

# **ACCOUNTABILITY AND THE JUXTAPOSITION OF CIVIL SOCIETY AND POLICING IN A PERIOD OF CHANGING NORMS: USING INDEPENDENT POLICE ADVISORS**

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## **Abstract**

### **Purpose**

The purpose of this paper is to examine the existing approaches to police accountability and how they may or may not address changing norms and expectations of civil society. It examines the role of independent police advisors and how they may contribute to bridging this divide.

### **Design/Methodology/Approach**

The paper is a constructivist reflexive critique of the shortcomings of the mechanisms for policing accountability. It addresses human security considerations and the social contract in the existing populist charged social context and addresses other ways by which accountability may be achieved by challenging ideas and facilitating reconceptualization of accountability.

### **Findings**

The advent of the independent advisor as employed by British Police forces is reviewed as a viable means of engaging communities to enable a constructive relationship built on accountability in advance of action rather than punitive recourse post crisis via complaint.

### **Originality/Value**

An exploration of the relationship between the ‘critical friend’ Community engagement model of the UK independent police advisor and the role played by this approach in reconceptualising police accountability. The author spent 10 years as an advisor.

**Keywords:** police accountability, independent advisors, human security, civil liberties, social contract, intelligence

Accountability is defined as responsibility to account for actions taken. It implies that policing practice is bench marked against a set of expectations regarding professional standards of behaviour. Professional policing standards in turn might be defined as action, which is legal, proportionate and accountable according to existing law which the police are charged with upkeeping in order to ensure the security of the state, in conjunction with socially constructed expectations of behavior in the delivery of justice as it is understood in the context of prevailing and existing law. It is an essential component in ensuring the state's legitimacy since it could be argued that the state holds a monopoly of power, and the social contract relies on that power being used for the protection of citizens rather than against them in a fair and accountable manner. Human security perspectives and their influence on perceptions of state and police accountability might therefore provide a better understanding for police practice since it addresses the issue of trust, where increasing that power is concerned. Understanding how changes in social norms and corresponding views of the state might impact how communities view agents of the state is therefore critical. Approaches to accountability might therefore require evolution outside the domain of 'professionalism' where it presently sits. Professionalism and adherence to professional standards alone does not engender trust where the role of law enforcement is seen to be protecting the state rather than protecting and serving the changing needs of citizen communities. Where these perceptions or realities are out of step then distrust, and antagonism might become the shared language, which defines the relationship between law enforcement and the communities they police. This paper examines how UK Police Forces ensure their actions are accountable through the use of security cleared, integrated, independent citizen advisors for tactical and strategic police operations, intelligence and force planning. This process, it is argued, moves attaining and assuring socially and community based acceptable standards of accountability, into the domain of active policing and not solely as an after-action review or as part of the complaints process.

### **The Problem of Accountability and the Culture of Blame**

Those who oppose Anti-terrorism Acts, imply that they embody all that remains wrong with state power and its potential use and abuse by law enforcement, against the community it is theoretically designed to protect. Some civil liberties associations suggested key concerns such as- the expansion of the security definition, limitations in freedom of expression, preventive arrest, secrecy, information sharing and scrutiny (Bronskill, 2015). There is a major disconnect here. Ironically, these tools, their active and legal use and implications are exactly what law enforcement require to conduct the business of ensuring state security is maintained (Stryker and Cheung, 2015). The real test is in ensuring that the

balance between civil liberties and state power result in communities which feel safer and are safer.

Preserving a lawful and peaceful state, by definition requires a degree of negative freedom in order to exist (Replogle, 1989). Freedom of the individual is derived through participation in collective control based on a general will (Kumar, 2011). The individual therefore has a clear role to play in the determination of what, how and if he or she will subject themselves to the loss of self will or personal sovereignty, within the state, in exchange for personal safety and freedom. From this perspective accountability of those charged with delivering the law, is to the individual and the groups that make up liberal civil society. Accountability is arguably to the public – as distinct from the government-and it is the public who is being policed. Our system of democracy is presently designed for accountability to lie in the hands of institutions and bodies created by the state-for the maintenance of the state.

