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*With a Foreword by  
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*Editor: Arthur Peers*

#### NOTE

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#### FOREWORD

It is a disappointment to me that this, the 12th edition of the Seaford House Papers should be so late in making its appearance. The reasons are several: suffice to say that they were beyond our control. We shall try very hard to prevent a similar occurrence in the future.

The nine papers that go to make up this volume were selected from a total of 69 individual and joint theses. Overall and not surprisingly, given the diverse background, expertise and experience of the international membership here, the spread of subjects chosen for study was wide indeed and inevitably interest in topical events was featured in many of them.

Thus, the subject matter contained in this volume ranges from thoughtful concern regarding the place of police in present-day British society, through the Trident decision to the 'factional' minutes of a meeting of the Military Committee in the Soviet Union. They have but one thing in common: each is considered worthy of merit.

Seaford House  
October 1982

WP  
Admiral

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ACQUISITIONS

## ACCOUNTABILITY OF CHIEF CONSTABLES IN ENGLAND AND WALES

by Mr C Smith, Asst. Chief Constable

### I

#### INTRODUCTION

1. Her Majesty's Chief Inspector of Constabulary said in the introduction to his 1979 Annual Report: 'The police exercise such a degree of power and authority within society and over the lives and liberty of individuals, that it is essential that our [constitutional] arrangements should be kept under scrutiny', and he went on to define the continual dilemma: 'That the police service should have the highest integrity and impartiality born of independence coupled with accountability'.<sup>1</sup>
2. The last major examination of the police was by a Royal Commission in 1960. Since then, and increasingly in the last few years, the present constitutional position of the police has been under challenge. Critical to the challenge and the role of the police is the accountability of chief constables.

#### AIM

3. This paper will examine the accountability of chief constables in England and Wales. The wider issues of the role, organisation and structure of the police in society are too vast to be attempted here. It is appreciated the use of the word 'accountable' will be seen by some as revealing the partiality of the writer, but its use, unless specifically stated otherwise, will embrace all shades of relationships from 'control' to 'independence'.

#### Exclusions

4. Scotland and Northern Ireland have not been included because of their different judicial and constitutional structures, and in the case of the latter, the societal problems; and similarly, the commissioners of police in London have been excluded because, whilst they are chief officers of forces in England, the capital has a unique history, a distinct constitutional structure and its own peculiar problems which qualify it to be treated individually.
5. Also excluded will be specific consideration of the procedure for dealing with complaints against individual policemen. That subject also comes within a wide consideration of accountability, but under discussion here is accountability for policies rather than

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<sup>1</sup> Sir James Crane: *Report of Her Majesty's Chief Inspector of Constabulary*, 1979: HMSO: page 4.

individual acts. The complaints procedure does not normally apply to chief constables, and in any case this writer has had his views on this subject published relatively recently.<sup>2</sup>

6. Of crucial importance to any examination of the office of chief constable is his status as a 'constable', because every policeman is first and foremost a constable and it is the basis of most of his responsibilities, powers and role within society. It is now generally accepted that 'a constable is an officer whose authority is original and is exercised at his own discretion'. This premise is so crucial to the following analysis that a brief resumé of the relevant court judgements has been included at Annex.

### Approach

7. An important part of the examination will be historical, for:

'It is the British tradition to assume that institutions can be best understood by the manner in which they are seen to emerge from their history, shaped by their relationships and other shared experiences; and that this texture of experience and practice, the product and push of history, ensures that institutions are soundly based and workable'.<sup>3</sup>

The future does not have to be the prisoner of its past, but many who are critical of the present arrangements either do not understand or have misrepresented history.

8. In discussing accountability today and for the future, there is little alternative to relying on personal judgements. The aim will be to express arguments objectively (and from some personal experience), and where subjective observations are made they will be conscious ones.

## II

### GROWTH AND DEVELOPMENT OF GOVERNMENT AND POLICING

#### Establishment of a Paid, Regular Police

9. To appreciate the history of the accountability of chief constables, it is not sufficient to start in 1829 when the first regular paid force was established. The Act of that year was a watershed, but in its historical perspective it was only a step in the evolution of policing. However, the accountability of chief constables was not an issue before the creation of organised, paid forces and the birth of modern local government.

10. It was in 1829 that Robert Peel, as Home Secretary, finally persuaded parliament to create the Metropolitan Police, to assume responsibility for policing all of London except for the jealously independent and powerful City. The Act allowed the Home Secretary to set up a new police office and to appoint two justices of the peace as police commissioners:

'to execute the duties of justices of the peace . . . together with such other duties as shall . . . from time to time be directed by one of His Majesty's principal secretaries of state, for the more efficient

<sup>2</sup> Colin Smith: *An Examination of the Procedure for Dealing with Complaints Against Police*: 1972: Police Federation Occasional Paper No. 1.

<sup>3</sup> *Royal Commission on Criminal Procedure* 1980: HMSO: Cmnd 8092: para 1.35.

administration of the police . . . and the said justices may from time to time, subject to the approbation of the Secretary of State, frame such orders and regulations as they deem expedient'.<sup>4</sup>

And that is all parliament said about the accountability of the first chief officers of police of a professional force.

11. It appears both from contemporary accounts and from subsequent events that the vagueness was deliberate. For example, following the Cold Bath Fields riots in 1833, the Parliamentary Committee Inquiry questioned the Home Secretary about his refusal to give orders in writing to the commissioners, and said: 'The convenience of being able to deny having given orders to the police was a safety valve in the circumstances of the time that the Home Office was determined not to lose'.<sup>5</sup> The same historian goes on: 'It is clear also during 1831 and later, that strife between magistrates and the commissioners was welcomed by the Home Office because it tended to weaken the commissioners' independence and forced both of them and magistrates to treat the Home Office as a Court of Appeal'.<sup>6</sup> In other words, a deliberately loosely defined accountability was purposefully kept vague so that no one had too much power. It also shows that from the beginning, the commissioners had considerable independence.

12. The commissioners were made accountable to the Home Secretary because there was no other obvious choice as police authority – the justices were not unified and there was no local government for the whole of London – and in any case it was parliament that had created the single united force.

### DEVELOPMENTS BETWEEN 1829 and 1960

13. Accountability involves more than one party and therefore it is necessary to examine the history and development not only of the police but of central and local government and the interaction between all three.

#### Changes in Central Government during the Nineteenth Century

14. In 1829, parliament was the only form of government above the parish and borough councils, and it was not yet itself truly democratic. The milestone in its reform also marked changes in the organisation and accountability of the police. The policing Acts of 1835 and 1839 were preceded by the widening of the franchise to the middle classes in 1832; and the restructuring of local government and hence the police in 1888 was precipitated by the introduction of the secret ballot in 1872 and agricultural workers gaining the vote in 1884. By the end of the century parliament had undergone a metamorphosis from reluctant rule by an elite to active interventionist government in the whole country and its affairs by a democratic body.

<sup>4</sup> Metropolitan Police Act 1829: 10 Geo IV: c.44: S.1 and 5.

<sup>5</sup> Charles Reith: *A New Study of Police History*: 1956: Oliver and Boyd: page 165.

<sup>6</sup> *Ibid*: page 168.

### Changes in Local Government during the Nineteenth Century

15. The parishes and municipal boroughs of the 1800s had virtual autonomy in the administration of their own affairs: in the boroughs, this usually meant as cheaply as possible and in the interests of the richer merchants; and in other areas, rule was by the established landed or trading families, who also supplied the justices. The new, often large, towns such as Birmingham and Manchester had no effective government unless they had sponsored a private bill to acquire borough status – which few had.

