

9 The Golden Concept

We are accountable, I suppose, essentially to ourselves as a responsible body.

James Anderton, ACPO President, May 1987

The question of police accountability is usually considered a dull corner of the forest. Any journalist who suggests it to the editor is likely to see a tell-tale glazing of the eyes in response, followed by the unanswerable judgement that it is hard to find a new angle.

In a country with no written constitution, it is perhaps not surprising to find national policy for police forces made by an informal grouping of unelected Chief Constables meeting as an association which has no basis in statute. Nor, apparently, is it remarkable that the leader of this association should declare in a television interview (in the *Secret Society* series on BBC2) that they are accountable only to themselves for their actions. Imagine the uproar which would greet a similar declaration by the FBI or, for that matter, the KGB.

The theory of British policing is quite different from this reality. Peter Imbert, the Commissioner of the Metropolitan Police speaks of 'the golden concept of policing by consent' which governs each force. In theory, each police headquarters answers to a democratic authority which ensures its compliance with the wishes of the public. In London, this authority is embodied in the elected Member of Parliament serving as Home Secretary. Everywhere else, it takes the form of a watchdog committee composed mainly of elected representatives. Control of the coercive power of the state as exercised by a police force, is theoretically held between the Chief Constable, who decides day-to-day operational policy, the local police authority which oversees general policy and decides the budget, and the Home Office which inspects standards and gives specialist advice. This arrangement is sometimes compared to the balance of forces which makes for stability in a tripod.

In practice, the control of public order policy has come more to resemble a shooting-stick. Almost all important decisions have been made by just one leg of the tripod, the Chief Constables. Their association has organized the crucial meetings, established the framework of committees, drawn up and agreed the central document, and arrange relevant training materials. The only known intervention by an elected authority has been the approval given by a Home Secretary, William Whitelaw, to the draft of ACPO's *Public Order Manual*. Local authorities have simply been ignored throughout the process, neither informed of ACPO's intention to prepare a manual nor consulted about its contents.

This is a break with historical precedent. The origins of the British police force are commonly traced back to the Saxon office of tythingman, elected by the common people in his own locality to perform a variety of functions including the maintenance of the peace. The authority of his office derived from those who had appointed him, the members of his own community. His style of policing was, correspondingly, by consent rather than brute force. The Royal Commission on the police in 1929 referred to the tradition that held police officers to be ordinary citizens who were paid to do their job in uniform:

The police of this country have never been recognized, either in law or by tradition, as a force distinct from the general body of citizens. Despite the imposition of many extraneous duties on the police by legislation or administrative action, the principle remains that a policeman, in the view of the common law, is only 'a person paid to perform, as a matter of duty, acts which if he were so minded he might have done voluntarily'.

... This attitude is due, we believe, not to any distrust of the police as a body, but to an instinctive feeling that, as a matter of principle, they should have as few powers as possible which are not possessed by the ordinary citizen, and that their authority should rest on the broad basis of the consent and active co-operation of all law-abiding people.

The report went on to stress the 'peculiar degree' to which the police in Britain are dependent on the goodwill of the general public. 'The utmost discretion must be exercised by them in

overstepping the limited powers they possess.’ If these sentiments seem outmoded, even slightly pious, today, then it is worth recalling that they survived for more than a thousand years as the definitive marks of what we now call the British police tradition. The extent to which events seem to have overtaken them, is a measure of how far recent changes in policing have strayed from these origins.

This process of change did not begin with the election of Margaret Thatcher as Prime Minister, though it certainly accelerated throughout the eighties. It was already under way by the time of the Royal Commission of 1962, which examined the complex structure of accountability of police forces. The report of that Royal Commission set out what seemed merely common sense at the time, namely a spirited defence of the balance of power between central and local government. It is, again, a mark of how far the political fulcrum has been shifted that these simple nostrums should now seem so dated:

In our opinion, the present police system is sound because it is based upon, and reflects, a political idea of immense practical value which has gained wide acceptance in this country, namely the idea of partnership between central and local government in the administration of public services. This idea, working itself out in a variety of ways on our education, health, housing and other services, admirably suits the British temperament. It gives free rein to discussion and ample scope for compromise, thus promoting the growth of an enlightened and mature public opinion. It provides for the central pooling of knowledge and experience gathered from the whole country, but for the local application of this knowledge and experience to suit the needs of each particular community. By bringing into the administration of public services large numbers of men and women of goodwill it encourages the development throughout our society of a sense of civic responsibility. These are imponderable but very real gains. They ought not to be lightly surrendered.