Questions relating to accountability in intelligence and policing are raised after the fact and/or in the form of complaints to the institutional bodies charged with upholding the law. Oversight is in actuality after sight. Public confidence and broken trust might therefore be seen as being accrued in the system as it must be achieved after the fact and as a result of error correction.

There is a possibility that the understanding, interpretation, and application of accountability may be questionable. If accountability is determined “after the fact” and is punitive in nature and designed to determine responsibility for actions which have already damaged trust, ascertained as a result of “review and complaint,” then distrust is built into the system in a negative relationship between law enforcement, the state and civil society. The accountability mechanism arguably does not provide accountability; it provides explanation, and redress after an injustice has occurred. It confirms or denies responsibility and penalises those responsible for transgressions which cannot be undone. It is a means by which the state absolves itself of blame and enforces a blame culture on police forces- who seek to ensure a lack of culpability in all actions. It might be argued that Police forces conduct policing from the perspective of the avoidance of culpability. The accountability function for law enforcement and intelligence operations has arguably become structured into a fault-finding bureaucratic mechanism rather than one in which public trust can be the default. It is the system and process which is arguably at fault. Law enforcement tries to keep pace with civil liberty scrutiny and the expectation of inevitable

wrongdoing; the expectation of which prompted the need for scrutiny in the first place, while simultaneously attempting to deliver on its mandate.

It could be argued that the plethora of complaint and review bodies is in stark contrast with the lack of dynamic real time engagement mechanisms which might redress the balance so that accountability is built into the system in the form of consensual and agreed justification for action rather than fault finding and punitive consequences-after the fact. There will always be a role for complaint and review procedures as learning organisations are those with high-capacity debriefing functionality however accountability to the public- being policed, should not be after the fact and after error. Confidence once lost takes a generation to repair.

It could be argued that the present disconnect between civil society and law enforcement is profound. How can this disconnect and distrust be bridged? Understanding its evolution is vital. Genuine long-term security and effective intelligence architecture can only function with effective notions of accountability which is consensual and agreed, and not foisted upon a society, angered anew with each inevitable, anticipated misstep by law enforcement. Scrutiny is good but the balance cannot be tipped into a culture of expectation of wrongdoing where attenuation is via complaint.

There is clear and present danger which requires and necessitates the use of the powers embodied in laws such as Canada's Anti-terrorism Act 2015. Having the agreement of civil society in the administration and application of the powers contained in such acts, will not only enable law enforcement to function more effectively but will facilitate a deeper relationship with, and participation of, the communities being policed. "Insecurity tends to erode civil liberties, and the denial of civil liberties often fuels insecurity" (Brokenshire, 2013, p.2). Accountability is about striking the right balance between the two, but it also requires establishing a cooperative and conducive working relationship between the community and law enforcement. It might be argued that in the UK, there is a grudging acceptance that there has been less than robust engagement, and a degree of estrangement between the police and the communities they serve. The coalition government of 2010-2015 actually articulated this "For too long the police have been disconnected from the communities they serve, tied down by bureaucracy, and answerable to distant politicians instead of to local people" (Brokenshire, 2010, p.1). This was articulated as a distinction between bureaucratic accountability to the government and democratic accountability to the public. Part of this journey to democratic accountability lies in the domain of

police/public engagement. Ensuring public trust in law enforcement requires the participation of the public. There is no way around this. There is no proxy for this and there is no way of easily delivering or re-building public confidence, after acts which have been reviewed and deemed unjust and unlawful. Accountability cannot be after the fact because after the fact is too late to repair broken discourse and relationships within communities. This is especially so if this broken discourse is between the police forces charged with serving and protecting communities who have been aggrieved by Police action.

