy balances this by simultaneously bringing policing within a broader project of democratic authority (Sklansky 2005). Liberal values, moreover, while empowering the police through independence, simultaneously constrain the police by providing for the protection of human rights (Wood 2016: 156).

Dominic Wood's work on the British police highlights the danger of the liberal ideal of police independence ironically having the potential to produce what Fareed Zakaria (1997) refers to as *illiberal democracy*: 'a society in which people are given a say on public matters but without safeguarding the rights of minorities' (Wood 2016: 150). This is a caution no less relevant to South Africa. If, as the data for this study suggest, officers perceive that people have too many rights, what will prevent the emergence of a form of policing responsive to majority opinion without safeguarding individual and minority rights? South Africa's history itself plays a critical role: collective struggle against apartheid generated for many of its participants a vision of a mass democratic future. It also generated, as Smith indicates, 'a new moral imagination of what the law should be' (2019: 24).

The liberal democratic tension is therefore complex and, as democratic theorist Bobbio (1990) highlights, democracy by no means guarantees liberalism. Indeed, the uneasy coexistence of the *liberal constitutional state* and *policing* – the latter characterised by unconstrained power to protect collective welfare – is highlighted by Dubber (2005). Dubber likens the police role to the patriarchal management of the household and its collective welfare. While the modern definition of justice has become bound by law and liberal institutions, the state itself continues to exercise collective control and power through the police – an institution that has emerged from a longer history of unconstrained power for a collective good (Dubber 2005). The longstanding challenge for democratic theorists, therefore, is the balancing of liberalism and democracy. In the course of my interviews, this tension was particularly felt in the dual imperatives of defending freedoms and fighting crime.

At the outset of the data collection for this research, one Lieutenant Colonel in visible policing suggested to me that I would hear 'a very negative view of democracy from police officers' (LC2 2018, Int.). On the whole, he wasn't wrong. However, I am reluctant to believe that these are the perspectives of officers alone. Police, as Altbeker notes, 'are not separate from their society': 'the nature of a police force and its work reflects the society of which they are a part. The result, their successes and failures are the successes and failures of the whole social order' (Altbeker 2005: 7). Altbeker's is a fascinating and uneasy read into the everyday duties of officers and the lives of South Africans, in which he describes police as doing the 'dirty work of democracy'. Applying the work of Egon Bittner, he notes: 'It is police officers who are called in when something that ought not to be happening nevertheless is happening or has happened. It is to them that we turn when our society has failed in some way, and as a result they spend much of their day poking through our nation's viscera' (Altbeker 2005: 7). The nature of police work, thus, 'breeds cynicism and disenchantment' (Altbeker 2005: 9). Distrust of

democracy and suspicion of its protection of rights is therefore unsurprising, especially if officers regard their duty to reduce crime and bring perpetrators to justice as being sabotaged by liberal constitutionalism.

Research by Steyn & Mkhize (2016) has revealed a strong sense of isolation and cynicism amongst SAPS officers, linked to a lack of trust in and connection with members of the public and the communities they serve. Yet, citizen surveys in South Africa continue to flag crime as one of the top three priorities for government to address (Afrobarometer 2015). Although public trust in the SAPS remains low (Afrobarometer 2016; Stats SA 2017), and perceptions of high levels of police corruption abound (Corruption Watch 2012; Afrobarometer 2015), recent data still suggest that most people (74%) agree that the police always have the right to make people obey the law (Afrobarometer 2015).

South Africans also show an inclination for austere penal measures – what Faull describes as a 'disciplinary bent' (2017a: 68). A 2013 survey, for example, revealed that 76% of 18–34 year olds support a reinstatement of the death penalty (SAPA 22.2.2013) – a view made known again more recently in 2019 amidst the public response to South Africa's abhorrent levels of violence against women and children (*Business Tech* 3.9.2019). The procedural and the punitive, therefore, often stand in tension. Smith, for example, highlights how the popular struggle against apartheid, which included the emergence of informal justice exercised by citizens, propagated a view that the law under a democratic state would be 'an expression of popular sovereignty' (Smith 2019: 24) – not necessarily an impartial tool of rights protection.

