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# The Growing Police Challenge



Police during the 1970s that saw the turning point. Mark was perhaps the first real police ideologist, seeing the job as a function of the state which had separate interests from other state organs. He was also a skilled tactician, arguing for instance against capital punishment, and then building on his humanitarian stance a well-argued case that now that we no longer hang people we can do away with all the procedural safeguards designed to keep people from the gallows.

The sense of power, or at least of a right to power, did not take long to develop. On the first introduction of a token outside element into police complaints procedure Mark challenged the Government. But there was too much public concern about the police sitting in judgement on each other behind closed doors, and when the Government would not back down Mark took early retirement in protest. The warning was plain enough: the police were not simply the servants of government — they were claiming a say in the business of government.

The police have also mounted a prolonged challenge to the common law — that is, the law declared by the judges, which includes most of the legal protections we possess against arbitrary arrests and raids. Mark, loudly echoed by his successor McNee, was not afraid to threaten society that if the police were held back by the law in doing what they took to be their job, they would be driven to bend or break the law. McNee in fact went to the Royal Commission on Criminal Procedure recently with what amounted to the argument that police practice was now regularly exceeding the bounds of the law and the law had therefore better be expanded accordingly.

The record of the judiciary in the face of police assaults on freedoms guaranteed by the law has not been a creditable one for many years now. But, just as Parliament finally had to make some sort of a stand, the judges have recently had to put their foot down. Late in 1980 two men who had been held for days

It is increasingly difficult to remember that in constitutional theory the police are a non-political agency impartially enforcing whatever laws Parliament makes. This is not simply for the well-worn reason that police work has always tended to attract individuals for whom a uniform and a truncheon hold a special appeal and who have matching views. It is now because a corporate and articulate theory of policing has been developed in the United Kingdom, and developed to a degree which is starting to resemble a new limb of civil government standing outside and alongside Parliament, the judiciary and the executive.

The fault lies in large part with all three of the conventional limbs of government. Passively, Parliament and the civil service have allowed systematic abuses of police power to go unchecked. No attempt has been made by Governments of either colour to give the Judges' Rules<sup>1</sup> the force of law, to bring mail opening and telephone tapping under control or to carry the provisions of the Race Relations Act into police practice. They have left the judiciary to exercise what control it can. But the judiciary by and large does not want to exercise control over the police. Not only do the majority of police malpractices go on outside the area directly monitored by the courts; the judges in general side with the police and will, for example, waive breaches of the Judges' Rules where these can be proved to have occurred.

## Police pressure

There is perhaps nothing new in this. What is new is the advantage which has been taken by the police of the passivity of the civil authorities. In a review printed in this journal in June 1980 Robert Reiner wrote: '... the police have emerged as a vocal and influential pressure group, seeking to alter the laws they are required to enforce and the social context within which they operate.' It was undoubtedly the period of Sir Robert Mark's tenure as Commissioner of Metropolitan

without being charged applied for habeas corpus.<sup>2</sup> It emerged that the policeman responsible for holding them did not realise he was doing anything wrong, and the court, having first required an explanation from the Commissioner, granted habeas corpus and spelt out very firmly that the practices of the Metropolitan Police in this regard were illegal.

But the police can no longer be expected to acquiesce simply because the law is the law. They will renew their demands for the law to be changed in their favour.

## Royal Commission on Criminal Procedure

The most recent battleground which they have entered with these demands is the Royal Commission on Criminal Procedure. The publication of the report of the Commission early this year was the occasion for a hot public controversy about the recommended reforms of the law, a controversy in which the rival accounts of the Commission's recommendations were so different<sup>3</sup> that one wondered if they all related to the same

<sup>1</sup> These are rules laid down by the judges for controlling the process of interrogation and charging, but there is no proper means of enforcing them.

<sup>2</sup> Habeas corpus is the ancient writ which requires anybody detaining an individual to justify the detention or release them.

<sup>3</sup> For example Harriet Harman in the *New Statesman*, Tony Gifford in the *Guardian* and Ole Hansen in the *Legal Action Group Bulletin* on the one hand; Walter Merricks and Michael Zander in the *Guardian* on the other. The Metropolitan Police journal *The Job* gave it a 'cautious welcome'.

report. The reason, it turned out, was that by no means all the recommendations went the police's way: if you made a scorecard it appeared to come out at about 10-all between the police and the rest of us. The critical difference was that the hits scored by the police were most of them bullseyes; those scored by the citizens were more peripheral.

Thus a massive new range of police powers of search and detention is proposed, subject to immediate controls which are in the main merely verbal ('rare circumstances', 'last resort') or largely formal (detention beyond 24 hours to be authorised by a magistrate), and to ultimate sanctions which are no better than what we have now. When it comes to the one issue that could balance up the police's wide new powers, the Commission comes down against making illegally obtained evidence inadmissible, as it is in the United States.

Again, the Commission favours tape-recording interrogations, but because of cost recommends that after an interrogation the main points allegedly emerging from it should be put on tape in the suspect's presence — a procedure which will do practically nothing to alleviate the real oppression which is often involved in police interrogation techniques. As a further argument on cost, the Commission suggest that much of the expense will be offset by more people pleading guilty once the tape-recording system is introduced. In other words the Commission is echoing the police belief that people commonly admit their guilt in the police station and then deny doing so in court; whereas it is at least as likely that many people are 'verbalised' in the police station and plead guilty because they don't think their denial has a chance of being believed.