At the time, the Conservative Party welcomed this approach. The Home Secretary in 1963, Henry Brooke, commended the maintenance of local police forces to Parliament and spoke of the ‘immense value’ of local interest and local initiative in the working of the system.

Yet even in 1962 it was evident to the Royal Commission that the balance between local and central government was tilting:

A realistic appraisal of the present arrangements for control must consequently recognize that for many years there has been, under the guidance of the Home Departments, a centralizing process which has steadily gained momentum. As a result the police service cannot with any precision be described simply as a local service.

... Much of the evidence we heard indicated that the influence of the central Government is now dominant.

The freedom of Chief Constables from democratic control in large areas of decision making, was also clear to the Royal Commission. It concluded that they enjoy a position of ‘exceptional independence’:

They are subject to little legal control in carrying out their duties. Like everyone else they are subordinate to the law; but the effect of this is rather to restrain them from unlawful activities, than to order the manner in which they carry out those that are lawful.

The Royal Commission concluded that the problem of controlling the police could be restated as the problem of controlling Chief Constables. It spoke of the unfettered discretion a Chief Constable could exercise:

He is accountable to no one, and subject to no one’s orders, for the way in which, for example, he settles his general policies in regard to law enforcement over the area covered by his force, the disposition of his force, the concentration of his resources on any particular type of crime or area, the manner in which he handles political demonstrations or processions and allocates and instructs his men when preventing breaches of the peace arising from industrial disputes, the methods he employs in dealing with an outbreak of violence or of passive resistance to authority ... and so on.

This is a *carte blanche* which Lord Denning, in a celebrated judgment of 1968, put like this: 'The responsibility for law enforcement lies on him; he is answerable to the law and to the law alone'.

At the heart of the 1962 Royal Commission report, and the 1964 Police Act which followed it, lies an unresolved conflict between the desire to maintain local public control of police forces and the requirement to keep Chief Constables free of any semblance of operational accountability. It is the conflict between the demands of democracy and those of independence. The evidence of the 1980s suggests that police independence has won the contest. It would certainly be difficult to square the recent behaviour of ACPO with any customary concepts of democratic accountability.

As ACPO's president said later in the *Secret Society* interview, the guide-lines ACPO issues are matters for Chief Constables, not for public discussion. 'Why should we consult people outside the police service when we are determining operational policies and tactics?' ACPO may be, as Mr Anderton maintains, a responsible body in the sense that its decisions are taken with care, but it is not, it seems, responsible in the more literal sense of having to answer to anyone at all.

Yet ACPO as a body is not mentioned in any Act of Parliament and has no more standing in law than a village gardening society. So how has it managed to exert such influence over the direction of police strategic planning? The explanation lies in its success in undermining resistance to the paramilitary drift of its policies among all three legs of the constitutional tripod – the Chief Constables, the Home Office and the local police authorities. There are serving police officers who complain privately that ACPO is run by a self-perpetuating group among its membership. A small number of forceful Chief Constables are said to control the committee which makes all important decisions, including the appointment of association officers. Those outside the circle wield relatively little power within the association. It is not only John Alderson who has felt the chill of repeatedly being excluded.

The breadth of ACPO's influence over individual Chief Constables is considerable. When *Brass Tacks* invited police contributions to a documentary about the *Public Order Manual* in October 1985, a formal approach to ACPO got nowhere. Individual ACPO members indicated that they might be willing to appear in the programme but, because of their position as office-holders within the association, felt obliged to seek the advice of their colleagues first. In the event, they said no. So *Brass Tacks* wrote separately to each Chief Constable in Britain asking him to take part. They all refused. Significantly most of them refused in exactly the same terms, saying: 'I regret I am unable to assist ...', as if some unseen central spirit had guided their hands. Then one Chief Constable wrote: 'The question of police participation in such a programme was raised at the autumn conference of ACPO. I do not intend to depart from the decision of my association.' So ACPO apparently decides even the relatively minor matter of which television invitations to accept.