16. The first tentative steps towards modern local government were provoked by the necessity to cope with the results of the demographic and industrial revolutions – poverty and sanitation in the new towns – by the formation of Poor Law Guardians in 1834 and Sanitary Commissioners in 1848. Both of these co-ordinating bodies were created very reluctantly, for one function only, of a local nature, with narrow powers and with some central government control through parliament. It was not until 1888 that effective local government was created with the formation by local elections of 62 county, and 61 borough councils. The latter secured their separateness through their continuing power in parliament.

### Development in Policing During the Nineteenth Century

17. The first areas outside London to form their own 'New Police' were the boroughs; understandably so, because they had the next most serious problems of crime and disorder, and they had a local government structure to campaign for and then administer such forces. The enabling Act of 1835 was not exclusively or even mainly police legislation, but was the product of a fresh breeze of radical thinking following a widening of the franchise to bring new blood into local administration. It applied principally to the 178 municipal boroughs, but also enabled other towns to apply for charters. For the first time, councils were elected by all ratepayers and *inter alia* required to appoint Watch Committees to establish police forces. Watch Committees had power to appoint and dismiss constables, and make governing rules. The Act gave no indication who controlled the force, but no one in the early days appears to have questioned the right assumed by the Watch Committees. For example, one of the first chief constables of Liverpool, referring in his memoirs to a report to his police authority about his actions of only prosecuting the more serious offences relating to brothels and advising the continuation of this practice, stated: 'If the Watch Committee (whose province it was to decide on a question of police "policy" such as this) desired a change, I would of course spare no effort to give effect to their decision.'<sup>7</sup> As Critchley has said: 'For the boroughs, the term "police authority" had a literal meaning. The control of the Watch Committee was absolute.'<sup>8</sup>

18. The justices were left with only their judicial functions and the power to give lawful orders to constables and to suspend them. The Home Secretary, from the start, had the power to receive quarterly reports about numbers, pay and governing rules; and after 1856, he gained greater influence through the formation of his national inspectorate,

<sup>7</sup> Geoffrey Marshall: *The Police We Deserve*: Ed. by J C Alderson and P J Stead: 1973: Wolfe Pub Ltd: page 57.

<sup>8</sup> T A Critchley: *A History of the Police in England and Wales*: 1967: Constable: page 124.

whose sanction was the discretionary grant of 25% towards pay and clothing if it certified that forces were efficient in numbers and discipline.

19. Policing of the counties had to wait until 1839 before permissible legislation was passed. It had been debatable to whom these forces should be accountable, because there was no adequate local government and the local gentry did not want parliament to have the power. The Report of the Royal Commission on a Rural Constabulary had recommended the police should be trained in London for the whole country, and be supplied 'to provincial areas in response to requests from local magistrates only, and these requests to be strictly subject to the approval of Metropolitan Police Commissioners and the Home Office'.<sup>9</sup> They were against the local gentry because they regarded them as isolated from the disorders and insulated by insurance from crime, and therefore they would not spend enough money on the police. The Home Secretary shared these views: in the same year he had imposed a police commissioner nominated by, and answerable to, him in Birmingham; this followed the Chartist riots there; at the same time the Tory opposition in the town was going through the courts to prevent the granting of a charter to enable the town to form its own police force under the 1835 Acts. He later did likewise in Manchester and Bolton.<sup>10</sup> Also, during the passage of the 1839 Bill, he wrote to a colleague: 'I think it is a serious and almost fatal error in the Bill that the new Rural Police is not more closely under the government', and as an explanation he added: 'this arises necessarily from our weakness for all legislative purposes'.<sup>11</sup>

20. So, as a compromise, and a reflection of the continuing power by the gentry in parliament, the local justices were given the responsibility, with the consent of the Home Secretary, 'to increase or diminish the number of constables . . . for their county'.<sup>12</sup> The Act also allowed them on their own authority to appoint or dismiss the chief constable, to approve the appointment or dismissal of constables made by him, and to require him to attend Quarter Sessions and there make reports. Apart from his powers to appoint and dismiss constables, the chief constable was given the very real responsibility for 'the general disposition and government of all the constables so appointed'.<sup>13</sup> The Home Secretary had to agree for the force to be established, made the rules of its government (except to increase numbers) and after 1856 had the previously referred to influence through his Inspectorate and the grant.

21. County forces became compulsory after 1856, and in 1888, when a unified system of local government was established, they became accountable to *ad hoc* Standing Joint Committees, made up equally of the new county councillors and justices. Central government supported the continuing involvement of justices because they considered management of the police was partly judicial, but also the new councils needed time to be educated in the science of government. The local authorities fought hard for exclusive control, and so again the outcome was a compromise.

<sup>9</sup> Op cit 5: page 203.

<sup>10</sup> Op cit 8: page 84.

<sup>11</sup> Op cit 5: page 249.

<sup>12</sup> 'County Police Act, 1839': 2 and 3 Vict: c.93: s.2.

<sup>13</sup> *Ibid*: s.6.

22. As at every stage in the development of the regular police, some had favoured a national police force. On this occasion the Prime Minister had said in the Lords debate, he 'believed that we were slowly developing from the Dogberry and Verges position into that of a highly perfected system of organised police, which prevailed in every country but our own. He believed that we should ultimately get it. He should be glad if we were able to shorten the journey'.<sup>14</sup>

23. By the turn of the century, county forces had a degree of independence not enjoyed by the borough forces. This was because men of greater stature and ability were appointed to lead the former; these men were given more authority by statute and additionally they had usurped some of the power lost by the justices; their police authority was *ad hoc* and not cohesive, and the Home Secretary had from the outset wider powers of intervention over them. The greater authority of the chief constable and the Home Secretary in a county force was very positively at the expense of the local community representatives.

#### Changes in Central Government during the Twentieth Century

24. By the twentieth century, central government had matured in its democracy, and it had matched the increasing complexities of society as well as the interdependence of the country by a greater involvement in all aspects of local administration. The increase in the police grant to 50% in 1874 was followed 16 years later by a widening of the criteria for its payment to include the management and efficiency of the force, which was prompted entirely by the determination of the Home Office to obtain value for money through greater supervision. Once again a leading politician, the Home Secretary, had favoured complete central control for efficiency and utility, but thought the time was not right.<sup>15</sup>

25. The unifying influence of World War I and the extra duties it imposed on the police allowed the Home Office to increase its influence by co-ordinating these additional tasks, and to facilitate this it created regular conferences for the 183 chief constables which it chaired. The war also caused an enormous rise in the cost of living which, together with inept local authority management of the police, resulted in discontent and ultimately in strikes. The Desborough Committee was formed to examine police working conditions, and the resulting legislation in 1919 increased the Home Secretary's influence both through uniting the service and thus loosening dependence on local ties, and by being the inevitable choice to co-ordinate service-wide bodies. To this end, the Act established the Police Federation as the staff association for all junior policemen, the Police Council as an advisory body comprising representatives of the police service and police authorities, and gave the Home Secretary the power to make regulations governing pay and conditions applicable to law nationally. The significance of this Act was recognised by the Royal Commission on Police Powers in 1929, which recorded:

'the general level of police efficiency is probably higher than it was, owing to the greater uniformity of pay, conditions of service and training; whilst in spirit, though not in form, the whole Service is tending to become a unified National Force'.<sup>16</sup>

<sup>14</sup>. Op cit Note 8: page 137.

<sup>15</sup>. Op cit Note 3: para 1.19.

<sup>16</sup>. 'Report of the Royal Commission on Police Powers and Procedures, 1929': HMSO: Cmd 3297: para 300.