Continued public fear and experience of crime has thus triggered a tougher response from government. South Africa's Police Minister, Bheki Cele, is known for his hard-line stance on criminals and intolerance of violence against police officers. Following the release of the SAPS annual crime statistics for 2017/18 – showing increases in murder, rape and sexual assault – Cele's statement to the Portfolio Committee on Police in Parliament likened the situation to a 'war zone' (*Business Day* 11.9.2018). Yet, while the re-emergence of a militarised language of policing might stand in tension with the left-liberal discourse of justice, it nonetheless indulges a popular appetite for punishment and responds to public demand. Research by Bradford *et al.* (2014: 254) has shown that, in contrast to findings from the UK and USA, where police legitimacy is founded largely on public judgements as to the *fairness* of police behaviour, in South Africa, police *effectiveness* plays a greater role in judgements about its legitimacy. Notably, they also suggest that 'when South Africans feel the police are ineffective in dealing with crime, this is correlated with a weaker sense that police share their own values and priorities, and a weaker sense of duty to obey officers' instructions' (2014: 254).

The association of individual rights with the undermining of democratic rule is thus not peculiar to the police. Smith's research suggests that South Africans show concern for the effects of the rights of the individual on the security of the collective (2019: 22). It is thus quite possible that police perspectives on social breakdown, the constant threat of crime, and difficulties of bringing people to

justice are reflective of the challenges in the neighbourhoods they police. The lack of democracy's visibility in informal settlements particularly, where community protests over basic services are common, was noted by officers at station four (CAP5 2018, Int.; C13 2018, Int.; WO15 2018, Int.). At station three, one Sergeant, responding to a question about how she sees democracy taking place where she works, suggested that democracy was not really present in the community. Lack of opportunity and crime, as she described it, essentially negated democracy's gains (S6 2018, Int.).

The post-1994 framing of the SAPS' role as that of crime *prevention* is of course at the root of this discussion. From the late 1990s, and particularly since 2000, the government has shifted towards a less service-oriented and more forceful style of policing. The resulting lack of concentration on crime investigation and intervention has not only given the SAPS an incredibly difficult task, but, as Steinberg (2012*a*: 491) highlights, generated a situation in which 'policing for risk factors meant taking to the streets with aggression'. Justifiable accusations of police violence have inevitably ensued. The difficulty of the police's mandate is therefore tied up in the broader challenges of addressing crime's root causes: poverty, unemployment and inequality. We are reminded of Brewer's warning that, unless police reform is 'part of a wider process of social change', addressing both political and economic problems, then the police would be left to deal with the consequences of structural inequality (Brewer 1994: 348).

Nonetheless, this is the task assigned to the SAPS and, as Steinberg (2012*a*: 491) and Faull (2016: 158) remind us, their performance is measured against it. Moreover, the undelivered promise of crime prevention has had a manifest impact on popular perceptions and experiences of democracy for both police *and* communities. It is also of significance that the governance discourse of the ruling African National Congress (ANC) has been one of mass-based democracy. Through constitutional provision and national legislation, South Africans have been pledged popular influence over policy issues. The rise of popular and community protest is an indication of the strength of the public's desire to engage government and have their voices heard. While the prioritisation of crime reduction is by no means peculiar to South Africa, it nonetheless has implications for conceptions of democracy's meaning and quality. This is perhaps all the more so in a context in which a war on crime takes place in a broader system of not only representative, but participatory, democracy.

Rights or justice?

Interviews conducted for this study suggest not only a punitive outlook to South Africa's challenges, but low levels of morale and empowerment amongst SAPS officers, who not only see their mandate as frustrated by the democratic system, but feel abandoned by the government itself. A sentiment expressed by several officers was that the SAPS and South Africans were being let down

by the justice system. This intersected, both conceptually and in their experience, with the tension between democracy and fighting crime. The rights of offenders, and the difficulty of reconciling this with the delivery of justice, was once again present. An officer at station two explained: '[Democracy], it's not working … You can't treat someone who committed a crime the same as someone who never committed a crime. That one, it makes our job very difficult, very difficult' (CAP1 2018, Int.).

A Constable at the same station, who joined the SAPS less than 10 years ago, remarked wryly: 'When you go to court you see democracy. Someone is arrested and then they are let off. You feel like you worked for nothing' (C4 2018, Int.). When asked if she believed this was indeed democracy, she replied: '[It] is democracy because we are told that this is democracy working, because they tell us that the person had rights. Or they say that you forgot to add some small detail, or didn't write in a number, or something, even though the evidence is there and you can see the suspect' (C4 2018, Int.). Her response resonated with Comaroff & Comaroff's rumination 'about why it is that, in a constitutional democracy that celebrates the universal rights of citizenship, the state, civil society, and the criminal justice system are powerless to protect even the most intimate reaches of people's lives' (2016: 151).

