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The British Politico-Legal Structure and Police Accountability: A Critical Appraisal

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Abstract

Police has a very important role to play in a society. Broadly, the police are responsible to prevent and control any conduct or action that is recognized as threatening to life and property in order to create and maintain a feeling of security in communities. However, police is often criticized for their excessive use of force, lack of accountability, political interference, corruption, and abuse of power. It becomes, therefore, important to keep a constant check on the police so as to avoid any abuse of powers by the police force as well as raising awareness among the citizens about their rights vis-à-vis the police. This requires a legal framework which ensures the proper accountability of the police force. In this paper, we critically look at the complex structure of the tripartite system of police accountability in England and Wales and put forward some suggestions to improve the system so as to build a police that is more accountable.

Keywords: Police Force, Accountability, Crime Control, Tripartite System, Police Reforms; England and Wales

Introduction

Police is an important organization of any organized and civilized society. They are the gatekeepers to the criminal justice system and are in a unique position to contribute to and shape the communities where they work. They serve on behalf of the state with the primary responsibility of keeping peace, control and taking

criminals away from the community. In order to carry out their duty, the police have been granted certain powers such as arresting and detaining suspected individuals. However, it is also important to keep check so to avoid any abuse of powers entrusted to the police force. This requires a legal framework which ensures the proper accountability of the police force.

A central feature of governance of the police remains the degree to which the police force can be made accountable for what it does. National police systems in the world are, theoretically at least, made accountable at national political level, usually by way of clear ministerial responsibility to a national parliament or Assembly. In England and Wales, the accountability of the police force is as complex as its structure. This became a major political issue during the 1980s, concerning not only police accountability but also who should control the police force. In recent years, this debate has been greatly concerned with the performance and effectiveness of the police force. Efforts have been made to take the politics off the police and to make politics-free policies for police governance. However, concerns regarding police governance, performance and accountability remain profoundly political.

The Framework of Police Governance

Before going to discuss the police accountability in England and Wales, it is important to understand the structure of the police force which operates. It is important to point out that the police force in the UK is not a unitary body similar to the national police forces that exist in other parts of the world (Mawby & Wright, 2003). England and Wales comprise 43 territorial police forces based on geographical basis. Scotland has eight regional police forces. In Northern Ireland, since 2001, the Police Service of Northern Ireland has replaced the Royal Ulster Constabulary which was in operation since the disbandment of the Royal Irish Constabulary in 1922 (Patten, 1999).

Apart from these forces, there are some special police forces which operate throughout the UK. Among them are the British Transport Police, the Ministry of Defence Police, and the United Kingdom Atomic Energy Authority Constabulary. In addition, the Jersey, Guernsey and the Isle of Man Police have their own police forces whose jurisdictions are limited to their respective islands. Therefore, the police force in the UK constitutes many forces which operate in their respective jurisdiction.

The Tripartite System of Police Accountability

The current police force in England and Wales functions under the 1964 Police Act. The system distributes responsibilities between the Home Office, the local police authority, and the Chief Constable of the force. Further legislation like 1994 Police and Magistrates Courts Act, The Police Act 1996, and the Police Reform Act 2002 has endorsed the tripartite arrangements of the police force. This tripartite system provides accountability to Parliament through the Home Secretary who has the responsibility for policing policy. It also provides accountability to local populations through the local police authorities. These local police authorities consist of elected local councillors, magistrates and business representatives who are nominated by a central panel. The chief constables also respond to policies and circulars set by the executive (the Home Office and Her Majesty's Chief Inspector of Constabulary).

Prior to 1962, the police force in England were set up such as the chief constables in urban districts were accountable to watch committees and chief constable in rural districts were accountable to a magistrates committee (Jones, 2003: 608). This allowed for a large amount of police corruption, which reached a peak in the 1950s. The 1960s Royal Commission on the constitutional position of the police was set up in response to a series of controversial incidents of the 1950s, which "cast doubt on the adequacy of the means of bringing the police to account" (Crichtley, 1978: 268 cited in McLaughlin, 1994: 5).