ACPO has the ear of the Home Office. There are regular meetings between its senior office-holders and high-level civil servants to discuss policy matters. The Home Secretary attends the annual meeting of ACPO which is held each autumn over a period of three days. The importance of these links is that the Home Office exercises statutory powers in the appointment and dismissal of chief officers. The career path of an ambitious Chief Constable can depend to a great extent on the goodwill of successive Home Secretaries, which would be difficult to secure without the co-operation of senior civil servants. The Home Secretary is also responsible for the Inspectorate of Constabulary, which reports annually on each force, and which can, in theory, trigger a cut-off of government funds amounting to half the force budget if it does not like what it finds.

It would be possible for a Chief Constable to defy ACPO and the Home Office if he disagreed with a particular policy. But he would be a brave man to try it in view of the constitutional power held over him in Queen Anne's Gate. One former Chief Constable tells

the story of Home Office pressure on him to accept water cannon after the riots of 1981. He resisted all the way, until at last the Home Secretary himself became insistent. The point was silenced only after the Chief Constable banged his fist on the table and shouted 'I'm not bloody having them, Willie!' He carried the day, just as Lord Denning said he should under pressure from the executive, but it is significant that the Chief Constable concerned had already built an unchallengeable reputation within the service, and was within a few years of retirement when he made the stand.

But while ACPO has avoided the emergence of dissent within its own ranks, and formed a close working relationship with the Home Office, it has run into far greater opposition among some individual police authorities. Discussion with dissenters has been avoided by declaring the tactical options of public order policing to be operational matters, which are therefore outside the remit of the police authority. This is entirely in line with the constitutional position set out by the 1962 Royal Commission. Chief Constables have upheld their lack of accountability for the way they handle political demonstrations and industrial disputes and for the methods they employ in dealing with outbreaks of violence. But the Royal Commission, while presenting its account of the facts of the case, argued for greater accountability in some areas of policing. Chief Constables, it urged, should be controlled and supervised more closely. The Home Secretary, Henry Brooke, said in Parliament during the debates leading up to the 1964 Police Act, that new measures were needed to provide arrangements by which Chief Constables could be called to account, both centrally and locally: 'Even as we accept that the Chief Constable is not subject in these matters to order and directions, we must make sure that he is fully accountable for what he does.' When a Liverpool MP, Sir Kenneth Thompson, asked about the accountability of a Chief Constable who ordered the use of mounted police to restore order in the event of trouble, the Home Secretary gave a clear answer in favour of public debate of the issue:

Mr Brooke: Unquestionably, the police authority could ask for a report from the Chief Constable on that and could discuss the report with him.

Sir K. Thompson: But he could refuse to give it.

Mr Brooke: If he did, the matter could be settled in the end by the Home Secretary. But in a case like that I can see no reason why the Chief Constable should not supply a report on request.

This democratic impulse, however, was notably absent from discussion of police tactics in public order control among some police authorities in the eighties. Indeed, matters became so serious in Greater Manchester in March 1982 that the police authority called its Chief Constable to account for a speech he had made supporting the abolition of police committees and saying that the link with local government was no longer needed. Mr Anderton had spoken in terms which, with hindsight, seem to foreshadow the Prime Minister's 1984 speech about the Enemy Within:

I see in our midst an enemy more dangerous, insidious and ruthless than any faced since the Second World War ... I recommend that police committees should be totally abolished and replaced by non-political police boards.

Mr Anderton's reply to his police authority's questioning on this speech was forthright. He said that it was not incumbent on him to report back in any shape or form on what he had said. The meeting grew increasingly acrimonious. At one point, Mr Anderton refused to answer questions about the speech, saying that he felt like Christ must have felt before his crucifixion. Three years later, the police authority was abolished by the Government in a local government reorganization.

Not all police authorities, by any means, have been so robust in their approach to the job of calling the police to account. Research conducted by the University of Bath was made public in August 1987, showing a wide variation in attitudes among members of authorities throughout the country. An unnamed Conservative chairman of a police authority describes

the change which has been brought by the arrival of a number of Labour members determined to challenge the Chief Constable:

The police authority has changed. Meeting never used to last beyond 12.30 p.m. and we all used to go into another room and have a glass of white wine or sherry and go home. Within that meeting there was always a chance for us to enjoy a presentation from the Chief. He would explain something, show some slides or whatever. It's different now. Meeting go on until 2 or 3 p.m.