26. World War II saw a further step in the influence of the Home Office, through the Defence Regulations which allowed the Home Secretary to give any police authority or chief constable 'such general or specific instructions as appear to him to be necessary or expedient in the interests of the public safety, the defence of the realm, the maintenance of public order or the efficient prosecution of the war'.<sup>17</sup> He was also empowered to appoint regional commissioners to whom chief constables were answerable, to organise police reinforcements and to amalgamate temporarily small forces (he reduced the 183 by 21).

27. Once power is given, those who gain it are reluctant to lose it, and those who have surrendered it get used to the luxury of someone else making the decisions. It was therefore no surprise when in 1946 the Home Secretary was authorised to amalgamate forces permanently, and as a result of voluntary and compulsory schemes the number of forces had fallen to 125 by 1960. The historian, Reith, suggests during this post-war period that:

'the feeble and almost non-statutory authority of the Home Secretary has been developed by his officials, by various subtle means, into powers which, subject to its severe limitations by Treasury dictation, is almost as strong as any that could have been statutorily provided for him'.<sup>18</sup>

In short, by the middle of this century, the police service outside London was accountable to the Home Secretary, but his actual power was greater over the counties than the boroughs.

#### Changes in Local Government during the Twentieth Century

28. Although police forces were accountable to the Home Secretary, they were still responsible to police authorities. Local government underwent no significant changes between 1888 and 1974, the modifications in police accountability were the result of the ever growing influence of the Home Office and the establishment, supported by the courts, of the independence of chief constables. Counties increasingly left chief constables to command their forces, whereas the position in the Boroughs varied. On the one hand, the police were still regarded as locally controlled. For example, parliament, through 'Mr Speaker Lowther in 1917, ruled a member's question about the handling of a local riot to be out of order with the words: 'The Hon Member should ask the Watch Committee of the District. The great boast of England is its system of local government';<sup>19</sup> and following the fascist riots of 1936 in Oxford, the Home Secretary said:

'When you say that the House of Commons cannot discuss the Oxford Police in this debate, that does not mean that the Oxford Police can do as they like. It means that the Oxford Police are subject to the ratepayers of Oxford and to the people who elect the City Council, out of which the Watch Committee is formed'.<sup>20</sup>

29. On the other hand, the power of local authorities was seen to be diminishing, for example: Bunyan quotes a Watch Committee member (unidentified) as saying: 'The

<sup>17</sup>. 'The Defence (General) Regulations 1939': reg 39(1), under 'Emergency Powers (Defence) Act, 1939'.

<sup>18</sup>. Op cit Note 5: page 268.

<sup>19</sup>. Geoffrey Marshall: *Police and Government*: 1965: Methuen & Co: page 46.

<sup>20</sup>. 314 House of Commons: 5s: Col 1625.

police is not a local service. Every force in the country is controlled from beginning to end by the Home Office. It is a local force in that we are permitted to pay half the cost;<sup>21</sup> and he is supported in part, if less emotively, by court decisions (see Annex), and by the post Second World War "Oaksey Committee", which said:

'The Police Authority have no right to give the chief constable orders about the disposition of the force or the way in which police duties should be carried out'.<sup>22</sup>

Clearly the degree of independence of Borough chief constables varied, and depended on the people involved and the system that had evolved in a particular locality.

#### Developments in policing during the Twentieth Century

30. Many changes in policing were the result of central government initiatives and have, therefore, already been mentioned. Significant in the move towards a more unified national service were the creation of the Police Federation 'to consider and bring to the notice of the police authorities and the Secretary of State all matters affecting their welfare and efficiency',<sup>23</sup> the establishment of the Common Police Services Fund in 1939, the setting up of District Training Centres in 1944 to train all new recruits, and the formation of regular conferences of all chief constables. The latter was also a step towards the greater professionalism of the service, and was aided by the determination in the inter-war years to form a national police college and its establishment in 1949, the introduction after 1933 of service-wide detective training courses, forensic science laboratories and crime clearing houses, the creation of Home Office wireless depots, and the introduction in 1958 of national promotion examinations. As a consequence, the police was becoming very much one national service, operationally more efficient, more confident that it could manage its independence and, as the flaws in some local authorities became apparent, more aware that its independence to defend all sections of society would be its guarantee of support from the whole of society. And to this end, it was supported by the courts.

#### ROYAL COMMISSION 1960

31. A Royal Commission, chaired by Sir Henry Willink, was set up in 1960 to examine, amongst other subjects, 'the constitution and functions of local police authorities [and] the status and accountability of . . . chief officers of police'.<sup>24</sup> A study of the causes of its appointment gives an insight into how so much fear and suspicion was made out of so little of structural concern once the facts were established. The Commission reported, 'The recent events which led to public criticism of the police . . . did not reveal major defects in the system, so much as occasional failures in human relationships and a lack of definition in fields of responsibility'.<sup>25</sup>

<sup>21</sup>. T Bunyan: *The Political Police in Britain*: 1976: Julien Friedman: page 73.

<sup>22</sup>. *Report of the Oaksey Committee on Police Conditions of Service*: 1944: HMSO: Cmd 7831: para 185.

<sup>23</sup>. *Report of the Oaksey Committee on Police Conditions of Service*: 1944: HMSO: Cmd 7831: para 185.

<sup>24</sup>. *Royal Commission on the Police*: 1962: HMSO: Cmd 1728: page 1.

<sup>25</sup>. *Ibid*: para 141.

32. The report introduced constitutional analysis by stating:

'The police should . . . form an impartial force in the body politic, and yet be subject to a degree of control by persons who are not required to be impartial and also are themselves liable to police supervision'.<sup>26</sup>

They said of the existing arrangements that 'A system which has stood the test of time and has emerged successfully after severe strain in peacetime and proved to be adaptable in time of war and which, moreover, commends itself strongly to the Home Department, the local authorities and the chief constables, must obviously have strong claims to public confidence',<sup>27</sup> even if it resulted 'in a degree of vagueness in the relations between the central government, local government, the police and the judiciary which would probably be intolerable elsewhere and is tolerated, and even applauded, in this country only because it seems to work'.<sup>28</sup> However, they considered changes were necessary, and in proposing alternative arrangements the first of their three objectives was 'A system of control over the police, and a basic organisation which, while enabling them to perform their duties impartially, will achieve the maximum efficiency and the best use of manpower'.<sup>29</sup> They then looked at Police Authorities, the Home Secretary and Chief Constables in turn.

#### Police Authorities

33. The Commission received several opinions which brought into question leaving too much control with local authorities. The Law Society suggested watch committees 'in some instances allowed themselves to be influenced by local pressure, partisanship, political bias, personal relationships and reluctance to provide additional equipment likely to increase the efficiency of the police because the cost might result in increases in the local rates';<sup>30</sup> Berkshire Council submitted: 'It is more important that the independence of the police should be safeguarded than that financial savings should be achieved by granting financial control to county councils and thus sacrificing such independence';<sup>31</sup> and Essex Council went further, saying, 'in a county such as Essex, where political persuasions are of some considerable consequence in the county council, it is of the utmost importance that there should be no opportunity for allegations to be made that the administration of the force is subject to political influence'.<sup>32</sup> The Commission admitted: 'We have come across instances where persons elected to police authorities have sought to exercise improper influence on chief constables', but in their opinion: 'we believe these instances are few . . . The fact remains, however, that it *does* undoubtedly provide opportunities for the exercise of ill-advised influence on the police, and occasionally these opportunities have been exploited'.<sup>33</sup>

<sup>26</sup>. *Ibid*: para 24.

<sup>27</sup>. *Ibid*: para 141.

