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THE POLICE USE OF COERCION; REASONABLE FORCE?

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ABSTRACT

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Abstract

This is a socio-legal examination of many aspects of the police use of coercion, divided into four parts. Part one provides a historical overview for the rest of the work. Part two looks at coercion and the individual officer, examining legal and sociological circumstances relevant to police use of force, and an analysis of the police use of firearms. Part three confronts the issues arising from the police use of coercion in a public order context. This includes a look at recent legislation and trends. The drift towards more militarised and coercive policing tactics is charted and the question of paramilitarism in policing and the desirability of a specialised riot police force considered. Part four deals with the accountability and control mechanisms that should technically prevent the police behaving with unnecessary coercion, and reflects upon how they have failed. Legal changes are advocated throughout, but there is an awareness of their limitations as constraints on police behaviour. Important themes include; the conflict between laws and the police cultural ideology, whether police coercion is used offensively or defensively, for containment or repression, and the dangers of creating a circularity of violence and an upward coercive spiral if the police coercive capacity is continually being upgraded. Reform is urged, both legal, and in policing practice, for it is argued that the police's wide discretion to use coercion has been neglected for too long.

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INTRODUCTION

THE IMPORTANCE OF FORCE IN POLICING

The police's power to use legitimate force is what principally distinguishes them from ordinary citizens. The proper exercise of this power may protect liberties and benefit society. However, where it is abused, whether this be due to deliberate intention or over-zealous policing, the opposite will be true since the infringement of civil liberties and the abrogation of individual and collective rights will be an inevitable by-product. The police use of coercion is therefore an issue that is of central importance to concepts of individual freedom and democracy. Society is governed by laws that the police have the responsibility of upholding and enforcing. Where the police discharge their duties by resorting to coercion it is essential that this is controlled and used sparingly. Where police use of coercion is not subject to vigilant and effective control or accountability, talk of policing by consent and democratic policing needs to be reassessed. The potential of the police to forcefully derogate from their societal and legal mandate without commensurate checks on their power, means that 'the rule of law' can become a flexible and hollow concept, bearing little relation to the moral absolutes it is supposed to represent.

The police use of coercion is a vital element in police-community relations. Where they resort to force, if this is felt to be excessive by those policed, it will engender much social friction, undermine police-community initiatives and contribute towards societal instability. The effects of police misuse of force can be equally damaging to their public image. Instances where individual policemen have used excessive, unwarranted force against people always garner much media attention and expose the police institution to unwelcome scrutiny. The public's views of the police force as a whole may be adversely coloured, and public faith in, and co-operation with, the police may suffer as a result. This in turn will make the police's whole job more difficult; they rely upon the public's co-operation and the willing exchange of information in order to function. Where this is withdrawn or reduced, the police will have to adapt accordingly, and to compensate for the lack

of public help, may use more confrontational and intrusive powers, relying more upon coercion for their implementation.

The importance of the police use of coercion and its legitimacy as a suitable subject for study can not be doubted. Philosophically and jurisprudentially, the place of coercion in a democratic and consensually policed society poses many interesting questions. Practically, the police use of force affects individuals, groups and communities. Furthermore, where the police use of coercion is unchallenged and unregulated it may become self-perpetuating. Coercion may be used to achieve police goals at a high price of alienating public support and co-operation. This alienation may encourage opposition to the police and necessitate stronger, more coercive reactive policing. In this way, there is a danger of a circularity of violence and an increase in the optimum tolerable level of force, so that what seemed unacceptably coercive and harsh ten or even five years ago will be regarded as normal now. The logical implication of this course is that society and its police are becoming increasingly violent and heading towards a heavily armed militaristic police force who will rely upon fear and coercive supremacy rather than consent. This is undoubtedly a gradual process however, although it is contended that it is currently underway. that these changes are imperceptible to some does not detract from their seriousness and should not free others from the responsibility of opposing and questioning them.

An increasingly violent police force?

Although it is believed that police and public are locked in a coercive spiral this need not be an unduly pessimistic view-point and outlook. It is important when talking of an increase in violence and coercion, to distinguish between the **frequency** of force and the **form** that it takes. This thesis tries to avoid making overly simplistic judgements about the police and society of today being more violent than previous times.

It is a favourite theme of politicians, goaded by each fresh batch of crime statistics, to claim that crime is rising to unprecedented levels and that the police face more problems than ever before. In fact the history of policing reveals

consistently social turbulence and societal violence being met by forceful policing. It is difficult or impossible to conclude with absolute confidence that both society and the police are inherently more violent now than previously. If one considers how society and the concentration of the population has changed in the last two hundred years it is obvious that numerically at least, there will be greater instances of violence. However, where this numerical increase is misleading is where it is constantly stressed to imply that there has been a distinct upward change in the pathological human tendency to use violence, and that people, (both citizens and policemen) are therefore more violent today than before; this is too simple and convenient an argument to be the basis of wide ranging academic conclusions. So, although loathe to place undue emphasis on claims about the increasing frequency of violence, what is of more interest is the type of such violence. Although police and protestors have always clashed, and although truncheons or batons have long since been employed, the more recent trend towards re-equipping and re-training the police has seen an increase in their coercive capacity.

