



CRIMINAL DAMAGE

Some critical notes on the Government's policing proposals

There has always been particular concern about the constitutional position of the police. Police accountability has been a vexed question since the original establishment of modern policing arrangements in the early 19th century.

This anxiety arises from the peculiar role of policing. Policing is about the regulation of conflict, "keeping the peace" through the manipulation of the police organisation's special capacity: the monopoly of legitimate force. As a recent episode of *The Bill* put it more succinctly, "force is part of the service". This makes policing inherently political in a broad sense, and potentially always controversial.

Patchwork and compromise

There has been a traditional fear in British police history about concentrating power over the organisation in any one institution, however democratic. "Separation of powers" over policing has been the traditional cornerstone of British police arrangements. Dividing, in order to prevent any one interest ruling.

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This pattern was never really consciously planned or intended. British police history shows a perennial conflict between two fundamentally opposed conceptions of policing. On the one hand, there is a Benthamite model of the police as a rational, bureaucratically structured, centrally regulated force, efficiently and purposefully targeted at crime and social order problems as pinpointed by the government of the day. Against this there has been a civil libertarian sentiment concerned to keep policing minimal, diverse, local and close to the people, even if the results are messy from the standpoint of rational management theory. The pattern of policing which developed has been a product of perpetual compromises between these two visions. It has never been uniform, and until the 1964 Police Act there was a patchwork quilt of policing arrangements. The major distinctions were between London and the provinces, and in the latter between county and borough

forces. The arrangements in London have never had a role for elected local government, although this is originally due to the historical accident of the foundation of the Metropolitan Police in 1829 predating the existence of elected local authorities.

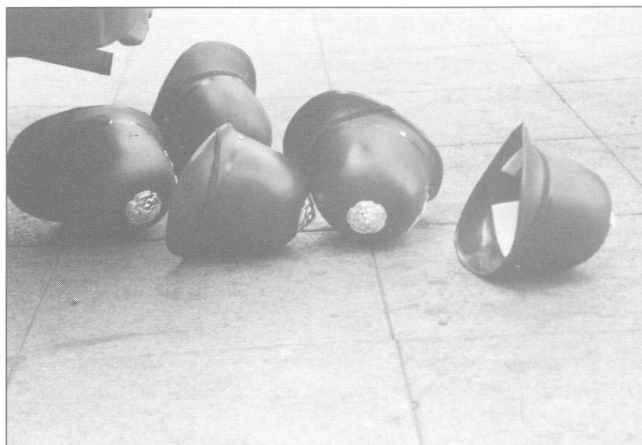
The 1964 Police Act's creation of a tripartite structure of police governance on a uniform basis (outside London) essentially rationalised but preserved the compromise. The effect was an apparent dispersion of powers over policing matters.

The 1964 Police Act embodied what Geoffrey Marshall has labelled the "explanatory and co-operative" style of accountability. It incorporated the common law doctrine of constabulary independence, giving no-one formal power to direct the police. A "gentlemen's agreement" rapidly developed, whereby the role of police authorities was restricted to non-operational matters (although it is impossible to maintain any coherent, systematic distinction between operational and non-operational issues). This model has been continuously opposed by the argument that in the final analysis the police like all other public services should be "subordinate and obedient" (again Geoffrey Marshall's terminology) to democratic authorities. However all attempts to pursue that line, notably by a number of Metropolitan authorities in the early and mid-1980s, have been defeated.

Instead, practice (and legal developments such as the 1985 Local Government Act and the 1987/8 Northumbria Police Authority case) since 1964 have produced a large measure of *de facto* central control. This has developed behind a facade of continued lip-service to the constabulary independence doctrine.

Sheehy's ghost

The present government "reform" package, originally proposed in the Sheehy Report and the White Paper on Police Reform, and now enshrined in the Police and Magistrates' Court Act and the "ghost of Sheehy" which is emerging from the Police Negotiating Board, amounts to a fundamentally new model of police accountability. This can be called



Kirsty Cunningham

"calculative and contractual". It remains true that no outside body has the formal power to direct police operations, so a shell of constabulary independence remains. But it is emptied of any substance by the battery of financial and other levers which central government will acquire. The targets for policing around the country will be set by a national policing plan, mediated to each area by new model police authorities which will only be cosmetically "local" in character.

London will remain anomalous. Kenneth Clarke's original announcement of his plans to the Commons in March 1993 had included a scheme to establish for the first time a local police authority for the Met along the lines of the new-style authorities outside London (which would be dominated by central government appointees rather than elected members). However pressure from London Conservative MPs led to this being modified by July when the White Paper appeared, in favour of a Northern Ireland model police authority consisting entirely of government placepersons. Even this gesture towards a figleaf local police authority for the Met has been dropped from the current legislation.

The constitutional rearrangements will be given practical bite by the enhanced economic levers over policing which the Sheehy Report originally designed, and which appear in modified form in the present package. Chief officers (and all ranks down to Superintendent) will be on short-term contracts and some form of performance related pay (the details of which are being thrashed out). These will ensure that policy is dominated by the imperative of achieving the government's centrally determined (although partly locally fine-tuned for provincial forces) targets ... or else pay losses and the dole queue beckon.



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What next?

The government's legislation encountered an exceptionally rough ride in the Lords, and was modified substantially. In particular the proposal that police authority chairpersons be centrally selected has been shelved, and a bare majority of elected members will remain, although not the current two-thirds. The final impact of the Act as a whole remains uncertain. Will the concessions seriously modify the centralising thrust?

There are three possibilities: a) The new police authorities, with locally selected chairpersons, enjoying the levers provided by Sheehy's ghost, will actually come to be the prime movers of policing policy. This is the outcome which has long been sought by critical and civil libertarian opinion, and would suffer only from the continued exclusion of London. However this outcome is almost certainly fanciful as it would involve the reforms producing the diametrically opposed result from that originally intended by government.

b) The present scheme has become fatally incoherent because of the forced compromises and will not last.

c) The forced changes are fundamentally cosmetic. Although police authorities will not be obviously dominated by central appointees, the legislation still gives the Home Secretary sufficient powers to determine their functioning. For example, the police authorities will be under a duty

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to take account of the centrally chosen targets, and the Home Secretary will have the power to set Codes of Practice for them. These will be buttressed by the formidable battery of financial levers available to the Home Secretary. There will thus be a substantial tilt towards centralised policing. This is the most likely outcome, as it is a continuation of long-standing trends. In the legislation can be discerned the lineaments of the police state, albeit in a muddled, typically Brit-

ish, compromised version.

The bottom line of the 'reform' package is the need to get the government off the hook with regard to law and order. In the face of the huge rise in crime and disorder since the government took office in 1979 they have been forced to scapegoat their erstwhile pets, the police. The attempt is to blame police inefficiency, rather than government policy in deepening economic and social divisions and deprivation, for rising crime. This is based on a fundamentally flawed analysis of the sources of crime, and the role of the police in managing the consequences. As Raymond Chandler crisply put it some forty years ago in *The Long Goodbye*, using cops to control crime is like taking aspirin for a brain tumour. The government's plans are unlikely to fool many people as a placebo, and seem destined to fail even in terms of narrow political advantage. The attempt could, however, inflict criminal damage on democratic local police accountability, replacing centralised rule by accountancy.

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