<sup>28</sup>. *Ibid*: para 41.

<sup>29</sup>. *Ibid*: para 19.

<sup>30</sup>. *Ibid*: para 120.

<sup>31</sup>. *Ibid*: para 204.

<sup>32</sup>. *Ibid*: para 204.

<sup>33</sup>. *Ibid*: para 130.



34. As far as police discipline was concerned, they agreed with the Oaksey Committee that 'discipline is almost always safer in the hands of an expert individual than those of a lay committee . . . particularly an elected body subject inevitably to local pressures and prejudices',<sup>34</sup> and strongly urged 'that the powers of watch committees in relation to the appointment, promotion and discipline of subordinate ranks be now transferred to chief constables'.<sup>35</sup>

35. After much debate, they concluded: 'that there is a strong case for bringing the police . . . under central control, is undeniable' as it might well make the police more efficient and would 'put it under effective Parliamentary supervision';<sup>36</sup> but, alternatively, 'The advantages of local administration by lay persons familiar with the character and needs of the communities they live in are important'.<sup>37</sup> They decided to go for caution and not destroy totally, 'the local basis on which the present system rests'<sup>38</sup> and defined the duties of the new police authorities as to:

- a. Provide an adequate police force for its area, properly paid, equipped, housed and administered',
- b. 'Constitute a body of citizens concerned with the local standing and well-being of the police, interested in the maintenance of law and order, and able to give advice and guidance to chief constables about local problems',
- c. 'Appoint, and if necessary discipline and remove, the senior officers of the force' and
- d. 'Play an active role in fostering good relations between the police and the public'.<sup>39</sup>

36. The Commission appreciated and indeed stressed the serious dangers of local control of the police, but were anxious both to retain local influence over policing and for the police to feel a responsibility to their local communities. They therefore recommended local police authorities as a 'bridge' between the community and the police, but although this gave them absolutely no operational control over policing, the bridge was clearly intended to carry traffic both ways.

#### The Home Secretary

37. The Commission, having decided to leave some significant responsibility for policing with reconstituted local authorities, was determined to lessen the inherent dangers of individual impropriety, political partiality and financial meanness, by requiring their responsibility to be shared with central government. It was thought inappropriate to assign to the Home Secretary responsibility for the police, 'beyond a general duty to ensure that

<sup>34</sup>. *Ibid*: para 187.

<sup>35</sup>. *Ibid*: para 188.

<sup>36</sup>. *Ibid*: para 147.

<sup>37</sup>. *Ibid*: para 148.

<sup>38</sup>. *Ibid*: para 149.

<sup>39</sup>. *Ibid*: para 154.

the police operate efficiently',<sup>40</sup> because this would have necessitated wide powers of control. However, they saw him as not merely 'entitled to intervene in the local administration of the police where [he has] reason to suspect inefficiency', but having 'a duty to do so'.<sup>41</sup>

38. This responsibility 'for' efficiency was not translated into the subsequent Act, because central government realised this would require positive powers of political intervention. As the Home Secretary made plain in the Second Reading, parliament had not gone as far as the Royal Commission, leaving him with the duty only of 'promoting the efficiency of the police',<sup>42</sup> because parliament this century had consistently and strenuously tried to avoid political involvement with policing.

#### The Chief Constable

39. The Commission recognised:

'The problem of controlling the police can . . . be restated as the problem of controlling chief constables. The essence of this problem is to achieve the advantage of preserving their impartiality as regards some activities, with the advantage of placing them under a degree of external supervision as regards others'.<sup>43</sup>

They accepted the existing position that a chief constable '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' but it remained a question whether his status 'should continue in future to shield him from external control in the formulation and application of what, for convenience, we describe as police policies in matters which vitally concern the public interest'.<sup>44</sup> They were emphatic that these latter duties did not 'require the complete immunity from external influence that is generally acknowledged to be necessary in regard to the enforcement of the law in particular cases'.<sup>45</sup> Unfortunately, they made no attempt to define such duties.

40. Having decided on the degree of accountability to local and central governments, the Commission made:

'no recommendation to alter the present legal status of the chief constable . . . As the chief officer of a local police force he should in our view continue to possess the status defined by the courts and not that of a crown or a local authority servant. But his conduct and efficiency in his office should be subject to control and supervision'.<sup>46</sup>

In the last quotation in the previous paragraph, it is important to see they used the word 'influence' and not 'control' in discussing policies, whereas, in this paragraph, 'control' is used when talking only of 'his conduct and efficiency'.

<sup>40</sup>. *Ibid*: para 230.

<sup>41</sup>. *Ibid*: para 325.

<sup>42</sup>. 685 House of Commons 5s, col 89.

<sup>43</sup>. *Op cit* Note 24: para 102.

<sup>44</sup>. *Ibid*: para 90.

<sup>45</sup>. *Ibid*: para 91.

<sup>46</sup>. *Ibid*: para 151.

## THE POLICE ACT 1964

41. The subsequent Police Act stated each force 'shall be under the direction and control of the chief constable';<sup>47</sup> the Secretary of State is charged with the duty to 'exercise his powers under this Act in such a manner and to such an extent as appears to him to be best calculated to promote the efficiency of the police',<sup>48</sup> and the police authority charged with the responsibility 'to secure the maintenance of an adequate and efficient police force'.<sup>49</sup> The detailed duties and responsibilities of everyone involved in policing are clearly spelt out in the Act.

## CHANGES IN SOCIETY SINCE 1960

42. The basis and logic of the arguments employed by the Royal Commission are still valid today, but over the last two decades society has changed very considerably. As a consequence, many of the conclusions on accountability drawn by the Commission could well be different if it was sitting today.

43. The nature of society has altered principally because of the pressures of technology and progress. As a result, attitudes to authority and public institutions are less tolerant. One of the consequences has been the appointment of several new quasi-judicial appellate bodies such as the ombudsmen for parliament, local government and the health services. World economic problems have caused central government to interfere more in local authority affairs; and, of very great relevance, politics in both tiers of government have strengthened and polarised. One result has been a feeling of hostility towards the lay members, the justices, on police authorities, and paradoxically just at a time when the judicial system generally is under attack for becoming politicised. Additionally, police forces have become fewer but larger, thus removing policy decisions further from local communities, the trend towards a centralised service has increased and forces have developed a more professional style; as a result, the service given by the police sometimes appears less personal and less locally responsive.

## III

### THE FUTURE

#### A National Force

44. The history of the 'New Police' has been dogged by the belief among men of influence that a national force would be the most efficient and eventually that such a force was eventually inevitable (see paras 19, 23, 24 and 35 above). The 1960 Royal Commission set out both sides of the argument,<sup>50</sup> and hopefully killed the irrational fear of a police state

<sup>47</sup>. Police Act 1964: ch 48 s.5(1).

<sup>48</sup>. *Ibid*: s.28.

<sup>49</sup>. *Ibid*: S.4.

<sup>50</sup>. *Op cit* Note 24: para 124 et seq.

when it said: 'British liberty does not depend, and never has depended, upon the dispersal of police organisation. It depends on the supremacy of parliament and the rule of law'.<sup>51</sup> It did not propose a national force because it preferred to retain the local ties; however, one member, Goodhart, submitted a Minority Report in favour of such a force. His arguments encompass most now propounded and are therefore worth exploring.

