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The Growing Power of the Military



More than seven years have passed since the first joint army-police operation was carried out in January 1974 when Heathrow airport was occupied. It was to be the first of many such exercises based on alleged terrorist threats. Some commentators put the exercises into perspective. It was, reported the *Guardian*, 'basically a public relations exercise to accustom the public to the reality of troops deploying through the high street' (8.1.74). Three years later, in the winter of 1977/78, twenty thousand troops were used, for the first time in British history, to replace an entire workforce of 32,000 firemen and to break the strike. By this time the public, whatever the 'legal niceties' (to use Sir Robert Mark's term), were indeed accustomed to seeing troops on the high streets of Britain. Although we have not yet seen troops used in a public order situation there is no question that they are ready and prepared to undertake this role too — and if the events over the weekend of April 11/12 during the Brixton 'riots' had become prolonged, and extended to other areas of London, there is little doubt (and some evidence) that the troops would have been called in (*Time Out*, 17.4.81).

The use of troops in civil society in strikes, to combat terrorism and to control public order is now perceived by those in power as a legitimate role for the armed forces and their deployment in these situations forms an essential part of the state's contingency planning for peacetime emergencies. This development in the 1970s contrasts sharply to the tradition, established during the nineteenth century, that the use of troops in civil situations should be strictly limited, subject to civilian control, and only employed in the last resort. During the course of the last century responsibility for maintaining public order (dealing with demonstrations and pickets in particular) passed from the army to the unarmed modern police forces. Thus the re-introduction of the army as one of the agencies for maintaining state control poses major political and constitutional questions which, so far, have not been recognised or challenged by the labour movement.

This article looks at the political and constitutional questions raised by the reinvolvement of the military in an internal role. In particular, it highlights the lack of democratic control over their use, and the new state machinery which has been created to deal with terrorism, strikes and public order.

The constitutional position

The popular assumption since the 1688 Bill of Rights has been that the exercise of physical force by the armed forces of the state is subject to democratic control. Attempts by Charles II and James II to maintain their own armies led to the 1688 declaration which remains important today 'because it asserts that the armed forces are constitutionally subordinate to parliament' (*Constitutional and Administrative Law*, 9th edition, A W Bradley, 1977).

After a series of running battles in the late nineteenth century between Queen Victoria, who appointed the Commander-in-Chief of the army, and the government, control over the army was formally vested in the Army Council which was created in 1904. This consisted of seven members — four military and three civilian with the Secretary of State for War answerable to parliament for everything connected with the army. In 1964 when the three wings of the armed forces were merged under the Ministry of Defence the controlling body became the Defence Council. Today the 13-man Defence Council is comprised of five members of the government, including the Secretary of State for Defence (who is its chairman); the five most senior military officers; and three senior civil servants. It should be noted that on both the old Army Council and the present Defence Council governmental representation is in the minority, and state servants in the majority.

Taken at face value the constitutional position remains today as it did in 1688. The Secretary of State for Defence is answerable to parliament, the day-to-day running of the military is overseen by the Defence Council, and members of the armed forces are only nominally under the command of the monarch.

The reality is somewhat different. As in many areas of the constitution the power of the 'royal prerogative' (the ancient power of the monarch to make law) and the precedents set in common law stand as the law of the land unless statutes have been passed by parliament which automatically override the two former sources of authority. This duality, between parliament and the monarch, is particularly relevant on the question of control over the military where the Secretary of State for Defence, and the Defence Council, exercise powers derived from the monarchical royal prerogative. At the same time common law restraints on the use of troops in civil society, established during the nineteenth century, have been ignored in the developments of the past decade. The starting point therefore is to examine the statutory and common law limits placed on the use of troops in peacetime situations.