### **The Disconnect**

Policing models evolve. They must keep pace with changing expectations and norms within the societies they police. The law is precedent based and precedents change as culture inevitably does. Policing methods must therefore be as adaptable and dynamic as the society it polices. Several models emerged throughout the sixties and seventies. Of particular interest was the ‘watchman model’ (Wilson, 1968). This suggested that the role of the police function of the state was to maintain existing norms in the society. It could be argued that this was regardless of social and structural developments. The police might, in retrospect, be seen to be racist, violent, and arguably dismissive of the due process of law (Skolnick, 1966). During this period great social upheaval and change was essentially community led and protest based. Protests led to changes in the law. Addressing inequality led to examinations of existing law and social norms. The first disconnect between policing and civil society is therefore the notion that Policing -as a function of state apparatus is by its nature-static, as its role is to maintain and uphold the existing law of a state. If civil society is in arms against existing law and social norms are fluid, then there is a disconnection between law enforcement and social change in the community. The police can only uphold the law, as it exists, they cannot change it. In a time of social change and normative civil practice realignment- this is problematic. White and Robinson (2014) refer: “changes to policing, along with significant changes to the structure of society, including community expectations of the role of police, have required police departments to consider more contemporary and diverse management approaches in order to increase effectiveness and efficiency” (p.1). Where community expectations and changes to the social structure of society juxtapose, the issue of accountability becomes complex. Further Murray (2000) emphasises the difficulties inherent in police forces negotiating the complex task of change within the police while simultaneously maintaining public confidence during periods of civil normative evolution.

A period of review in the 1980s brought forth the issue of policing reform and the need for greater accountability given the dramatic social change during the sixties and seventies. Out of this process emerged the ‘professional model’ of policing (Wilson, 1968). Here the concept of accountability is aligned with professional behaviour. Professional behaviour is itself aligned with codes of practice and standards which are lawful (McCoy, 2010). Professional police behaviour becomes synonymous with ethics, regulation, compliance and accountability. Professional behaviour takes as its bench mark the rule of law. This interpretation and evolution in the concept of accountability helps to elucidate the second key notion of disconnection. Lawful professional behaviour of law enforcement agents does not necessarily have a relationship with accountability.

This is a dramatic statement. But it lies at the heart of the disconnection between civil society, policing and law enforcement. Accountability- in its present form- oversight which is after the fact- will not increase trust with civil society. It may in fact make it worse. A professional policing and law enforcement body perfectly in line with all codes and standards of behaviour may be out of step with what a socially conscious and normatively evolving public expects, and or tolerates, in terms of acceptable behaviour. A lawful killing may be ‘by the book’ and conforming to accepted policing practice but if public perception and evolving norms of its lawful nature has changed, then existing and accepted professional standards are no determinant in the perception of justice or injustice and how or if such was delivered.

Understanding how changes in social norms and corresponding views of the state might impact the way communities view agents of the state is therefore critical. Approaches to accountability might therefore require evolution outside the domain of ‘professionalism’ where it presently sits.

Professional and ethical conduct might be defined as conduct that conforms to existing expectations to uphold the power and legal structures in force. Where the legitimacy of those structures, or norms, that inform them are disputed by civil society or are seen to be questionable then proportionality, legality and accountability can be subjectively interpreted through the lens of the prevailing norms.

If oversight and accountability lie in the hands of parliament or the institutions of government, the public must not be alienated from these. Institutions which are perceived to be structurally flawed or racist or corrupt or institutionally biased may well have the benefit of professionally practiced police standards in the

maintenance of that structure but insecurity in the system on the part of the community may render that meaningless. It takes decades to change models of policing best practice, but social media has the capacity to change social norms and social expectations of justice, overnight.