45. Goodhart considered that if all forces were amalgamated, then 'not an iota of difference would be made in the status of the police constable, although the uncontrolled authority of the chief constable would be affected'.<sup>52</sup> In law, he is probably right, but he overlooked the reality that what affects the latter now will inevitably affect the former eventually. He appears not to have held chief constables in very high regard, but considered them as compared with governments 'the most important, because the power of the two governments is primarily financial while his is the power of administration'.<sup>53</sup> His colleagues did not see the government as having a purely financial interest, and by putting his faith in his proposed regional commissioners he surely overlooked the probability that those who would have filled these posts are today's chief constables. However, his thinking is better understood when he explained, 'I believe that the primary guarantee of impartiality is that a person who acts should be held responsible, directly and immediately, to his superior officers; if the chain of command ends with him then there is no adequate control'.<sup>54</sup> Such a stance is very arguable: as anyone who has served in a junior position in an hierarchical organisation will know, it is wholly dependent on how much faith the junior has that his senior will allow him to behave impartially; and more often it is knowing one has the ultimate authority and accountability (to the courts, the Home Office and local opinion) that concentrates the mind onto impartiality. And the 'buck' has to stop somewhere, so it is more likely to be safer with 43 autonomous chief constables than one supremo, especially if he has a committee.

46. The base for Goodhart's arguments appears to have had three components: first, that the constitutional change necessary for a national force had already occurred in 1829, it had not proved harmful to anyone's rights and it had been shown to be more efficient; second, that a national force would still be local policing, only the control would move, and local representatives would be satisfied with access to their regional commissioner; and third, that he did not like local police authorities, 'which might be influenced by personal, political or religious prejudices'.<sup>55</sup> The latter may still be valid, but as far as efficiency is concerned, since 1960 forces have become significantly larger and service-wide co-operation and co-ordination have greatly raised the level of effectiveness. However, pressure for local accountability has certainly not lessened.

47. A national force is said to have the advantages that – parliament would be directly responsible for the efficiency of the police and they in turn would be directly answerable for their actions, instead of as now with a divided responsibility and the police only

<sup>50</sup>. *Op cit* Note 24: para 124 et seq.

<sup>51</sup>. *Ibid*: para 135.

<sup>52</sup>. *Ibid*: Memorandum of Dissent, para 13.

<sup>53</sup>. *Ibid*: Memorandum of Dissent, para 23.

<sup>54</sup>. *Ibid*: Memorandum of Dissent, para 24.

<sup>55</sup>. *Ibid*: Memorandum of Dissent, para 25.

accountable retrospectively; it would be possible to co-ordinate all police actions into greater efficiency, and save money and resources through centralised purchasing and resource co-ordination; greater use could be made of facilities, capital investments and the requirement to implement research results; and manpower would be exploited to greater effect by using each man to his potential and filling every post with the best qualified. All desirable, if obtainable, and potentially the panacea for much of today's criticisms. There are, however, regrettably inherent problems: experience has shown that human abilities and management structure limit the optimum size of any organisation, and above certain numbers there are adverse factors mitigating, and even negating, advantages of greater size; and secondly, there are numerous and valuable advantages of having many local forces.

48. These advantages, which involve mainly subjective judgements, are threefold: firstly, that whereas a national force would not lead inevitably to a police state, it may well be how the public would perceive it, and at least they would feel less able to influence local policing policies. Prior to the reorganisation of the Royal Ulster Constabulary, a Commission of Enquiry into the 1969 disturbances in Northern Ireland recognised the importance of the public perspective, declaring: 'The relationship of the RUC to the Minister of Home Affairs makes it easy for the criticism to be put forward that the RUC is essentially an instrument of party government'.<sup>56</sup> (The subsequent Advisory Committee proposed the same system of accountability as now exists in England).<sup>57</sup> Politicians also appreciate this danger. The Home Secretary in 1972 said: 'A single national police force would, inevitably, come more and more under political control. This would be disastrous'.<sup>58</sup>

49. Secondly, anyone who has moved around this country, living in different communities, will know the enormous variations of history, temperament, outlook and attitudes, and local people, especially councillors, would resent not being able to influence local policing policies. To continue the speech from the last paragraph of a former Home Secretary: 'The other reason was set out well in the Royal Commission Report and dealt with the immense importance of the police being regarded, and regarding themselves, as part of the home community in which they live'.<sup>59</sup>

50. Thirdly, a judgement from the police service. For a policeman, his force is hierarchical and disciplined, and as a consequence there is a desire to seek some contact with his policy-makers. In a national force this would be impossible, and experience in large commercial organisations has shown the resulting anonymity would cause alienation. Morale is crucial to efficiency, and it would require great ingenuity to sustain it in a national force. Creativity and innovation are advantages of having 43 distinct forces, and these would be stifled; and the great bureaucracy, with the necessary plethora of co-ordinating committees, each with vast clerical intervention, would sit at the apex of the service, crushing the base.

<sup>56</sup>. *Disturbance in Northern Ireland 1969*: HMSO: Cmnd 532: para 230.

<sup>57</sup>. *Report of the Advisory Committee on Police in Northern Ireland, 1969*: HMSO: Cmd 535: paras 85 and 89.

<sup>58</sup>. R Maudling: *Address to 1972 Police Federation Conference*: Police Review 26 May 1972: p.660.

<sup>59</sup>. *Ibid*: para 58.

## LOCAL ACCOUNTABILITY

51. Currently, county councils provide two-thirds of the members of police authorities, and the remainder are magistrates. They do not control the force, but the man who does, the chief constable, is appointed by them and 'accountable' to them. Apart from being his disciplinary authority and having the power to dismiss him if the Home Secretary agrees, 'accountability' is not defined. Clearly it is more than their specific statutory duties, although their most tangible power is to require the chief constable to submit a report on any matter for which they have a responsibility – and their main responsibility is to secure the maintenance of an adequate and efficient force. All a little vague, but some clarification exists. Willink said that they were 'to give advice and guidance to a chief constable',<sup>60</sup> and during the Second Reading of the subsequent Bill, the Home Secretary said, they 'will have every right to discuss with [their] chief constable how the men and equipment . . . can be most effectively used in conducting police operations'.<sup>61</sup> The present Home Secretary has gone further, in saying:

'I think it has become increasingly desirable that police authorities should see themselves not just as providers of resources but as a means whereby the chief constable can give account of his policing policy to the democratically elected representatives of the community and, in turn, they can express to him the views of the community on those policies'.<sup>62</sup>

They cannot become involved in individual operational decisions, nor matters which it would not be in the public interest to disclose, but as the same Home Secretary said in a subsequent speech, again addressing police authorities and chief constables: 'There is a grey area where general questions about the way in which the community is policed merge into operational matters', and he drew a parallel from which he suggested the local police authority had:

'the right to be consulted, the right to warn and the right to encourage'.<sup>63</sup>

### Greater local control

52. There are of course people seeking significantly greater control of the police, using such expressions as 'democratisation of police forces', by which they mean 'bringing the police force firmly under the control of popular democratic institutions'.<sup>64</sup> 'Popular' is ill-defined, but it is positively not the present local authorities. In practice, they mean under the control of a particular party or group. A member of the Merseyside police authority, Simey, has written that 'A police committee is a piece of political machinery or it is nothing', she explains this by adding that at present 'committee agendas consist entirely of items relating to the efficiency and adequacy of the staff';<sup>65</sup> she seeks to be responsible for promoting law and order in society in its widest sense, something that is much more

<sup>60</sup>. *Op cit* Note 24: para 154.

<sup>61</sup>. *Op cit* Note 42: col 89.

<sup>62</sup>. W Whitelaw: 'The Police and The Public': "JAMES SMART LECTURE 1980": 17 September 1980: Edinburgh.

<sup>63</sup>. W Whitelaw: 'Speech to the Joint Local Authorities/Chief Police Officers' Conference': Eastbourne: 10 June 1981.