While understood by officers as contradictions between justice and democracy, these challenges were in fact reflective of the tension between *liberalism* and *democracy*. Inequalities witnessed in the SAPS' day-to-day work were couched as products of 'democracy'. Yet, in reality, it is not the democratic values of South Africa's dispensation that guarantee such rights, but the *liberal* ones. Just as liberalism provides for a degree of police independence and protection from political interference, so too does it provide for the guarantee of the rights of individuals, seen in the manifestation of international human rights frameworks and in South Africa's bill of rights. The grievances of officers are reminiscent of Dubber's depiction of the incongruity of the police power (historically 'free from principled constraint') and the liberal framework of the modern state that purposely constrains its pursuits (2005: 180).

Police forces globally, as Hornberger points out, have increasingly been assigned the responsibility of protecting human rights (2010: 260). Yet, there is a sense amongst SAPS officers that this is a calling to which they are reluctant. The abstract notion of human rights and its 'incongruity' with realities of policing in transitional societies is problematised by Hornberger. By virtue of their international validation and framing in a language of legality, human rights have come to be accepted as 'common sense' and 'consensus' (2007: 140–2) and their proponents, in the form of human rights organisations, 'civilizing missions of the twenty-first century' (Comaroff & Comaroff 2006: 25). Yet Hornberger's account explains how human rights agreements have been forged from middle-class and legalistic origins which ignore the historical and social contexts into which they are inserted. In South Africa, Hornberger's argument is that SAPS officers lack the personal reference points to locate themselves in rights discourse. Her analysis of the human rights training

introduced to the SAPS after 1994 highlights how the language and ethos of human rights retained a legalistic (and thus inaccessible) character, and were never made understandable or applicable to those officers required to protect them (2007: 140–2).

In my discussions with SAPS officers about their training when joining the service, references to human rights training were often lacklustre or formulaic – a section of their law studies rather than a fundamental component of policing. It is notable that none of the officers I interviewed recollected the notion of 'democratic policing' as being part of their training. Although it features a set of 'measures' against which oversight bodies should assess police conduct, there was not one officer who was familiar with the concept.

During the course of my interviews, some officers conceded that they see democracy differently as a result of police work. The challenge they felt that rights, and particularly offenders' rights, posed to the pursuit of justice, for them, was compelling. One Lieutenant Colonel explained:

I think as a police officer I see it differently, different to any other normal person, because of my dealings with the situations whereby we talk about democracy as a core rule that says people must have rights, and all that. Whereas, if I was in my normal being, not being a police officer, I wouldn't be coming across these things, whereby I have somebody, I take him through the courts and the court release this person and he doesn't come to court again. And before he goes to court again he has killed somebody …. [B]ecause I am a law enforcer, I feel that something was supposed to have been done to safeguard these rights that we have made available to people. (LC1 2018, Int.)

Some officers related their frustrations to the justice system specifically and particularly to the ease with which bail is often granted, enabling people to re-offend. As such, the same officer remarked, 'I feel like the justice department or the democracy is failing us'. He related his disappointments not only to its impact on the SAPS, but to the impression it gives to victims: 'I arrest somebody today who might have killed somebody and then this person comes out, he's walking on the street because of bail … The family comes and says to the police: Why? You take somebody and you bring him back and he's coming past and talking whatever he wants to us' (LC1 2018, Int.). At station four, a Detective Constable commented 'This democracy is not working for us, we are left behind. They [suspects] can come and talk to us the way they like. And the parliament, they are listening to them' (C14 2018, Int.). The reflections of a female Constable at station two carried a more direct, but equally leaden connotation: 'Because we are living in a democratic country they [the court] released a suspect of murder. And he committed the same crime, this time he killed a police officer' (C4 2018, Int.).