Since the late eighteenth and early nineteenth centuries, concerns about the direction and control of powers vested in the police have surfaced regularly at time of political tension. The 1964 Act placed each force under the 'direction and control' of its chief constable. The act also provided the Home Secretary with an array of powers and established in statute the increasing dominance of central government within the framework of police governance (Jones, 2003: 608). As aforementioned, the Home Secretary formed the police authority of the largest and most influential police force — the Metropolitan Police. With regards to provincial forces, the Home Secretary had a number of key powers. For instance, he could require the chief constable to give up his job in the interests of competence, could call for reports into any portion of the policing of an area and set up a local inquiry into policing matters. In addition, the Home Secretary was provided with a number of powers of approval over police authority appointments (Jones, 2003).

Since then during the late 1970s and early 1980s political and social polarisation increased greatly in Britain, and the police became embroiled in acute controversies (Reiner, 1992). Whether the police were adequately accountable became a prominent issue (Morgan and Smith, 1989). Recently partisan conflict over police accountability has abated.

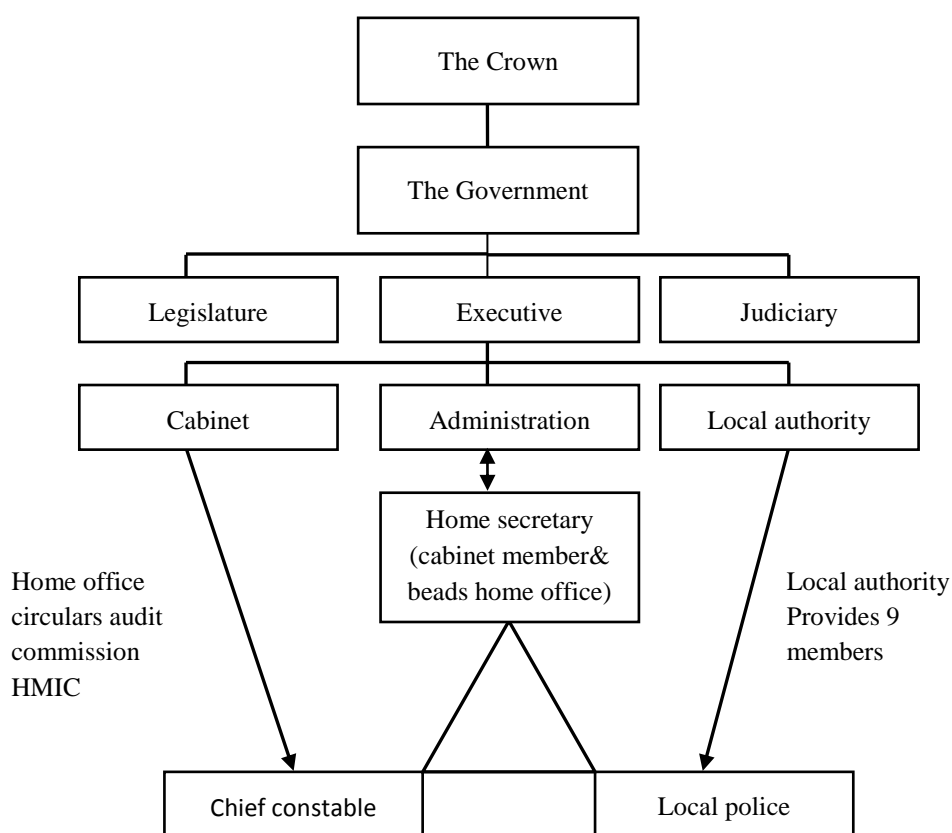
During the 1980s, concern with accountability was central to much of the discussion about policing in Britain. 'Accountability' has been called a 'chameleon word' because it encompasses a range of meanings including 'answerability', responsiveness, openness, efficient estate management, not to mention participation and obedience to external laws' (Day and Klein, 1987).