<sup>64</sup>. R Reiner: 'The Police, Class and Politics': *Marxism Today*: March 1978: page 69.

<sup>65</sup>. M Simey: 'All Dressed Up and Nowhere to Go': *Police*: August 1976: pages 14 and 15.

than policing and may amount to a political role. Hain claims that 'The demand for community control of the police can no longer be ignored'; his case is based on the fact that police forces were formed 'to safeguard the interests of an emerging capitalist class' and 'since then they have faithfully reflected their origins'. He fails to define 'community control'.<sup>66</sup> Benn has written that 'chief constables are now forced to act as if they controlled police forces which are a law unto themselves', and his fear is 'not that Britain will consciously adopt the methods of a police state but that we might slide into it almost casually'.<sup>67</sup> He, too, advocates democratic control.

53. The man who has openly done most to try to secure greater control is Straw, who has placed two bills before parliament; the first was designed *inter alia* to extend the powers and duties of police authorities to include the operation and organisation of forces<sup>68</sup> – giving them the right to decide 'general policing policies'; and the second would have added the removal of JPs from the police authorities, giving more say to county councils over police finance and placing the Metropolitan Police under a locally elected authority. His bills as far as control is concerned, were based on the belief that the Police Act was intended to 'make police authorities more accountable, but the truth is that far from police forces becoming more accountable since 1964 they have become less'.<sup>69</sup> He rightly referred to the changes that have occurred in society during the intervening period, but he totally failed to give any weight to the inherent disadvantages of his proposals, which have been spelled out consistently by history and by every inquiry into policing. Any increase in political control will result in a diminution in the independence of chief constables. To quote again from a recent speech by the Home Secretary, in which he emphasised that the present arrangements gave no one 'total control over police authority', he said:

'I think most people in this country would agree that it is highly desirable that the enforcement of the criminal law should not be subject to political control or influence. . . . I do not believe the majority of people in this country would welcome or would tolerate the situation in which local or national politicians could direct the police operations or influence decisions on who should or who should not be prosecuted for a criminal offence. And let us be clear, the kind of powers over the police which are being sought in some quarters would make this possible'.<sup>70</sup>

#### Against greater local control

54. The old watch committees did exercise control over their police, and by 1839 it was already known that 'administration of the new borough police forces was falling into the hands of licensees, brewers and local vice-providers'.<sup>71</sup> Partiality continued to a greater or lesser extent until 1964, and was one of the reasons why Willink recommended the abolition of the small borough forces and the introduction of lay magistrates into all police authorities. Regrettably, changes since 1964 have potentially made matters worse. Particularly the polarisation of politics and rule through party caucuses, make impartial

<sup>66</sup>. P Hain: 'Policing the Police': 1979: John Calder: page 15.

<sup>67</sup>. T Benn: *State Research Bulletin No. 14*: October/November 1979: pages xiii and x.

<sup>68</sup>. House of Commons: 14.11.79: col 1361.

<sup>69</sup>. House of Commons: 11.3.80: col 1155.

<sup>70</sup>. *Op cit* Note 63.

<sup>71</sup>. *Op cit* Note 5: page 203.

control of the police by local authorities impossible. It would not be, as their advocates claim, control of the police by the people, it would be control by a specific political ideology. It is essential to realise that such proposals would involve party politics deciding operational policing policy for trade disputes, protest rallies and demonstrations, and even the typical crimes against people and property, which would be totally unacceptable to society as a whole.

55. As confirmation of these fears, it is worth looking at a few contemporary political commentaries. Lord Harris, in a House of Lords debate over the sacking of an employee who refused to join a union, described some of the Sandwell councillors as 'By any normal ethical standards. . . thoroughly bad men and their actions thoroughly wicked'.<sup>72</sup> The Economist, discussing the then forthcoming elections, claimed that the reason why so many candidates stood was partly because 'many big city councils are fiefdoms of union power – some think business contracts, or at least contracts, can be steered by a councillor's influence'.<sup>73</sup> The ruling GLC Labour party, whose manifesto informed the electorate (if one paid the £4 for a copy) of their intention to campaign to gain control of the police of London 'to scrutinise the day to day affairs of the force and to allocate the resources to the various police functions',<sup>74</sup> recently decided to spend £20,000 from the rates to feed, house and transport participants in a politically organised protest rally.<sup>75</sup> It is not intended to judge the rightness of any of these decisions, but to show they are party political actions on behalf of a group and not motivated by the desire to protect the rights and interests of the whole of the local community impartially.

#### INDEPENDENCE OF CHIEF CONSTABLES

56. Independence of the chief constable is integral to a consideration of the power a police authority should have, for an increase in one diminishes to some degree or quality the other. Police are not an arm of government in the sense that it does not direct or control their actions. Government represents the will of the majority (or at least it is not opposed by the interested majority), and 'first past the post' elections secure positive rule; but the recent manifest strength of political factions aggravates the risk that government can, if only accidentally, ignore, or deliberately suppress, the rights and views of minorities. The police from their inception have always been seen by government, society and by themselves as a societal service, protecting particularly the weak, the inarticulate and the vulnerable. Certainly they have the duty to act according to the laws passed by government and are wholly answerable to the law in the courts, but they have always injected some independent discretion in their actions to enable them to retain public support.

57. The police must be accountable to public opinion, they cannot function without it, but it is an accountability to all sections and interests in society. As Alderson has said:

<sup>72</sup>. *Daily Telegraph*: 26 March 1981.

<sup>73</sup>. *The Economist*: 25 April 1981: page 19.

<sup>74</sup>. *Labour Party Manifesto for GLC Elections*: 5 May 1981: para 2.6.

<sup>75</sup>. *Daily Telegraph*: 22 and 23 May 1981.

'a superior democratic police force should be enabled to and should strive to serve all, since its purpose should be to contribute to the notion of the common good and not to be the servant or tool of the majority. Its aim is to contribute to attainment of general happiness, not just to the utilitarian concept of the greatest happiness for the greatest number, but to go beyond that'.<sup>76</sup>

This requires a need to ensure that they are not controlled by, but are independent of, all organised partial groups, even if that group represents an overwhelming majority interest. The Oaksey Committee went so far as to warn chief constables against being weak: 'The police authority have no right to give the chief constable orders . . . and he cannot divest himself of responsibility by turning to them for guidance or instructions on matters of police duty'.<sup>77</sup> This does not mean the police are seeking to place themselves down amongst the people. As Critchley in a political commentary observed:

'The rapport established for years between a predominantly working class police, organised for the most part in small local units, and the mass of the population will not necessarily survive the present changes in police organisation [towards greater professionalism].<sup>78</sup>

How much more would the rapport be changed by the police becoming an arm of an increasingly powerful and interventionist government, even local government. Unless relations between the police and the general public 'are marked by mutual confidence and co-operation, no laws however well conceived . . . will ensure the maintenance of law and order, and the very basis of our social fabric will be exposed to disintegration'.<sup>79</sup> And one could add, political direction of an extreme variety would surely cause more harm than anything.

58. Those seeking to make the police more accountable are in the main the extremists who, as was said earlier, are anxious to use the police to facilitate the imposition of their ideologies, or destroy the *status quo* so that their views may grow on the decaying remains. They are not trying to make the police more accountable to society as a whole. In the debate on Straw's first Bill, Brittan rightly said:

'If the police are to maintain public order they must be there on behalf of the community to preserve order, and not to enforce the views of one side or the other, not even if the government of the day or the local authority in the area is involved in the dispute'.<sup>80</sup>

(He might have said 'especially' rather than 'not even'). It is right that chief constables should be accountable, both to the law and to an elected committee, but operational decisions must be made impartially (i.e. they must be politically neutral) for the good of the whole community. It is in the best interests of society that now 'accountability' is mainly retrospective.