The Emergency Powers Acts

There are two Acts of Parliament which authorise the use of troops in strikes and other civil emergencies. The main Act is the 1920 Emergency Powers Act. The origin of this Act was the Defence of the Realm Act (popularly known as DORA), which was passed within days of the outbreak of war in 1914, and gave the government powers to make Regulations for 'securing the public safety and the defence of the realm'. DORA was due to expire when hostilities were officially declared to have ended in 1921, but faced with widespread industrial unrest the government and various state agencies were keen to retain the key powers afforded by DORA for more permanent use. The Act was to 'make exceptional provisions for the protection of the community in case of emergency'. In particular it gave the government power in cases of major strikes or civil disorders to ask the

monarch to declare a 'state of emergency' where the disruption of the 'supply and distribution of food, water, fuel or light, or the means of locomotion' would deprive the community of the 'essentials of life'. The government is then empowered to draw up Regulations and can 'assume such powers and duties as His Majesty may deem necessary' to restore order and maintain supplies. Once drawn up the Regulations have to be passed by parliament and renewed by them each month. Although the Act enables the government to suspend or amend all laws some restrictions were laid down. No Regulation can introduce compulsory military service or industrial conscription — this requires the declaration of a state of war; it cannot be made an offence to take part in a strike; and existing criminal procedures cannot be altered.

While the powers granted under the 1920 Act are far-reaching they were intended to specify the terms under which troops could be used in strikes and other emergencies, and placed some basic safeguards both on the rights of the subject and by providing for parliamentary scrutiny. Since 1920 there have been 12 declarations of a state of emergency under the 1920 Act, although troops have actually only been used on seven occasions and the wide powers granted under Regulations have never been fully used. The 12 declarations were: 1921 miners' strike; 1924 bus and tram strike in London; 1926 General Strike; 1948 and 1949 dock strikes; 1955 rail strike; 1966 seamen's strike; 1970 dock strike (July), electricity strike (December); 1972 miners' strike (February), dock strike (August); 1973/4 miners' strike. It was the practice until recently of governments of both parties, that the use of troops in strikes on a national basis would require the declaration of a state of emergency under the 1920 Act.

The second statute is the 1964 Emergency Powers Act which was passed in February by parliament in the dying days of Sir Alec Douglas-Home's brief period as Tory Prime Minister. There was only a short debate on the second reading and no amendments were made at the committee stage. To all intents and purposes it was uncontroversial. The Tory Home Secretary Henry Brooke told the Commons that he was introducing the Bill because of the 'prolonged bad weather of last winter', the main intent being to make permanent an unrepealed wartime Regulation which had been used by governments of both parties. The purpose, he said, of Section 2 of the Bill, was to legalise the use of troops in tasks which could not be 'properly described as military duties', and cited instances where troops had been used under the Regulation — bringing in the harvest, flood disasters, heath fires and in conditions of severe snow and ice. Section 2 empowered the Defence Council to authorise the use of troops in 'agricultural work or in other work of national importance' (phraseology taken from the wartime Regulation).

Between 1964 and 1977 Section 2 of the 1964 Act was used on three occasions in what were termed as 'limited' and 'local' situations — the 1970 dustmen's strike in Tower Hamlets; the 1973 firemen's strike in Glasgow and the 1975 dustmen's strike also in Glasgow.

How power passed from local control

Common law restraints were embraced in military law. The actions of the military are subject both to the law of the land and, through the Queen's Regulations for the Army, to military law. Queen's Regulations are issued under the 'royal prerogative' by the monarch on behalf of the Defence Council, and are based on various Acts of Parliament and common law precedents (based on laws and customs declared to be law in the Courts). In the postwar period there have been three editions of the Regulations issued, in 1955, 1961 and 1975. In the first two all the constitutional precedents established since the last century were maintained. But the 1975 edition contained several major changes.

Since the beginning of the nineteenth century it was established in common law and included in Army Regulations that the 'civil authority' empowered to call for the aid of troops was: the Commissioner of the Metropolitan Police in London (who was a justice of the peace from 1829 to 1974); and outside of the capital, a magistrate or more usually the elected mayor (who was automatically a JP by virtue of the office). The mayors or magistrates were thus empowered to request aid from the local army commander if disorder occurred. This definition of the 'civil authority' was included in Queen's Regulations issued in 1955 and 1961.