In response to the public demand for the central governments attention to police accountability, the Royal Commission on the police was put into police in the early 1960s. "The Royal Commission on the police reported in 1962 that the chief constable should be accountable to no one for enforcement policies" (Baldwin and Kinsey 1982: 106). Soon after the Royal Commission of 1962 was reported, the development of the 1964 police Act was put into place. The 1964 police Act set up new Police Authorities which would be composed of local councils and their duties would include: approval of budgets, appointment of chief constable, appointment of deputy constables, appointment of assistant constables, approval of size of local police force , deal with complaints against senior officers , approval of police building and equipment and can call the chief constable to retire (Baldwin and Kinsey 1982: 107).

The 1964 police Act is what is still in practice today in England's police force. It also set up what is known as the tripartite system of police government. "Under this responsibility for policing divided between local police authorities (one-third of the members of which are Justices of the Peace and two-thirds local counsellors), chief constables, and the Home Secretary" (Reiner, 1993:2).

The current system of holding the 43 forces of England and Wales accountable has been characterized as 'the tripartite structure of police accountability'. Established under the 1964 Police Act, following the deliberations of the 1962 Royal commission on the police, this remains the fundamental basis of police governance. The tripartite system distributes responsibilities between the Home Office, the local police authority, and the chief constable of the force. Legislation since the 1964 Police Act, including the 1994 Police and Magistrates' Court Act

(PMCA), the Police Act 1996, and the Police Reform Act 2002, has endorsed the tripartite arrangements, though not always uncontroversial (Reiner, 1993). This tripartite system provides accountability to Parliament through the Home Secretary (who has responsibility for policing policy including centrally set 'Key Priorities' that are formalized within a National Policing Plan). It also provides accountability to local populations through the local police authorities, which comprise of elected local councillors, magistrates and business representatives nominated by a central panel. In practice chief constables also respond to policies and circulars set by the executive (the Home Office and Her Majesty's Chief Inspector of Constabulary). The autonomy of chief constables is arguable limited by the current arrangements, although case-law has made it clear that the police are servants of the law in terms of their operational discretion, are not subject to administrative or political direction in this respect Figure 1 below provides an overview of the tripartite system and where it is situated constitutionally (Mawby & Wright, 2005:4).



Police Legislations Since 1990s

The 1990s were a crucial time of reform in the system of police governance, with the central piece of legislation during this time being the Police and Magistrates' Court Act 1994 (later consolidated under the Police Act 1996). Police authorities became independent bodies set apart from the local government structure. Their duty under the Act was to provide for an 'efficient and effective' police force. Moreover, the size of most authorities was restricted to 17 members, consisting of nine councillors, three magistrates and five 'independent' members. These independent members were to be appointed according to complex process but with significant local involvement. In addition, the chief constable drafts the local policing plan and sets the annual budget and may now be subject to fixed-term contract. The act also provided the Home Office with a number of new powers. Greater power was given by the act to the Home Secretary as well to join police forces. Finally, under the new system, the Home Office relinquished details control over staffing and capital spending budgets within police forces and henceforth simply provided an annual cash-limited grant to police forces (Jones, 2003:609-10). This provided for greater control of overall spending but less details control over the details of what the grants is spent on (Newburn & Jones, 1996).

One purpose of the 1994 Police and Magistrates' Court Act (PMCA) was to strengthen the role of local police authorities by giving them additional powers, including involvement in developing local policing plans. However, the 2002 Police Reform Act moved greater power towards the centre through, inter alia, the introduction of the Home Secretary's rolling three year National Policing Plan. The act also has significant implications for the 'pluralisation' of policing. It enables chief constables to designate police authority support staff as 'community support officers', investigating officers, and detention officers or escort officers in order to support police officers in tackling low-level crime and anti-social behaviour. In addition, it introduced arrangements for the authorization of district and street wardens and embraced the idea of the 'extended police family' (Jones, 2003).

Table (1) shows the current balance of powers and the respective responsibilities of the tripartite structure. Scotland, unlike England and Wales prior to the 1964 Police Act, already had a tripartite system of police governance, in which the local authority itself was the local authority (Walker, 2000).