59. Of equal importance, chief constables must not stretch the area of their independence, whether through lack of confidence or in an effort to avoid problems. Chief constables carry a heavy burden in that they are required to provide society with as much explanation as possible, and to listen sincerely and respond genuinely to views from

<sup>76</sup>. J Alderson: *Policing Freedom*: 1979: Macdonald Evans: page 63.

<sup>77</sup>. *Op cit* Note 22.

<sup>78</sup>. T A Critchley: *The Conquest of Violence*: 1970: Constable: page 204.

<sup>79</sup>. *Report of the Royal Commission on Police Powers and Procedures, 1929*: HMSO: Cmd 3297: para 239.

<sup>80</sup>. House of Commons: 25.1.80: col 901.

whoever they come. Impartiality requires considerable professional skills of management and leadership, and a great deal of hard work. A senior chief constable recently summed up the duty of the police:

'We shall only be able to maintain confidentiality when it is essential if we clearly demonstrate our willingness to be completely open on every occasion when the public interest (not our's) does not demand otherwise'.<sup>81</sup>

## NON-STATUTORY BODIES

60. Many critics of the present arrangements have tried to find their solution to the three-sided dilemma of the independence of chief constables, the remoteness and imagined impotence of police authorities and the need for police accountability, in the introduction of non-statutory liaison committees. Marshall, for example, proposed a 'body that would act in a manner analogous to that of the Press Council, the BBC Complaints Panel or the Parliamentary or Local Government Complaints Commissioners. These provide a clear example of explanatory accountability in that without any power to bind or reverse any decisions they provide an avenue for challenge, for the requiring of reasoned explanations and for advice and recommendation'.<sup>82</sup> Whitaker, on the other hand, proposed a 'neighbourhood police council for each sub-division's area', which would give 'each neighbourhood more say in its local policeman's work'.<sup>83</sup> The former seems very much the existing intended role of police authorities, after all the use of the word 'accountable' is by definition retrospective. The latter proposal, however, has much merit now that forces and local authorities are so divorced through size and organisation from local communities.

61. Some forces are already constructing informal links with district councils, usually at chief superintendent level, and this appears to be ideal in that it enables the police officer responsible for the area to listen to what the public expect of him and to explain his problem and policies to the community representatives. It has the added advantage it does not usurp the powers of police authorities who otherwise might be offended or neglect their duties in the belief that others were carrying them out.

## CONCLUSIONS

### Present Effectiveness

62. Opinions vary on the effectiveness of the present systems and the desired direction for the future. The Home Secretary believes:

'The present arrangements, resting on a tripartite division of responsibility between police authorities, chief officers of police and the Secretary of State achieve on the whole a satisfactory balance between

<sup>81</sup>. Sir Philip Knights: *Ultimate Command - The Responsibilities of Chief Constables in the 1980s*: paper presented to the Joint Local Authorities/Chief Police Officers' Conference: Eastbourne: 10 June 1981.

<sup>82</sup>. G Marshall: *Policy and Politics*: Edited by D Butler and A H Halsey: 1978: Macmillan Press: page 63.

<sup>83</sup>. B Whitaker: *The Police in Society*: 1979: Methuen: page 189.

local, operational and central interests. This does not mean, however, that I see no scope for movement or development within the existing framework'.<sup>84</sup>

A reservation on this approach has been suggested by one chief constable, Anderton, who fears: 'the genuine efforts by reasonable people at local level currently to devise a more meaningful involvement in police affairs, are unwittingly preparing the foundations for political mastery of the police'.<sup>85</sup> He may be right, and he is probably only counselling caution. If one is aware of the dangers, then one should have faith in the good sense of the majority of society. It is arrogant to do otherwise, for the strength of the police has always been its reliance on mutual respect and understanding with the community. And it is for society to decide what it wants, not for the police or anyone else to determine what it ought to want.

63. Opposition to the present system comes from three distinct sources: extremist political groupings, those who, unasked, wear the social conscience of others on their sleeves and a few who are involved in the system and naively latch on to apparently easy solutions to the inevitable rough and tumble of day to day problems. Certainly some of the proposed solutions would, at least in the short term, ease a few of today's difficulties, but this paper has aimed to show they would cause far worse problems and more deep-seated long term harm. The present system has the advantage that, considering it relies on fallible mortals in ever more demanding situations, it actually works tolerably well; it has not consistently deprived any group within society of their rights or aspirations; nor has it allowed any chief constable to assume oppressive powers; the local police authorities and the Home Secretary, apart from very isolated cases, have not disagreed with the policies pursued by chief constables; and Home Secretaries very rarely, and police authorities almost never, call for reports, and only two inquiries have been ordered under the 1964 Police Act.<sup>86</sup> One would have thought if anyone were to advocate a national force, it would be a Home Secretary, but the present Conservative and one former Labour holder of this office have both forcefully spoken against such a proposal.<sup>87</sup>

#### Areas for Improvement

64. So how can the present systems be further exploited so as to blunt the assault of extremist critics? Does Simey have a point when she asks: 'How often is it the chief constable and not the chairman whom members of the public meet when they are concerned over some aspect of public order . . . it should be directed against the [police] committee'?<sup>88</sup> Is Phillips right that police authorities should interest themselves more in general prosecution discretion?<sup>89</sup> Do members of the police authority who sit on various management committees of some of the common police services, like district training centres, report back to their full authority meetings and there discuss policy issues? Is the

<sup>84</sup>. *Op cit* Note 62.

<sup>85</sup>. J Anderton: *The Art and Economics of Policing*: paper presented to SSRC: London: 9 January 1981.

<sup>86</sup>. *Red Lion Square Disorders of 15 June 1974*: Report of Inquiry by the Rt Hon Lord Justice Scarman: HMSO: Cmnd 5919; and *The Brixton Disorders 10-12 April 1981*: HMSO: Cmnd 8427

<sup>87</sup> *Op cit* Note 62 and R Jenkins: 'Address to Police Federation Conference': *Police*: June 1975: page 12.

<sup>88</sup>. *Op cit* Note 65: page 14.

<sup>89</sup>. *Op cit* Note 3: para 6.59.

statutory duty placed upon police authorities 'to keep themselves informed as to the manner in which complaints . . . are dealt with'<sup>90</sup> carried out rigorously and that fact adequately advertised? Are too many elected representatives more interested in ideologies or self-interest than pursuing quietly what is best for the whole community as the community sees it? Do police authority members discuss policing problems with their chief constable, and sympathetically and constructively advise him on the public reactions to these policies? Do police authority members explain policing problems and policies to their electorate? Are chief constables as forthcoming as they could be with their authorities about what they are thinking of doing? Do some instead pass the buck and let the authority make, or at least take the blame for, decisions they should have decided themselves? Is it reasonable to expect police authorities to accept responsibilities without providing them with the information and knowledge on which to base their advice and judgement? Do the officers of the authority restrict themselves to providing a service, or do they seek personal influence? Does HM Inspectorate frequently enough exert its undoubted practical power by challenging the policies of a chief constable? Is everyone involved trying as hard as they should to build up an open and trusting working relationship? In short, is all the opposition gaining credibility and likely to provoke undesirable changes solely because the participants in the present system are not accepting their individual duties and responsibilities fully? To quote again a senior chief constable, which at least shows that one side is trying to be constructive:

'I would hope the present arrangements to bring a chief constable to account for the efficient operation of his force might first be used to a much greater extent than I believe they are currently before we start to think about new ones'.<sup>91</sup>

#### Tripartite Challenge

65. The history of the police has shown that the present structures have evolved slowly but surely to minimise the opportunity for partiality and to maximise operational efficiency to a desirable level. The Home Secretary has a very real responsibility to promote efficiency by acting as the referee and mentor, the local authorities have adequate powers to influence meaningfully the policies of their force and to call to account the chief constable if he falls down on his duties, and the chief constables have sufficient independence to be impartial in their operational decisions but fully accountable to society, the law, their police authority and the Home Secretary for the efficient discharge of their responsibilities.