In 1976 it emerged that the 'civil authority' had been redefined as the local Chief Constable instead of the democratically-elected mayors (Letter from MOD to secretary of the Cobden Trust, 12.4.76). And secondly that the power to request the despatch of troops was now centrally controlled by the Home Secretary, to whom Chief Constables would apply (Hansard, 8.4.76). In fact, this change had happened without any reference to parliament by means of an amendment to Queen's Regulations for the Army in September 1973 — just three months before the second confrontation between the Heath government and the miners — and was incorporated in the 1975 edition of the Regulations.

The second major change occurred *after* the firemen's strike in the winter of 1977/78. The post-1974 Labour governments (under both Wilson and Callaghan) were known to be reluctant to declare a state of

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emergency under the 1920 Act — Heath having declared five of the 12 declarations in just four years. Faced with a national firemen's strike the Cabinet (or more precisely the inner Cabinet of key Ministers) decided, on the advice of their civil servants, to authorise the use of troops under S.2 of the 1964 Emergency Powers Act. This fact received no publicity at the time of the strike and was revealed only in February 1978 after detailed investigations (see *State Research Bulletins* Nos. 4 and 5).

So yet another change was effected in Queen's Regulations. Queen's Regulations were at the time of the firemen's strike quite clear on the procedure to be followed. The relevant Regulation, under the heading 'Military Aid to Civil Ministries', specified, in line with the existing statutes, two situations. The first was where a state of emergency was proclaimed under the 1920 Act in a 'situation where the supply and distribution of the essentials of life to the community are extensively threatened' (Reg JI 1.004a). The second 'where there is *no proclamation* and the emergency is *limited and local*, the Defence Council may, under the Emergency Powers Act 1964, authorise Service personnel to be temporarily employed on work which the Council have approved as being urgent work of national importance' (Reg JI 1.004b).

The use of troops in the firemen's strike was clearly *national* and *extensive*, not *limited* and *local*. The Ministry of Defence admitted the probable unconstitutionality of their actions and announced that the Defence Council would at its next meeting issue a Defence Council Instruction (DCI) changing the Regulations by simply deleting the words 'limited' and 'local' from Reg JI 1.004b. The deletion of the offending words removed the contradiction from Queen's Regulations and thus that of issuing potentially unlawful orders to troops, and, *post hoc*, legitimised the use of troops in the firemen's strike.

By-passing parliament

Several issues are raised by these actions. The use of the 1964

Emergency Powers Act rather than the 1920 Act in the firemen's strike was a clear abuse of the intention of parliament in passing the two Acts. In doing so it set the precedent of using troops on a national scale in strikes without providing for parliamentary sanction or scrutiny. Moreover, the fact that the Queen's Regulations for the Army have now been changed does not dispose of the constitutional contradiction with common law precedents which allow for local democratic control.

This situation is compounded by the powers exercised by the Defence Council under the 1964 Act. A Defence Council 'order' (as distinct from Instruction which changes Army Regulations) is in effect an 'order-in-council'. However, there are two kinds of order-in-council. One derives from *statutory* powers granted by parliament in an Act giving a Minister powers to issue orders-in-council which he first *has to lay before parliament* and, these are, theoretically at least, open to challenge. The other derives from the 'royal prerogative' power to issue an order-in-council exercised by, in this case, the Defence Council, which does *not have to be laid before parliament*. In the latter case three members of the Defence Council are able to meet and issue an order-in-council under the 'prerogative' powers which is passed to the Privy Council. Three members of the Privy Council, which numbers several hundred, have to agree it whereupon it is passed to the Queen for signature. Parliament is simply by-passed. It is precisely this latter procedure which is used under the 1964 Emergency Powers Act.

Who to take on and who not to

The implications of these changes over control of the army are best illustrated by looking at their use, or otherwise, in recent strikes.

The decision to use troops in strikes is taken at the highest level, in the Cabinet Office. The general policy is decided by the Civil Contingencies Committee, chaired by the Home Secretary, and the Civil Contingencies Unit, under a senior civil servant, handles matters on a day-to-day basis. Both of these bodies grew out of the major reorganisations after the 1972 miners' strike which involved all levels of government and the civil service. The job of the CCU is to advise the Committee on the likely effect and success of any threatened strike in the public and private sectors. Special Branch, MI5, Defence Intelligence and the relevant Ministries all provide reports on which these assessments are made. Governments of both parties have been particularly concerned when a strike is threatened in key industries where the life of the community could be seriously disrupted.