The most significant of these anonymous remarks from the point of view of police accountability echoes this tone. It is attributed to the leader of the Conservative group on an unnamed authority:

After all the police do control the country. If they are to be effective they must be above politics, under the control and answerable to the Home Office. The police authority is like a sub-committee of the Home Office, a sort of local tier of management.

Where these views have prevailed, there can have been little, if any, resistance to the change in public order policing decided by ACPO and approved by the Home Office. There is, however, no record of any Chief Constable presenting an explanation or a slide show of ACPO's plan for the mobilization of police units. In other police authorities where members have decided to test the limits of their powers, as before they have been over-ruled in favour of central decisions. A case in point arose over the decision of Douglas Hurd as Home Secretary to make two of the most forceful tactical options available to forces whose authority members opposed their acquisition. In a Home Office circular issued in May 1986, Chief Constables were told that they could draw stocks of CS gas and plastic bullets from central stores under Home Office control if their police authorities refused to authorize their purchase. It was the clearest possible instance of central government offering to help Chief Constables override the wishes of local government representatives.

The Northumbria Police Authority decided to test the matter at law by taking the Home Secretary to court for exceeding his powers and infringing their own influence on policy. In the High Court in London the case was given its first hearing in December 1986. The Northumbrians claimed that the Home Secretary's circular went beyond his powers set out in the Police Act of 1964 and that his circular should be set aside by the court. They lost the case. The Court decided in favour of the Home Secretary but on significantly restricted grounds. It agreed that the Police Act gave him no power to overrule a police authority in a matter of this kind, but declared that he had a general prerogative power invested in him as an office holder under the Crown. This prerogative power was considered by the Court to be sufficient to justify the circular.

The Northumbrians decided to appeal against the decision. In July 1987, at the Court of Appeal in The Strand, they argued against the lower court on two grounds: firstly that the right of prerogative had never, as a matter of precedent, been interpreted so widely as to give a Secretary of State the power to supply arms to a police force under local democratic control; and secondly that the Home Secretary's powers under prerogative had been superseded by the elaborate statement of his position in the 1964 Police Act.

Those closely involved in the case from the Northumbrian side felt that the judges in both courts were eager to side with the Chief Constable, and by implication with all Chief Constables, in making available to him whatever he requested to maintain public order. The Northumbria Police Authority is Labour controlled and not particularly left-wing. As in much of North-East England, the Labour tradition leans towards the right of the party. The chairman of the police authority, Councillor George Gill, decided to press the case in Court on constitutional grounds. Little more than a year earlier, he had been appointed to chair the new police authority after the abolition of its predecessor under the Tyne and Wear County Council. He remembered the briefing papers he had been given, setting out the tripartite balance of power which, in theory, governed his force, and was horrified to find the Home

Secretary apparently undermining it by his circular. The offence was compounded, in Councillor Gill's eyes, by the failure to discuss this disagreement openly. He expected the Home Office to call a meeting of Chief Constables, local authority representatives and civil servants to settle their differences. But there was no such meeting. The Home Secretary, he decided, was going beyond his remit and attempting to establish a national police policy without the involvement of his proper partners in power, the local authority. For Councillor Gill, the question went to the heart of policing in a democratic society:

You can only ever police by consent because there are not enough policemen to do the job in any other manner. We could not afford to employ enough officers to take on the status of an army.

There has never, in the history of the police, been a greater need to have the support of the people. The country is at a crossroads and the police require our support. But if it is seen that the representatives of local people are not even taken account of when decisions are made, then it will do the police no good.

His authority's decision to refuse expenditure on plastic bullets was made on practical grounds as well. Their force was seriously undermanned, down by 550 men, one sixth of its total establishment. If there was money to spend, Councillor Gill wanted it spent on recruiting more officers to fill some of these gaps on the beat.