Although statistics have shown that more officers are killed in car accidents than are murdered or shot, and that the majority of these deaths occur off-duty (SAPS 2015, cited in Faull 2017a: 38), reports of the loss of life of fellow officers give the SAPS the impression that their lives are not valued. In the

short time that I spent at the four stations involved in this research, there were at least three memorials held for police officers who had lost their lives. It is therefore little wonder that officers are supportive of leadership who take a harder line on crime. An interview with Deputy Police Minister Bongani Mkongi in 2017 echoed the sentiments of officers I interviewed:

I want to ask the nation of South Africa and the so-called human rights activists and organisations, what must the police do when they are shot at by criminals? Must they sing 'Nkosi Sikelel' iAfrica',5 or they must return fire? We are losing police officers day-in day-out. But we are protecting criminals that are terrorising our communities. (EWN 14.7.2017)

The sense that rights are perceived as an obstacle to justice is tangible in his statement. It is also something of a reflection of the challenge to the very basis of a rights-based order, symptomatic, perhaps, of what Comaroff & Comaroff call 'the erosion … of the liberal-democratic social contract' (2016: 27).

There was acknowledgement amongst some of my interviewees that incidents of failed justice could sometimes be related to corruption. If a magistrate agrees to bail when past precedent would suggest this would never be the case on such a charge, one officer remarked that people would suspect corruption (LC1 2018, Int.). Another was more direct in explaining that some police officers might let suspects go, or in 'getting to know what is happening on what corner', they might turn a blind eye (S4 2018, Int.). As such, this Sergeant remarked: 'We, at the ground level, we find that no, this what we do it's nothing. Criminals have connections … to more senior officers. So, most of us, we are just working. For myself, we are just working. Month-end, we get paid' (S4 2018, Int.).

It is thus possible to see how officers view democracy as self-defeating. They are assigned the task of democratic policing: to participate in endeavours to address the root cause of crime, prevent and investigate acts that threaten the safety or security of communities and bring the perpetrators to justice. They are measured against their service to the public and protection of the rights of all. Yet, as they see it, they are unable to fulfil these demands due to the protection of offenders' rights and suspicions of corruption which undermine public confidence, police morale and democracy. A sense of being let down by the justice system must surely increase the likelihood of officers abusing the system themselves.6

Officers' diffidence to the validity of rights, however, does resonate with popular sentiment. A sense of popular anger with regard to rights and justice was expressed by a mother at the Total Shutdown March in South Africa on 1 August 2018 – a movement of women who marched to the Union Buildings in Pretoria to serve a memorandum to the President, demanding that action be taken about South Africa's epidemic of gender-based violence:

Mr President … I'll tell you an incident: my daughter was raped. Our daughter was raped on the 3 July by a foreign national taxi driver on her way home … We, on our own, caught the foreign national. The police came and took that foreign national

from our hands. Last week, that foreign national was released on bail, with R1,000 of bail. My daughter is 15. So, I want to know, Mr President, what are we doing about our justice system? We might complain as much about the South African Police Services but our justice system keeps failing us. That guy, number 1, is a flight risk: He might not even come back on 17 August. He tore my daughter's virginity, not even broke it. So, something has to be done … We are here because we are angry women who live in a society where children are raped, regularly, on a daily basis. (SABC 1.8.2018)

In the background were calls from her comrades, 'Castrate the rapist, Mr President!' (SABC 1.8.2018).

This mother's repetition of 'foreign national' evokes a subtext of xenophobia. The number of sexual offences in South Africa, which the recent national crime statistics placed at just over 50,100 for 2017/18 (*Business Day* 11.9. 2018), make it highly unlikely that this is a 'foreign' affair. Yet the yearning for justice and the disappointment in a democracy intended to protect is palpable. Moreover, when the rational legal apparatus of the state is seen to fail, citizens may themselves step in. High levels of inequality and violent crime undermine public trust in the institutions of policing and justice, which itself risks eroding popular commitment to the rights and liberties that South Africa's constitution protects. Super (2016) suggests that the state's discourse about being tough on crime, alongside its encouragement of citizens to take responsibility for their own safety, has made space for illegal and unaccountable processes of citizen justice. As a result, the resurgence of vigilantism in South Africa has blurred the lines between the actions of vigilantes and police (Smith 2019). While the latter have license to use force for public protection, the exercise of coercion by the former is suggestive of both the perceived illegitimacy of the police in advancing justice and of a popular defiance of liberal constitutionalism.