A list of sixteen public services was drawn up six years ago which placed public service industries in three categories of vulnerability, although experience has led to some amendments. The categories are: a) sewerage, water, electricity, gas and the health service, being the most vulnerable; b) railways, docks, coal production, and refuse collection in the intermediate group; and c) other public transport, education, telephones, air transport and steel in the least vulnerable. Even before coming to power Mrs Thatcher was given a confidential report drawn up by Lord Carrington which concluded that where industries 'have the nation by the jugular vein the only feasible option is to pay up' (*Economist*, 27.5.78).

Despite reassuring statements by government ministers, usually widely reported in the media, the ability of any government to use troops (backed by the police) to replace and outlast striking workers is quite limited. For example during the road haulage drivers' strike in 1978-79 the Labour Home Secretary admitted in the Commons that the introduction of troops was not the answer because the army could move less than 5% of supplies. The road haulage industry, after the strike, was added to category (a), the most vulnerable sector.

A more blatant example occurred last winter when a national water workers' strike was threatened. Conflicting stories as to the ability of

troops to cope with the strike abounded. Even the *Guardian* carried an article headlined 'Troops would keep water running in national strike' (7.1.81). Nothing could have been further from the truth. The 'massive use of the armed forces', comprising of 15,000 men (every member of the services not engaged in Northern Ireland and NATO) would have achieved little. According to the best estimate, within 48 hours of the strike starting health hazards would have arisen and many industries been brought to a halt. Without the help of the supervisory staff the Royal Engineers had only enough pumps to keep one city's water system going. A declaration of a state of emergency would have been inevitable and widespread public panic and disorder highly likely.

Policing the recession

So far we have looked at general changes in the control of the use of the military in civil society, which beg major questions of democratic control, and at the use of troops in strikes. However, these aspects represent only part of a much wider rethinking which took place during the 1970s. The turning point was the miners' strike of 1972. Soon after the end of the strike a Brigadier on the General Staff at UK Land Forces Headquarters told *The Times*:

'The whole period of the miners' strike made us realise that the present size of the police force is too small. It is based on the fundamental philosophy that we are a law-abiding country, but things have now got to the state where there are not enough resources to deal with the increasing numbers who are not prepared to respect the law' (23.5.72).

This attitude was echoed by the Tory government who announced in March 1973 that a permanent National Security Committee (now the Civil Contingencies Committee in the Cabinet Office) had been set up. What was at issue was not just major strikes but the prospect of mass defiance of the state and the law. Contingency plans to cope with all peacetime emergencies were to be drawn up based on the coordination of the police, military and civil service.

The Special Branch was expanded from some 300 to 1,500 and their brief widened to cover all 'subversive' activities; MI5, the internal undercover agency, was expanded and their regional centres beefed up; para-military units in the police were formed — Special Patrol Groups and Police Support Units — and trained for demonstrations, strikes, and riots; the 'War Plan', first drawn up prior to the First World War, was revamped to cope with the 'internal' enemy; and the new central coordinating unit was created in the Cabinet Office.

The 'internal enemy'

Despite the continuing threat of nuclear war, the main 'enemy' perceived by the state is not external but internal — namely those engaged in political and industrial activity (the 'subversives'). State planning for strikes, widespread public disorder and post-nuclear attack situations are now closely interlinked. Today, the official terms 'Home Defence' (against an external enemy; previously 'Civil Defence') and 'Internal Security' (internal enemy) are used interchangeably. 'Civil Defence' was officially placed in mothballs by the Labour government in 1968, and when the Tories returned to power they did not seek to reverse this policy. Instead the concept of 'Emergency Services' was introduced in 1972, a policy pursued ever since. Wartime emergencies, peacetime emergencies and natural disasters were in future to be considered together. The Home Office circular outlining the new policy stated that:

'It is considered that there is much common ground between war planning and the preparations required for and the organisation appropriate to a major peacetime emergency or natural disaster. Accordingly there are many advantages in creating a closer relationship than hitherto in local planning for different emergencies of peace and war' (Home Office circular ES/1/72, dated March 22, 1972).