66. Any system is only as good as the people within it. If chief constables, local police authorities and the Home Office can be encouraged to work together in a greater spirit of co-operation to serve society as a whole, the police in England and Wales could be that much more caring and efficient; and, as a bonus, it might silence the present destructive critics.

<sup>90</sup>. *Op cit* Note 47: page 50.

<sup>91</sup>. *Op cit*: Note 81.

## THE STATUS OF THE OFFICE OF CONSTABLE

1. Since the formation of the "New Police" in the early nineteenth century, a constable has been seen to hold an individual office under the Crown. Although the legal basis for the current position is not universally accepted, it has been stated forcefully, frequently and consistently by the Courts.

2. An early and much quoted authority was the judgement in the case of *FISHER v OLDHAM CORPORATION* 1930.<sup>92</sup> The circumstances were that the police of Oldham had issued a warrant for the arrest of a man for obtaining £150 by false pretences from a local tradesman. Fisher was subsequently arrested in London, and detained for several hours before it was confirmed that he was not the offender. He claimed damages from the Corporation but lost, for as McCARDIE J said in his judgement:

'A police constable is not a servant of the Borough (or County) Council, he is a servant of the State, a ministerial officer of the central power, though subject in some respects to local supervision and local regulation'.

3. McCARDIE J cited with approval the following passage from an earlier judgement by GRIFFITHS C J in *ENEVER v THE KING* 1906:

'Now the powers of a constable, qua police officer, whether conferred by Common Law or Statute Law are exercised by him by virtue of his office, and cannot be exercised on the responsibility of any person but himself. . . A Constable, therefore, when acting as a peace officer, is not exercising a delegated authority, but an original authority'.<sup>93</sup>

4. The extrapolation from the Fisher case to the independence of the office of constable in all operational decisions and duties claimed today by the police service is not accepted by everyone. One of the best argued opponents is MARSHALL, who maintains that this case was only concerned with vicarious liability for a tort committed by a constable, and in his view, writers have subsequently 'given [it] a wider significance than it deserved'.<sup>94</sup>

5. In a later case, *ATTORNEY-GENERAL for NEW SOUTH WALES v PERPETUAL TRUSTEE CO*, 1955, Viscount SIMONDS, sitting in the Judicial Committee of the Privy Council, approved the observations made by McCARDIE J quoted above as a correct statement of the Law. He also held: an officer's 'authority is original, not delegated and is exercised at his own discretion by virtue of his office'. This again was a civil claim. An Australian had been injured in a collision between a motor vehicle and a tramcar in which he was travelling. The Crown had tried to claim damages for his disablement, but was unsuccessful. Viscount Simonds considered nothing in the intervening twenty-five years since the Fisher case had altered the Law:

'neither changes in organisation nor the imposition of ever-increasing statutory duties have altered the fundamental character of the constable's office'.<sup>95</sup>

6. Again, MARSHALL takes issue with the courts and the generally accepted interpretation of the judgement. After a well-argued point of view, he says: 'It would be fair to conclude that no such immunity from subjection to lawful orders and no general constitutional autonomy can be inferred from the much handled civil liability cases'.<sup>96</sup>

7. Coming closer to today, there have been two cases in which the independence of a chief officer was challenged, when the Commissioner of the Metropolitan Police was taken to court in an effort to require him to take specific action. In the first case, *R v METROPOLITAN POLICE COMMISSIONER*, ex parte BLACKBURN, 1968, Blackburn applied for an order of mandamus requiring the police to enforce the gaming laws in the London clubs, and Lord DENNING, Master of the Rolls, said:

'The office of Commissioner of Police within the Metropolis dates back to 1829 - his constitutional status has never been defined either by statute or the courts - I have no hesitation in holding that, like every constable in the land, he

should be, and is, independent of the executive. He is not subject to the orders of the Secretary of State, save that under the Police Act, 1964, the Secretary of State can call upon him to give a report, or to retire in the interests of efficiency. I hold it to be the duty of the Commissioner of the Metropolis, as it is of every Chief Constable, to enforce the Law of the land. He must take steps so to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace. He must decide whether or not suspected persons are prosecuted; and, if need be, bring the prosecution or see that it is brought. But in all these things he is not the servant of anyone, save of the Law itself. No Minister of the Crown can tell him that he must, or must not, keep observation on this place or that, or that he must, or must not, prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the Law and to the Law alone'.<sup>97</sup>

8. Marshall again takes issue, but with such a clear statement of the law he is compelled merely to retreat to his lost cause by suggesting: 'It is fairly plain that these categorical assertions [that "no Minister of the Crown can tell him" precisely what to do] were merely repetitions of the orthodox and arguably mistaken inferences from Fisher's case'. He then adds for good measure: 'In any case . . . it seems justifiable to treat the tangential views . . . on the powers of the police authorities and the Secretary of State as being obiter'.<sup>98</sup>

9. In the second case brought by Blackburn, in 1972, when he sought a further order of mandamus requiring the police to enforce the laws against pornography, Lord WIDGERY C J spelled out the limits of a chief constable's discretion, his relations to the Government law officer - the Director of Public Prosecutions, and the points at which the courts would intervene, by stating:

'If it could be shown . . . that the Commissioner had declined with public or scandalous results to enforce the law, mandamus would issue, but the court would not interfere with the legitimate exercise of police powers . . . [and] . . . that it was perfectly proper for the Commissioner to seek the Director's advice before embarking on a prosecution, so long as he did not consider himself bound to follow his advice'.<sup>99</sup>

10. In this country, the right of the courts to determine the law as laid down by Common Law and Parliament is fundamental to our constitution, and they have consistently declared the independence of the office of constable in his operational duties, and a chief constable is first and foremost a constable.

11. This situation is well-recognised and respected by all senior politicians. To quote just two, a previous Home Secretary declared publicly:

'One of the great features of our system of policing is the independence of chief officers who are not responsible to me, nor to any political authority, but to the Law and the Law alone'.<sup>100</sup>

And the present Home Secretary said at a public lecture:

'There is . . . a real need to ensure that the views of the public are adequately taken into account in the development of policing policies. That must never happen to the detriment of the independence of chief officers in operational matters'.<sup>101</sup>

<sup>97</sup> *R v Metropolitan Commissioner*, ex parte Blackburn: 1968: 2 Q.B. 118 page 135.

<sup>98</sup> Op cit 82: page 59.

<sup>99</sup> *R v Metropolitan Commissioner*, ex parte Blackburn: 1972: C.L.R. 1973: page 55.

<sup>100</sup> Op cit 58.

<sup>101</sup> Op cit 62.

<sup>92</sup> *FISHER v OLDHAM CORP* 1930: 2KB 364.

<sup>93</sup> *ENEVER v THE KING* 1906: 3 Commonwealth L.R. 969.

<sup>94</sup> Op cit 82: page 57.

<sup>95</sup> *Attorney General for New South Wales v Perpetual Trustee Co* 1955: A.C. 477

<sup>96</sup> Op cit 19: page 45.

**END**