Nevertheless, reforms in England and Wales have followed a similar pattern in Scotland, the primary legislation being the police (Scotland) Act 1967 (Oliver, 1997).

Table 1: The Tripartite System under the Police and Magistrates' Courts Act 1994 and the Police Reform Act 2002

HOME SECRETARY /HOME OFFICE	LOCAL POLICE AUTHORITY	CHIEF CONSTABLE
<p>Determines key national policing objective .Produces Plan and presents it to Parliament.</p> <p>Direct police authorities to establish performance targets. Can require a police force to take remedial action if HMIC judges them inefficient or ineffective.</p> <p>Determines cash grant to police authorities</p> <p>Approves appointment of chief constable</p> <p>Issue statutory codes of practice and directions to police authorities</p> <p>Has authority to order amalgamations</p>	<p>Responsible for maintaining an effective and efficient force</p> <p>Determines local policing priorities. Produces a three-year strategy consistent with national policing plan.</p> <p>Determines arrangements for public consultation</p> <p>Established as precepting body responsible for budgeting and resource allocation</p> <p>Responsible for appointment and dismissal of the chief constable (subject to ratification by the secretary of state). Can require suspension or early dismissal on public interest grounds</p> <p>Membership of 17 (usually). 9 from local government 5 local independents' 3 magistrates</p>	<p>Responsible for direction and control of the force</p> <p>Responsible for operational control</p> <p>Drafts local policing plan in conjunction with local police authority</p> <p>Responsible for achieving local and national policing objectives</p> <p>Responsible for resource allocation</p> <p>Chief constables and deputy assistant chief constables on fixed term contracts</p>

Source: Mawby and Wright 2003: 185

Impediments in Police Accountability

The implementation of the 1964 police Act is the beginning of the end for local police forces in England. Police forces are, unjustly, becoming more accountable to the central government and financial goals rather than being accountable to the

taxpayers and the law. The continuation of such a trend will lead to a down spiralling of police accountability to the law and the public.

Although the issue of police accountability was dealt with in the 1964 Police Act, it is still a major issue in policing and criminology studies today. Accountability can be defined as “the liability to account for decisions after it has been taken” (Baldwin and Kinsey 1982: 106). This is often confused with the idea of control .Control “ ... exists where influence is exerted in making a decision” (Baldwin and Kinsey, 1982:106). It has been said that modern day Chief Constables are accountable to Police Authorities even though in the Royal Commission on the Police reported in 1962 stated that the Chief Constables should be accountable to no one for enforcement policies (Baldwin and Kinsey 1982: 106).

The traditional governments’ commitment to making public services more ‘business-like’ in their management was, of course, to enlarge the local police forces and police authorities. Under the Police and Magistrates’ Courts Act 1994 the traditional role of the police authority as a mainly elected adjunct to the district Council was to be significantly diluted as a consequence of the then government’s espoused aim to improve the efficiency of police forces (Loveday, 2000). In what proved to be a bogus claim, the same government radically reduced the membership of local police authorities, from around 30 members to 16, while requiring the new authorities, along with the Home secretary, to jointly select ‘independents’ nominations to make these bodies more ‘representative of the community’. It is difficult to note that while the Conservative Home Secretary, Michael Howard, was to claim to seek wider social representation; ultimately those independents that were to be selected were drawn overwhelmingly from professional and/ or business backgrounds (Loveday, 1995). The reasoning, backing up the claim that Chief Constables are accountable to Police Authorities is due to their responsibility for annual police force budgets (Loveday, 2000:215).

Due to the fact that the Police Authorities have control over the budget it is necessary that the Chief Constables try to work with the authorities in order to assure that their budgets are able to maintain the entire force. In this way, it seems as though the Police Authority has more control over the Chief Constables than the Chief Constables being accountable to them. The police authority is also responsible for “drawing up the Local Policing Plan each year. Within the latter, the police authority is able to identify local policing objectives and targets for the police force on an annual basis. The same policing plan will also accommodate

those national key objectives identified for the forthcoming year by the Home Secretary” (Loveday, 2000:215). This is evidence that the police authority has a great deal of control over local police forces. They are able to set the budget of the force and advise the chief constable what the force should be prioritizing. It seems absurd to impose these goals on all local police forces, considering the fact that certain types of crimes are distinctive of different communities. The local police should create local police objectives with the input of the community. In the early 1980s, the Scarman Report into the disturbance in Brixton argued that the police had lost the confidence of local populations, particularly in many inner-city areas with high concentrations of minority ethnic communities (Scarman, 1981).