It is thus possible that a sense of unity is difficult for the SAPS to cultivate when the cohesiveness of communities – and their sense of justice – is already crumbling. Two of the officers I interviewed spoke of seeing 'mob' justice take place (C13 2018, Int.; WO4 2018, Int.), one of whom witnessed a crowd from the community burning a man alive. When the police arrived on the scene, she explained, the crowd pelted them with stones (C13 2018, Int.). It is possible to see how, in a deeply divided society, the idea of serving a 'disaggregate public' (à la Bayley) seems somehow inapplicable. Although the criminal justice system in South Africa 'has acquired the legitimacy it previously lacked' prior to 1994, Gordon (2006: 175–6) notes it has 'disappointed both the ordinary citizen who hoped for respite from the violent crime of a society with a history of repression and inequality, and the reformer who saw it as a potential source of public empowerment'. Not only does 'the South African version of mass democracy exist uneasily, side by side, with the liberal minimalism of its Constitution' (Super 2014: 11), in fact one is seen as thwarting the other. A sobering extract from Altbeker's work (2005: 97), relaying a case of multiple murders being investigated by a detective in Ivory Park, seems fitting: 'It was as if the right to put people to death had been thoroughly democratised.'

Opting out of the rights project?

Narratives of community and exclusion, by citizens and police, fuel one another. Amongst some of the officers I interviewed, xenophobic attitudes were certainly present, especially amongst those working in areas with high migrant populations. The sentiment that foreign nationals were often responsible for crime was, in some cases, overlaid with a narrative of the abuse of rights, in which immigrants were taking advantage of being in a democratic country (C4 2018, Int.; S5 2018, Int.), or taking the jobs of South Africans (C4 2018, Int.). At station four, crime amongst immigrant populations was highlighted alongside the challenge of policing undocumented migrants (WO14 2018, Int.). At station three, an officer suggested that tensions between immigrants and locals resulted from the former being recipients of state housing (WO5 2018, Int.) – a reflection of South Africans' heightened demands for rights and concomitant xenophobia, wrought by the inequality and competition of neo-liberalism (Comaroff & Comaroff 2006: 32).

Nonetheless, reflecting on Loader's (2006) notion of the police as constructors and guardians of community, it is quite possible to see how their language and actions can shape political community and create the terms and criteria for inclusion and exclusion. In July 2017, Deputy Minister Mkongi described as 'dangerous' the occupation of Hillbrow in Johannesburg by 70–80% foreign nationals, adding 'we fought for this land from a white minority. We cannot surrender it to the foreign nationals' (EWN 14.7.2017). As an arm of state, allocated with the legitimate use of force, the police's narrative is powerful. Democratic policing, moreover, should foster cohesion, not division and the selective protection of rights. Yet conceptions and experiences of officers I interviewed reflect the existence of a deeper set of societal values – about difference, race and belonging; about who is an insider or an outsider.

In this sense, there is a danger that rights are part of a collective project of which South Africans are opting out. Recounting an interview with a SAPS Sergeant in 1999, Jensen quotes a view that he argues was echoed by many others 'within and outside of the police' at the time: 'The Constitution that we have is a beautiful document. Everyone says that it is the best Constitution in the world. But maybe South Africa is not ready for it yet, because it allows criminals to walk free and we can do nothing about it … I would say it is too early for South Africans with all these rights' (Jensen 2009: 68). Almost 20 years on, this is a view that has not entirely disappeared. As a Captain at station two remarked to me:

Democracy is a good thing in general. It's good to have democracy in our country and it has been implemented 100% compared to other countries. But what I've realised is our 100% of implementing democracy, better than other countries, it kills us. That's why other people can't implement it 100% the way it is. Because if you give the criminal some rights, you are doing the wrong thing. (CAP1 2018, Int.)

His observation resonates with the tension between rights frameworks and policing realities and with a troubling lack of belief amongst some SAPS

officers in the legitimacy of human rights.[7] The officers I interviewed were by no means ignorant of the concept of rights. From their perspective, however, their unlimited nature contradicted democracy's parallel demands of safety and justice. One Warrant Officer, for example, explained that because, in his precinct, it is unsafe to walk at night then people's rights are taken away. Due to crime, 'they have no freedom of movement' (WO2 2018, Int.). Democracy, once again, seemed self-defeating.