Secondly, civil society has an explicit understanding that the social contract represents the state's agreement for the preservation of life and freedom. Law enforcement therefore has an obligation to ensure this is extant. Wider definitions of security or the notion of Human security suggests that this must be accompanied by freedom from structural violence and emancipation (Bernbeck 2008; Booth, 1991; Galtung, 1969). "Advocates of human security suggest that on a scale of values, state sovereignty is no longer sacrosanct and does not stand higher than the human rights of its inhabitants" (Kumar, 2011, p. 969)

Human security elaborates upon how secure individuals in a society feel, based on certain freedoms. Arguably, secure individuals who are able to achieve, feel equal, feel safe and who have access to justice and equity in society- do not rise up against the state or join terrorist groups. However, where the individual views the state as the architect of structural violence against their community then law enforcement oversight only by parliament or institutional state bodies where a lack of representation is perceived, effectively demonstrates a lack of accountability to the public or to individual communities, within multi-cultural societies. It could be argued there would inevitably be resistance to laws or measures designed to increase intelligence or policing powers in such a scenario. Such powers as those vested in the Canadian Anti-terrorism Act 2015 might be viewed as a means by which structural abuses of the state- in the name of state security might be enabled. This might by necessity affect perceptions of human security as the state itself could be viewed by sections of the population as the structural abuser of emancipation, for some.

There is certainly evidence that citizens are increasingly dissatisfied with the nature of the relationship between civil society and the state. Populist victories across almost every continent in the last five years lend credence to this view that there is a breakdown in confidence- a disconnection between citizens and the institutions of the state designed to keep citizens safe (Bonikowski, 2016). It is arguably one of the reasons why fifth generation warfare is evolving, and net centric warfare tactics are increasingly being employed by non-state actors, to power the edge of their reach (Alberts & Hayes, 2005).

Social movements empowered by social media change norms and challenge the structural status quo (Kelshall & Bulut, 2016). The state is structured to provide security for the continuation of the state. Social movements arise to provide security to the individual since the state is the perceived threat. Accountability is an essential component in ensuring the state's legitimacy since the state holds a monopoly of power and the social contract relies on that power being used for the protection of citizens rather than against them. Human security perspectives and their influence on perceptions of state and police accountability might therefore provide a better understanding for police practice since it addresses the issue of trust, where increasing that power is concerned.

### **Perception: Professionalism vs Institutional Thoughtlessness**

#### **The Macpherson Report (1999) and UK Policing as a Case Study**

Understanding the concept of institutional racism is instructive in terms of appreciating the disconnect between social (civil society) accountability and professional policing behavior. Some of the learning from the Macpherson report might be considered as useful guidelines especially for determining how to approach accountability in a multicultural society. The reference here is in understanding the impact of the 'structure' of the police service and how this could impact socially unacceptable yet professional police service to a community. Macpherson's 1999 report into the Stephen Lawrence inquiry in UK established the realization that institutional or subtle racism existed in the structures of the policing service in the UK. This is distinct from overt racism – language, actions or processes that were deliberately intended to discriminate (Holdaway & O'Neill 2006; Macpherson, 1999). Subtle or institutional racism could be found in institutional policies and practices which might present systematic racism that was not intended. Lord Scarman in reference to the Brixton riots of 1981 referred to unthinking racist stereotyping which involved attitudes and methods of the MPS not having been adjusted to meet the needs of both an ethnically diverse community and the centrality of community relations to policing a multiracial society. The Macpherson report widened the understanding of institutional racism by introducing the concept that collective failure to provide an appropriate and professional service due to unwitting thoughtlessness, prejudice or ignorance was possible (Hiller, 1981; Lord Scarman, 1981).

It is not racism which this article is aimed at but rather the learning from the possibility of institutional thoughtlessness, as expressed by Lord Scarman. There may be a crisis of collective failure in accountability bought about by the lack of acknowledgment that increasing global populist sentiment is causing a deep questioning and distrust in



the institutions of government, including law enforcement. It is for this reason that accountability is critical if law and order is to be upheld without changing the nature of the policing relationship from population centric to enemy centric given the widening gaps in trust and concepts of what lawful accountable and proportionate police behavior looks like.