Both major parties have used troops to replace striking workers in order to enforce their wage policies

The long-term implications of collapsing the two categories of 'emergency' into one were not lost on those concerned with 'Home Defence' planning. The principal of the Home Defence College (which is under the Home Office, and runs regular training courses on 'Home Defence' for local council officers, councillors and the police), Air Marshal Sir Leslie Mavor, said in relation to 'subversion' and 'sabotage' that 'the full possibility of the present internal threat is only just sinking in' (*Guardian*, 12.6.75). (Earlier this year Sir Leslie Mavor was appointed as the National Co-ordinator of voluntary organisations to help in 'Civil Defence').

While the courses run at the Home Defence College concentrate on disasters, terrorism, and nuclear war, the machinery also has a different potential application. The contradiction is that while elected councillors and local council officials (who are not bound by the Official Secrets Acts) need to be trained for 'Civil Defence' — between

November 1977. A striking fireman watches troops trying to contain a fire.



1973 and 1977 over 6,000 such people attended courses there — the involvement of local government in strikes and civil disorders would be highly controversial. For this reason local government officials (as distinct from national state employees) were only marginally involved in the firemen's strike and the road haulage strike. All the facilities, the coordinating centres and communications systems, were provided by the army and the police.

The military in the 1980s

Contingency planning is effectively based on the colonial model laid out in the British Army Land Manual written in the 1950s. The concept spelt out in the Manual of a controlling 'triumvirate' of: the repressive agencies of the state (the police, the military and the intelligence agencies), the civil service and the government has now been transposed from the Third World to the metropolis. The system for regional (and sub-regional) control for war and peacetime 'emergencies' are now one and the same and each would be under the control of the 'triumvirate'. It is a system geared not just to nuclear war or revolution but one which is adaptable enough to be used in everyday situations — like the firemen's and the road haulage drivers' strikes.

The military are now, in an unprecedented way this century, openly prepared to speak out about the possibility that they might be used on mainland Britain in a public order role. The BBC 1 series entitled 'War School' on the Army Staff College at Camberley, run by Kitson, included interviews with officers referring to 'subversion' in strikes, broadcasting, and the press. One senior officer said:

'The biggest threat we reckon to our sort of society is the communist one and if we think that threat only comprises a great number of tanks sitting on the other side of the Iron Curtain, then we are deluding ourselves' (*Listener*, 10.1.80).

The programme also included a 'mock' exercise based on a revolutionary outbreak in a fictional town in the north of Britain — it was, in fact, based on Aberdeen where a group of nationalists created a situation which the police could not control.

This openness to envisage that the military might be used against the working class of Britain was again illustrated when General Sir Edwin Bramall, the Chief of the General Staff, addressed the Royal Society of Arts on the subject of 'The Place of the British Army in Public Order' last year (6.2.80). While he recognised that the military should only be used as a last resort he also set out the scenario in which the police would have to call on the troops to restore order.

However, the role and influence of the military needs to be put into perspective. Governments of both parties have presided over these developments. Both major parties have used troops to replace striking workers in order to enforce their wage policies. They have also sanctioned the creation of a new, and highly sophisticated, machinery to deal with peacetime 'emergencies' including strikes. Within this new machinery the military, along with the police, the civil service, and the security agencies, are involved at all levels both in planning and regional deployment. The re-introduction of the military into an internal role should be seen less as a sign of military aspirations to find a new post-colonial role but rather as an indication of the degree to which the state, and governments, are prepared to go in order to 'manage' the recession and combat opposition from whatever source it may come.

The implications of developments in this field over the past decade cannot be made too strongly. They not only affect present everyday struggles in relation to wage claims, by the threat or actual use of troops to replace striking workers, but are part of a longer term planning which is intended to pre-empt any revolutionary movement, and could indeed be used against extra-parliamentary support for any truly socialist government, should one come to power. •