Relations between the police authority and the Chief Constable of Northumbria remained good in spite of their disagreement. The force had taken pride in avoiding most of the tactical options in the ACPO manual even during the conflicts of the eighties. For the whole of the 1984-5 coal dispute, they kept their riot gear in lockers and never once put it on. Visiting police units from other forces were told to put theirs away too because Northumbria didn't do things that way. But the Chief Constable wanted plastic bullets as a precautionary measure. He was worried that trouble might blow into the Tyneside area from outside. More importantly, the force was concerned that officers from other police forces might be brought on to their territory to restore order if they failed to do themselves. The Deputy Chief Constable expressed their fears vividly:

If the unthinkable happens, in other words if RentaMob decided to come here from Manchester or Liverpool, then we would have to make sure that we could manage them. The only way we can do that is by training. We need plastic baton rounds to make sure that our officers are properly trained to use them. The last thing we want is officers from another force coming into this area and having to discharge those weapons.

The case was decided several months later, on 18 November 1987. The Appeal Court accepted the general scheme of the 1964 Police Act as a deliberate separation of power: the police authority to maintain, provide and equip a force; the Chief Constable to control and operate it; and the Home Secretary to supervise and regulate. But the Court decided that these functions were not as closely limited as the Northumbrians believed. The Home Secretary, for instance, had a power to provide central services for the police. The Court ruled that the supply of equipment constituted a service. So the Home Secretary was entitled, after all, to issue plastic bullets and CS gas from a central store, under the terms of the 1964 Act. There was thus no conflict between statute and the Royal Prerogative, and the Northumbrian case decisively rejected. They were denied leave to appeal to the House of Lords.

The outcome of this seminal case has weakened, perhaps even demolished, the tripartite arrangement of control over police forces. It sets a clear precedent for any future dispute between a Chief Constable and his Police Authority. If the Home Office backs the Chief Constable, then the third part of the traditional tripod, the police authority, could find that it has no leg left to stand on. In the specific instance of riot equipment, the Home Secretary's Circular 40/1986 upheld:

Where a chief officer decides that he needs plastic baton rounds or CS equipment, and anticipates that he will have difficulty in obtaining the approval of the police authority, he should consult HM Inspector of Constabulary ... If the HMI endorses the officer's assessment of need, but none the less the police

authority withholds approval for such equipment, the HMI will make arrangements with the Home Office for equipment to be supplied from a central store.

Just as the Northumbria case was going to Appeal, the 1987 Birthday Honours list caused a stir among police forces by elevating a former Chief Constable to the peerage. Sir Philip Knights, after long years of service in the West Midlands force, was to become Lord Knights of Edgbaston. No previous Chief Constable had ever been honoured in this way. The new peer was, of course, delighted. The honour had been awarded to the whole police service, he said, and he intended to act as the voice of the police in the House of Lords. Then came the barb. Lord Knights said he would continue to press as a peer those issues which had most concerned him as a Chief Constable. He mentioned only one, in his interview with *Police Review*:

I am disturbed by the increasing influence of central government on the police. The proper level for police control and accountability is in local government, whose members should have a say in deciding police priorities ... Effective policing requires marked local affinity, which can be much better achieved with local forces.

Lord Knights knows from the inside how far ACPO wishes to move in the direction of national co-ordination of the police. The *Public Order Manual*'s section on *Inter-force liaison* summarizes current attempts at standardization, and looks forward to further joint developments. The political debate over control of the police is not mentioned in this section. Instead, moves towards a common policy are presented in terms of professionalism. The present arrangement is set out under the heading *Existing expertise*. Two 'alternative developments' are noted with approval:

- (a) Consideration of the regular deployment of officers to neighbouring forces for familiarization in preparation for any mutual aid commitment;
- (b) Interchange of senior officers between forces on temporary attachments for familiarization.

Nowhere does the manual give any indication that ACPO wishes to see its members combined into a national police force. But it clearly does encourage the establishment of still greater uniformity throughout the country in terms of operational policy. That indeed, was its justification for producing a manual in the first place:

Conclusion

There is at present a high degree of co-operation and liaison between forces and departments.

This will be further enhanced by the establishment of A8 (Public Order) Forward Planning Unit, which will be staffed by officers from a variety of forces. Whilst already reality on a limited basis, it is recommended that all forces consider mutual aid interchange of PSUs, and senior officers on temporary attachments, particularly to be deployed during public disorder. This will afford valuable training and familiarization and give officers from both the receiving and sending forces the opportunity to gain expertise that otherwise would not necessarily be possible. These are valued options worthy of consideration by all forces.