The learning from Macpherson and Scarman should not just be understood in the context of racism but rather considered from the perspective that all policing for all communities and all intelligence led operations should take into account the possibility of institutional bias, institutional thoughtlessness, institutional unwitting prejudice and institutional ignorance regarding policies or operations and how actions might be perceived by mobile, interconnected, educated audiences ready to act. It is for this reason that perception is vital. Perception as Lord Denning famously cited must ensure that justice is not only done but must be seen to be done. “So much of this is about public confidence, and that does come down to appearances” (Paterson, 2015). The publics’ demand for transparency has become sophisticated (Jones in Perino, 2006). The mobility and democratization of information and thus the power of civil society is arguably increasingly upsetting the balance of power within the state. The ability and flatness of access, to social media power and the consequent ease of mobilizing large groups of people instantly, at any perceived injustice, is arguably at its greatest. The Jasmine revolution in Tunisia began with a police officer slapping a vegetable seller. The Jasmine revolution became the Arab spring and spread across the Middle East affecting eight countries.

### **Citizen Involvement in Policing and Intelligence**

One means of addressing this issue of accountability is in moving the onus on accountability away from institutions and into the hands of individual citizens.

A key consideration in increasing citizen oversight is the objection of law enforcement agencies themselves (Perino, 2006). These objections relate to lack of understanding of the intricacies of law enforcement and decision making. Citizen police academies are conducted in Canada and involve members of the public and media. One example is the Vancouver Police Department’s efforts held twice a year, but the recipients of this knowledge do not go on to further engage in any formal capacity with oversight activity. Extensive community outreach is engaged in, but it is, in some cases, outreach using volunteers for speaking to, or at communities. There is valid community interface activity, but it is arguably limited in terms of penetrating actual policing decision making processes. Other considerations are the need for credibility of advisors with both

the Police force and community and a clear and transparent impartiality. Citizen Advisors must have training in the organisational culture and in the national security plan and the role of the specific agency they are partnering with, in that plan.

The principles of police independence have to be upheld for civil society to retain any trust in the impartiality of the system. Politicization of policing is a real threat given the wide spread civil society perception of FBI involvement in the US political process in 2016. Whether or not there is credibility to the belief the mere widespread existence of such a belief, is damaging to relationships within the US community. Police independence, in such a circumstance might be effectively underpinned by a process of independent community advisors engaging with the policing and intelligence collection and dissemination process. This involvement is not in the actual policing and intelligence gathering but in assessment of the rigor of the process of its execution.

### **Accountability by Inclusion of the Individual in Policing and Intelligence Operations**

This paper is an exploration of how UK Police Forces ensure their actions are accountable through the use of security cleared, integrated, independent citizen advisors for tactical and strategic police operations, intelligence and force planning. This moves attaining and assuring socially and community based acceptable standards of accountability, into the domain of active policing and not solely as an after action review or as part of the complaints process.

The UK Policing structure uses a trained group of independent individual influential community members as a cadre of critical friends to the police force. These advisors are representatives of communities and are influential within their spheres. They are security cleared or vetted to appropriate levels. These individuals are divided into teams working at three levels gold, silver and bronze. Gold team members operate at strategic level working with senior superintendents and up on managing critical incidents and operations. Silver members work with tactical teams managing incidents and bronze members walk with police sergeants as part of the community engagement team during operations. The commanders log all activity with both a recorder and the independent advisor present for dynamic, active, decision-making during operations. Disagreement with decisions is logged for after action review. Logs recorded by both the independent advisor and the official recorder can be produced for de briefing and learning opportunities.

Professional standards cases might also utilize independent advisors for informed, non-police, third party perspective on actions taken by officers. The independent and unpaid nature of the advice might be considered a useful third perspective from a community member who is familiar with standards and expectations from both a community and policing standards angle.

In addition to the training provided by police on ethics and force performance expectations, advisors are guided through the key legal acts which provide authority for operations. Their job is to provide an informed assessment on whether actions subsequently taken might be viewed as legal, proportionate, necessary and accountable- in the eyes of the communities they represent. Police recruitment interviews have involved the use of these advisors and special attention is paid to diversity access issues related to the profession. Independent advisors are also used in cold case closure tribunals.