It is in ways like this that the gradual power of a self-regulating police lobby is manifested. There is little doubt that the pressure was so heavy that some of the more progressive members of the Commission finally believed that they had produced a system of checks and balances, when the real substance of their recommendations was listing heavily to one side. It was not the radical lawyers but a trade unionist, Jack Jones, and a black clergyman, Canon Wilfred Woods, who finally stood out against the worst of the Royal Commission's proposals. Perhaps the most striking retreat is to be found in the two major issues on which they made virtually no recommendations at all: identification procedures and plea bargaining, two of the worst sources of injustice in recent criminal trials, and both of them involving forms of malpractice or human error which make it possible to secure convictions of innocent people.

## Plea bargaining has been a blot on the face of justice for a long time

### Plea bargaining

The suggestibility even of honest identification witnesses has been demonstrated again and again, not only in controlled experiments but in established cases of wrongful convictions. In 1976 Lord Devlin reported on the problem and recommended a number of safety measures. Characteristically, the Home Office's response has been to circularise procedures which lack the force of law: the pressure short-sightedly exerted by the police to enable them to get convictions has brought about a compromise which satisfies neither the demands of the police nor the requirements of justice.

Plea bargaining — private deals between judge and counsel to trade a lenient sentence for a plea of guilty — has been a blot on the face of justice for a long time. The Court of Appeal keeps trying to stop it, but it goes on. The Royal Commission has missed its opportunity to speak loudly and clearly against an unfair procedure.

It is noteworthy that Sir Robert Mark took a longer-sighted view of police interests. He recognised that juries frequently disbelieved police evidence because police corruption was known to be widespread, and there is no doubt that he worked hard and effectively to reduce the level of corruption in the Metropolitan Police. The striking point of Mark's philosophy is the assumption that the people whom the police charge are guilty, and that the real task is to facilitate the business of getting them convicted. That is an understandable police view and one which it is the major job of any judicial system to shut out. It highlights a real conflict of interest which a socialist society must equally face and resolve. The Royal Commission has taken a step in the right direction by recommending that the function of prosecution should be taken out of the hands of the police.

### The Left and the police

The police do not yet have it all their own way. As I have argued, they meet resistance from time to time within the establishment which nurtures them. But they have

are taking the side of oppression because of the way they tend to view society and their own role within it

manifested and developed a willingness to argue their case as an almost independent constitutional force, and their case at present is consistently authoritarian and illiberal. Their greatest asset is the relative inertia of a political, administrative and judicial establishment which shares their values even if from time to time it cannot decently tolerate their methods. And perhaps more than any one victory they may gain in terms of powers or procedures is their gradual alteration of the civic climate — a process in which it is both possible and important for them to be opposed.

This article is not a programme for such opposition. It is, however, arguable that the authoritarian mood of policing in Britain, though socially and politically explicable, is no more inevitable than the advent of socialism: both are determined by conflict and struggle, and in both the Left requires strategies which grow out of concrete analysis. The present state of affairs and current trend is not cheering; in the present political state of Britain one should not expect it to be. In planning and effecting the long haul out of Thatcher's state, the Left's strategy has to take into account the fact that an articulate and largely reactionary police force is a part of the society which has to be radically changed. What still needs full debate is a mode of opposition which will not simply polarise the labour movement and the police but will constrain and modify those deep-seated attitudes which at present put policing and democracy in opposite camps.

This implies a present and continuing need for dialogue with the police on the part of the organised Left and the labour movement. Neither the physical nor the mental channels of communication are numerous, but in using those which can be found the Left is going to need to listen as well as to explain its own stance. It needs, for example, to grasp what are the things which reinforce the worst of police attitudes and practices, not so that a policy for appeasement can be formulated but so that workable responses can be developed.

Tentative though this is, it reads like heresy in a Marxist journal. The truth is that we have not begun to face up to this problem at all. The Left has remained divided between those who see the police as part of a class enemy which has, in the favoured phrase, to be smashed, and those who cheerfully suppose that the police do as they are told and will go on doing so under a socialist government. A strategy which envisages a non-insurrectionary and democratic mass movement carrying in a left government capable of unseating capitalism cannot fall back upon either of these easy

schemes. Nor can it wait for the great day and then start deciding what to do about the police.

The problem we face is therefore a critical one. The extent of authoritarian violence and of tolerated racism in the major urban police forces is alarming, and events such as the killing of Blair Peach and the recent Lambeth Report are continuing reminders of it. There are important issues of democracy on the

agenda, on which the police, through the chief constables who largely speak for them, are taking the side of oppression because of the way they tend to view society and their own role within it.

There is no iron law which says it must always be that way, but there are evident social and political reasons why it is that way at present. Experience elsewhere in the world has shown that a shift in class power in a

society does not always radically alter that state of affairs.

Not only the kind of socialism which the people of this country can build, but the possibility of building it at all, depends to a significant degree on how the Left and the labour movement can face and answer the present reactionary trend of police power and influence, distinguishing principles from slogans and dialogue from appeasement. •