There is a further aspect of police accountability which has become increasingly important with the preparation of the *Public Order Manual*. It is the thorny question of how to adjudicate complaints against individual police officers after a serious public disturbance. The theory, as we saw earlier, is that constables enjoy no special protection from the law against the consequences of their own actions. A police officer who hits an innocent person with his truncheon, for example, is supposed to be as liable for this assault as anybody else who did the same thing.

The extension of this principle to cover the tactical options is of the greatest importance. If police officers firing CS gas canisters or plastic bullets are to be held individually responsible for their actions, then some could find themselves, in theory, facing murder charges if they kill people. With intentionally lethal weapons, such as live firearms, the legal jeopardy of officers carrying out their duty under orders is even greater. As the *Public Order Manual*

itself repeatedly emphasizes, every officer using force must be able to justify the legality of his conduct, which cannot be done merely on the basis that he is acting under order (see Part 6).

Once again, though, this theoretical accountability in law bears little relation to the practice applied in real policing. Consider three instances of public order policing in the mid-eighties. First the twelve-month coal dispute, during which the riot squad tactics imported from Hong Kong were first used in the British mainland. Those who watched television news reports of the major confrontations during the strike saw line after line of police in riot gear taking the strain of protesting miners and their supporters. They also saw a number of spectacular scenes of brutality by individual policemen either on foot or on horseback. Within police ranks today it is commonly accepted that some officers 'went over the top' in their zeal to beat the demonstrators. Yet the law has apparently overlooked them. Not one police officer has been charged with an offence as a result of the year-long public order operation, though more than ten thousand charges were brought against individual miners and demonstrators.

Two other events share a similar pattern of failure to bring guilty police officers to book. Some assaults on students demonstrating against the visit of the then Home Secretary, Leon Brittan, at Manchester University on Friday 1 March 1985 and on members of the 'peace convoy' at Stonehenge on Saturday and Sunday 1 and 2 June 1985, have not been cleared up because the police officers who carried them out have never been identified. In both cases, elaborate inquiries were made by officers of other forces on behalf of the Police Complaints Authority, and established unlawful behaviour by some constables present. But a wall of silence has prevented these constables being brought to account for their actions in court. In the case of the Manchester students, the Police Complaints Authority concluded that: 'In eight cases where evidence clearly showed that police had assaulted students it had not been possible to identify the individual officer responsible, the Authority made this quite clear to the complainant.' For the Stonehenge hippies, the conclusion was similar: 'In the act of making arrests some officers clearly used excessive force, but it has not been possible to identify them amongst the 1363 officers involved and therefore disciplinary proceedings, which demand a clear identification of officers, are impossible.'

In both cases, the complainants and the general public are left with the result that established breaches of the law by some police officers go unpunished because those responsible cannot be identified. The presence in Manchester of more than sixty trained officers, and at Stonehenge of more than a thousand, is apparently no help when it comes to identifying the perpetrators of these crimes.

It may also be relevant that inquiries by outside forces have depended upon the co-operation of the very police force under investigation. In Manchester, for example, as an edition of the BBC2 *Out of Court* series showed, the investigating team of officers from Avon and Somerset police were billeted in Greater Manchester police accommodation, used GMP offices, were driven about by GMP drivers, and even socialized in the Greater Manchester police bars. When press releases covering Manchester University and Stonehenge were issued by the Police Complaints Authority, the word 'Independent' had been inserted into the Authority's title.

Perhaps the most telling comment on the current system of investigating complaints against individual policemen comes from a man who, as a Deputy Chief Constable, had been responsible for discipline within a police force. It was John Stalker, as DCC of Greater Manchester Police, who supervised the response to allegations of ill-treatment which were made by four dozen students and lecturers after the police cleared the steps of the Students' Union during the demonstration against Leon Brittan. In May 1986, Mr Stalker was removed from duty over allegations of misconduct in his relationship with a Manchester businessman. He was subjected to detailed investigation himself amid suspicion that he had been 'nobbled'

to get him off his own inquiry into the conduct of Royal Ulster Constabulary Officers in Northern Ireland. Eventually, he resigned in frustration, telling reporters that he now held opinions which he had rejected during his thirty-year career as a policeman:

I am less than sure now that the present system of investigating the police is the best. Having read the report of the investigation into me, I now recognize something that people outside the force have long recognized about policemen investigating policemen.