Results of the system are well recorded (Rowe, 2007). Over one hundred cases of engagement with British transport police during the author's time as Vice chair of the British Transport police Independent advisory group in the UK resulted in learning opportunities for the force but equally led to greater relationship building and understanding between the communities represented and the Police. Direct engagement activities for independent advisors with police, included briefings, planning exercises, and training as well as observation of unfolding protests, arrests, and intelligence led operations, death announcement house calls and critical incidents including mass fatality events. Advisors engaged with officers dynamically and in real time either in person or via phone advising on actions which would adversely affect relationships between police and wider communities. They delivered advocacy where required on behalf of the force directly with and between members of the communities being policed. They did not get involved in active investigations and did not become part of criminal or civil cases as their role was advisory only.

From the community's eyes, non-institutional members of the civil society subject to being policed, were visible and able to account for actions taken. Communication with social media and social movements to ameliorate negative effects of policing actions were also beneficial in ensuring dialogue and engagement was active and visible. In instances where advice was not followed- the community had the benefit of engaging with the independent advisors whose advice was recorded by official recorders and officers then had to justify decision making against community advice. The Police forces were under no obligation to change tactics or conform but the element of additional accountability in the face of informed advice arguably led to more robust decision making. Intelligence led operations usually had a sanitized

version briefed to advisors which had names, addresses and pictures removed but the substance of the police action and the justification were presented for accountability during or in advance of an action. Advisor feedback was always recorded. These individuals were cleared to required levels and subject to extensive interviewing and acquaintance to the forces they were critical friends with. The independence of the role allayed fears within the communities represented and the presence of an advisor calmed the respective communities. Advisors were drawn from all diversity strands and specializations. Firearms operations and use of deadly force also included master class sessions with advisors so that greater understanding could be imparted to unsettled communities from figures respected within those communities.

In addition to the existing structure and processes of judicial, ministerial, and parliamentary accountability, this individually based community engagement model ensured that concerns were fed into the system directly and from the ground up in advance of policing errors. This included tactical as well as strategic decision making and via consultation for larger issues such as the use of force wide tasers or firearms.

### **Conclusion**

The use of this structure in Intelligence led and critical incident policing operations or for intelligence operations might be considered an important option for attempting to address the deficiencies in the way in which civil society perceives the use of expanded legal powers for intelligence and police forces. Engagement which is on the basis of reciprocal cooperation and critical friendship. By using carefully selected community members who are trained by the police in terms of understanding policing outcomes and police decision making, it is possible that new means of creating dialogue and synergy between the police and communities might reveal themselves. This may go some way in terms of bridging a gap and addressing the problem of police accountability, authority, and perceptions of questionable legitimacy within certain communities who feel they are talked to but not engaged with or involved in regulating the nature of policing they are subject to. This becomes increasingly more relevant for minority or vulnerable communities. The current accountability format it is suggested-is inadequate. It places emphasis on blame and punishment -after the fact. New approaches to accountability using real time dynamic consensual justification based on proportionality, legality and necessity may decrease complaints, and the expectation of wrongdoing by the police and increase community confidence in law enforcement at the time of engagement. This reduces the likelihood of perceptions of injustice and 'expected, 'excessive use of force or lack of cultural sensitivity which communities become over sensitive about- as this is the prevailing method of demanding redress and accountability. Independent police advisors

provide a conduit between police and communities which offers benefits in both directions. Currently it might be argued that oversight for police accountability is in the hands of state institutional structures in various forms- judiciary and parliamentary –but which civil society lacks confidence in (Bonikowski, 2016). The opportunity presents itself for addressing some of these key issues by using this channel of communication which may go some way in enabling increased knowledge between police forces and the communities they serve. It will also benefit dialogue via increased engagement and decreased miscommunication and negative relationships.

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