Yet, because officers do not always buy into what has been prescribed as an international norm (Hornberger 2007: 141–2), there is a tendency that their views are merely discredited, rather than being used to understand the challenges and complexities of policing in context. Referring to the veneration of South Africa's constitution, one interviewee reflected on what this means for officers: 'It's the best democracy in the world, they are saying so ... I don't think that. But if the other countries say it is the best, but we are saying 'no', you see? My word doesn't have value, it doesn't have weight' (CAP1 2018, Int.). Reflecting on the mid-1990s, Altbeker refers to the disregard and disparagement with which the perspectives of police officers were received by civilian experts at the time (2005: 248), their rationalisations easily overridden as resistance to democratic change. It is clear that, two decades on, little has changed. As one Constable remarked to me, 'This is democracy because we are told that this is democracy' (C4 2018, Int.).

CONCLUSION

This article has sought to draw attention to the importance of rank and file perceptions of democracy in an attempt to understand the challenges to democratic policing. It has framed the issues raised by officers in a context of democratic theory, revealing their perceptions of democracy to be a reflection of the challenge of balancing rights with fighting crime, but also of the wider challenge of balancing liberty and democracy. Importantly, the article has located the SAPS within broader South African society, while at the same time acknowledging that the police see the country and its challenges from a vantage point unlike any other: police officers hold insight into the challenges facing communities and the realities of policing in a context of structural inequality. Their experiences of democracy are not unconnected to the value placed by wider society on democratic control and individual freedoms. If citizens themselves, as Smith's research indicates (2019), are challenging the extension of rights, then the perspectives of SAPS officers also reflect the broader popular experience of post-1994 democracy.

Over 20 years after the establishment of a democratic constitution, there remains resistance amongst SAPS officers about its coalescence with preventing crime. The balancing of democracy and fighting crime – or of liberalism and democracy – features prominently in officers' frustrations, while highlighting the fragility of policy commitments in a context in which rights may hold limited grassroots legitimacy. The legitimacy of the police in the eyes of citizens,

moreover, may also be related not only to their protection of human rights but their effectiveness in fulfilling their mandate to create safer communities and bring offenders to justice. If citizens experience the exercise of certain rights as *in*justice, this has bearing both on the popular legitimacy of the police and on citizens' experience of democracy itself.

It is clear that a challenge to rights is already underway amongst some South Africans, and notably amongst the police men and women charged with its protection. This suggests the need for a new discourse on rights and policing that not only rationalises the importance of the police's role in shaping and protecting democracy, but that elucidates the balance of rights and democracy in such a way that speaks to the realities of policing and experience of officers on the ground. It concerns both the paradox of liberty and democracy that besets the police in democratic states, but also the problematic nature of normative democratic frameworks in transitional societies. A revised approach does not require us to turn our backs on those elements of democracy founded on liberal values. Individual rights, and the recognition of political difference, have been critical in overcoming oppression and in transitions to democracy worldwide. It does, however, demand a more decolonised and bottom-up approach.

The disjuncture of liberal constitutionalism and community safety can be seen in the experiences and concerns of ordinary officers. Overcoming the challenges to democratic policing thus requires that scholars engage with these perspectives. If we are concerned with the protection of rights as fundamental for the future of democracy, we must understand the ways in which citizens themselves experience the liberal democratic tension. Attention must be diverted not merely to the establishment of oversight bodies and measures to hold the SAPS accountable, but to the social conditions in South Africa that generate a questioning, even a rejection, of the very legitimacy of rights. It is an exercise that means recognising conceptions of democracy beyond that advanced by liberal democratic theory, and an approach to judging democracy's quality that accounts for the experience of those at its coalface.

NOTES

1. For a more extensive discussion on decolonising democracy in South Africa, and analysis of democracy from below, see Brooks *et al.* (2020).

2. RDP houses refer to the housing provided by the state under the Reconstruction and Development Programme (RDP) from 1994, to cater for South Africans lacking affordable formal housing.

3. Nyaope, a street drug, has become increasingly accessible in South Africa, and combines both heroin and 'dagga' (marijuana).

4. Faull reports 7.2 deaths per million inhabitants in 2015/16; twice that of the United States police in the same year (2017*a*: 37, 60).

5. Translating as '*God Bless Africa*', this is the title of South Africa's national anthem.

6. On the challenge of police integrity in South Africa, see, for example, Kutnjak Ivkovic & Sauerman (2015).

7. Concern about the presence of this view is highlighted in work by Hornberger (2007, 2010).

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