Police Community Consultative Groups established under paragraph 106 of the 1984 Police and Criminal Evidence Act. They are local consultative committees that aim to promote communication and consultative between local policing commanders and communities. Research evidence suggests they non-adversarial poorly attended and non-representative. They have no powers and tend to be a forum for the police to explain their policies and activities (Morgan, 1992). Although both Police and Criminal Evidence Act of 1984 and the Police Act of 1996 have established police / community consultation groups via the police authority, they have not proved to be effective (Loveday, 2000:216). The community members that tend to take part in communicating with the police are not representative of the whole communities, but only a portion of it; and therefore they do not offer an accurate account of the communities’ needs (Loveday, 2000:217). It can be concluded that it is still; therefore, the responsibility of setting local policing goals is still in the hands of the Police Authorities and the Home Secretary.

It is arguable that the Police Authorities are accountable to the Home Secretary. “The police authority does appoint, and may dismiss ‘in the interest of efficiency’ the chief constable (as well as deputy and assistant chief constables). However these powers are subject to the Home Secretary’s approval” (Reiner 1993:17). While the police authority had responsibility for appointing the chief constable (and other senior command posts within the force), this power was crucially subject to the approval of the Home Secretary. Other police authority powers were also subject to Home Office and/ or chief constable co-operation (Jones, 2003). That is, chief constables were required to give account for their decisions to various authorities, but were under no legal requirement actually to take account of any critical response (Reiner, 1995).

The police are subject to the rule of law and to legislation, which is the product of Parliament. Although judicial processes and case law may affect the interpretation of legislation, and guidelines on procedure may be issued by the executive, the legislature is the origin from which the powers of police are derived. In this sense, they are subordinated to the law and to the law alone. In relation to policy, however, the major public powers of government are vested in ministers who are servants of the Crown (Turpin, 1995). Police also have allegiance to the Crown, which serves instead of the 'state' as a central organising principle of government. This is evident that the Police Authority does have to answer to another party before finalizing a decision. This makes the Police Authority a more democratic institution. However, the Home Secretary does not seem to have to answer to another party except in extreme cases. "The Home Secretary does wield more formidable powers over chief constables and these powers (unlike the police authorities) are not subjected to the arbitration of a third party (although they are judicially reviewable for complete unreasonable)" (Reiner 1993:17-18).

The Home Secretary according to this source has more control over the police institution than seems logical. It would only make sense that there was a circular path of accountability between the local police force, the police authorities, the Home Secretary and the judicial system. With the 1964 Police Act, as stated earlier, there was the creation of the 'Tripartite system of police governance'. This is demonstrated with a triangle, at the top of the triangle is the Home Secretary, and at the bottom corners are the Police Authorities and the Chief Constable. With this representation of police accountability it suggests that the Home Secretary is at the top, there is nobody for the Home Secretary to be accountable to. This leaves plenty of room for the Home Secretary to exert powers that may be deemed unnecessary; however, (from the source above) it is evident that judicial reviews only accure in cases were the Home Secretary's acts are *completely* unreasonable. That idea is too vague; what is a completely unreasonable act to the judicial system? It appears that the Home Secretary reserves too much power over police authorities and local police forces.

It is also been argued that Police Authorities do not achieve what they were set up to do because they do not use their powers to their full potential (Baldwin and Kinsey 1982:109). " a survey in 1976 revealed that seven Police Authorities *never* asked for reports from their chief constable and twenty-four did so infrequently" (Baldwin and Kinsey 1982:109). This source shows the failures of Police Authorities. They were given certain powers to achieve goals of improving police

accountability and are not using those powers in the correct manner. In the cases of the 1976 survey, it is a huge problem that the Police Authorities do not request frequent reports from the Chief Constables. If it is up to the Police Authorities to create an annual budgets they would need something to base that the budget on, without a reports from the Chief Constable of some kind, the authorities would fail to make an appropriate budgets for the police force. However, other evidence shows that even with reports from the chief constable it is very difficult for authorities to accurately judge the performance of a police force. "Nor was the police authority able to make a real judgment of police efficiency through league tables or other performance indicators as it had no source of information or analysis that was independent of the police"(Loveday,2000:216). It appears from this that the police authorities are not able to properly work with the chief constables, as they do not have enough information. Therefore, police authorities have a vast amount of power for fundamentally no purpose.

Although the majority of police are concerned more with local policing, national policing is an issue (Loveday, 2000:225). However, with an expansion for the need for national policing there is an expansion of the Home Secretary. "As such, these developments may only have further enhanced the responsibilities of the Home Secretary which have been substantially expanded under successive legislation" (Loveday, 2000:225). With the expansion of the national police, legislation is giving the Home Secretary more power. As stated above, the Home Secretary already holds a vast amount of power over the local policing institutions. Any additional powers to the office of the Home Secretary would be dangerous to the justice of the policing system on a local and national level.

Accountability is a tricky subject. There is no one right answer on how to deal with the problem of accountability. "It seems there are two problems with proposal on accountability. First, the extent to which it is in practice possible to exert increased democratic control over policing policies without running over into strictly operational matters. Second, the question whether those arguing for more democratic control make any such distinction between operational and 'wider policy' matters" (Baldwin and Kinsey 1982:110-111).

As seen from this source, there are two major factors in accountability, policy and operation. Scholars who argue for democratic control ask for public participation in policing by voting in all members of the police authority. While this would be an

improvement to the police authority, it would also be in the interest of the public to find a way for all members to have an input on police goals and objectives.

One recommendation would be a yearly census mailed out to all homes in a police district. This could help reach the public that is not able to participate in community / police liaison groups already in place. This would create a greater sense of police accountability to the public. It would also be a great second source for the police authorities to use, alongside Chief Constables reports, in order to make proper annual budgets and annual policing goals.

Secondly, the judicial system should take a more active role in policing via judicial review of the Home Secretary and Police Authorities. This would create a more circular means of police accountability, making sure that no one section of the parties involved with policing gains more control over the other.

Thirdly, a possible separate office within the Home Secretary's office that deals with only national policing issues would help limit the influence of the Home Secretary. This would give separation of powers to the Home Secretary's office and possibly prevent corruption that may occur from holding too much power.

Finally, there should be a sort of community committee that keeps their eye on the local police authorities. If police authorities are not using their position to accurately hold the chief constable accountable to them, then the Home Secretary should know about it. If there was some sort of secretarial community office that was able to demand reports from the police authorities then that would, possibly, help improve the strength of the police authorities in holding the local police accountable.

Conclusions

The 1964 Policing Act was the beginning of the continuous changing face of the police force in Britain. Although England's police forces have been rooted in the tradition of local policing, that is rapidly changing to a more centralized police force. The Home Secretary holds a large amount of power in concern with police accountability; yet, the Home Secretary is not accountable to anyone (except in extreme cases, in which they are accountable to the judicial system).

The Police Authority, which is set up to manage police force, is not a success in many areas. They fail to make appropriate policing recommendations for local police force, do not properly include community input in recommendations, and they do not request frequent reports from Chief Constables in order to manage the force more effectively. If the Police Authority is whom the Chief Constables are accountable to, then the need to include the taxpaying community members more in coming to policing conclusions. There needs to be a complete change of face to the policing institutions in order to achieve any real amount of change in the system. A start would be to include community members and judiciaries more in police accountability issues. They also need to make the police authorities accountable to the community, to make sure that the chief constables are being held accountable to someone. Without a complete change in the system of policing and police, accountability there will be no way to solve any of problems with the system. Therefore, it is necessary for the demand of change.

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