Where there is talk in later chapters of increasing police violence it must therefore be understood to refer not necessarily to the number of occasions that the police use force, but to this increase in their coercive capacity and their ability to use greater amounts of force in certain situations. The police's increase in violence in this sense is beyond dispute, and this is what is of primary concern. The situation is not hopeless however; there is cause for optimism. Increases in the police's coercive capacity are not inevitable, they are as much the result of deliberate policies as they are unavoidable responses to the troubles, and so any increase in coercion can be reversed and controlled.

Police coercion in a wider context

Policing and coercion can not be viewed asan isolated topic nor can it be divorced from historical and political circumstances. The first two chapters are of an introductory nature and provide a broad overview and background against which the later

material can be set. Chapter One looks at the history and development of policing with special reference to themes, consistent throughout history, (such as the struggle for control between local and central agencies) that have had particular relevance to policing and coercion, and that continue to do so. It also established that modern coercive policing is far from unprecedented, that the police struggle for acceptance was an arduous one, and that there has rarely been a period when they have been untroubled by public disorders and social discontent. Chapter Two continues to 'set the scene'. It looks at the crime control and social service models of policing, crime statistics, crime control policies and the shift to a more militaristic model. The central tenet of this chapter is that the political and legal climate will influence and perhaps partially dictate what kind of police force there will be, and consequently how much force will be acceptable. Coercive policing must not be looked at in a narrow-minded fashion and thought of as the actions of individual constables and superior officers. It should instead be related to a wider perspective in which police coercion is seen to be accommodated by prevailing societal attitudes when it no longer seems incompatible with modern expectations of police behaviour.

The dual approach to police coercion; individual and collective force

The potential range of excessive police coercion is vast; ranging from a thump a kick and a truncheon blow, to a mounted police or baton charge, and the firing of plastic or real bullets. This difference between the use of force by the individual officer in day to day policing situations, and that employed by the police as a whole when dealing with public disorder is recognised by treating them largely as separate topics. There are obviously many areas where information pertaining to one will overlap and be applicable to the other as well, and there are themes common to both, such as the conflict between legal rules and police cultural values, and the difficulty in controlling coercion and calling officers to account for it later.

Generally, however, police use of coercion is better

explained when aware of the different influences and factors that operate in individual and group circumstances.

Part Two is therefore concerned with the use of coercion by the individual officer whilst part three confronts the public order issues of group policing. Part Two looks at the law governing the use of force and finds it seriously wanting in many ways. It then considers a range of sociological and police subcultural influences that facilitate and encourage the use of coercion. The police use of force is treated like a metaphorical cloth, woven from different contributory strands. For a more complete understanding of police coercion it is necessary not just to look at the end result, the whole, but to examine its constituent parts. Thus, various elements of police culture, and other factors such as the police personality and the internal solidarity of the police are considered, in order to develop a more complete understanding of how the conditions are created in which police coercion flourishes. This is then backed up by drawing upon contemporary examples such as the police harassment of Manchester University students, and the issues arising from John Stalker's investigation into the Royal Ulster Constabulary.

The importance of the police culture and the internal solidarity of policemen can not be underestimated. Indeed, the conflict between law and police ideology is a major theme throughout, but it is in the closing of ranks that this cultural bond proves to be at its most effective, and the law at its most powerless.

Having considered the factors that make the police use of force amenable, attention is then turned to the actual reasons why coercion is employed. These include the use of force as a means to an end (e.g. to effect an arrest), coercion used punitively to dispense summary justice, to maintain control of a situation, and simply for excitement. The police may frequently exceed their legal brief when using coercion, but will still feel justified in doing so if they are personally convinced of the suspects guilt, and believe that their actions are broadly consistent with the aims of the criminal justice process.

Chapter six examines the police and firearms. The need for

adequate control here is pressing when 'reasonable', let alone excessive force, can result in death. Again the law relating to firearms is analysed before recent developments and incidents involving firearms, and police guidelines governing the practical use of guns are considered. The British police have traditionally been unarmed and gained much public sympathy from this; it is important not to jeopardise this support. The use of guns also provides a focus for the crucial issue of control, namely whether there should be collective or individual responsibility for errant behaviour. The police's position as independent officers of the crown has resulted in them being held individually responsible for their actions. Their unique constitutional status has, particularly in the context of firearms cases, resulted in individual officers being treated harshly, and virtually scapegoated for accidents that were arguably as much the fault of their superiors and operational planners. Such cases highlight the desirability of reassessing where culpability should lie.

Part three deals with the use of coercion in public order policing. The laws in this area are examined, with particular reference to the Public Order Act 1986, to see how they relate to the potential control of the police as well as the control of demonstrators and protestors. There have been many examples in the last decade of the police adopting controversial public order tactics, and used new equipment. Certain of these incidents are looked at and viewed as part of a discernible trend towards a more militarised, coercive style of policing and a greater willingness to use force. Policing the inner city riots of the 1980's, industrial disputes (such as the miners srike of 1984) and the clashes with protestors at Stonehenge have borne witness to a wide array of forceful police strategies.

The equipping of the police with updated riot protection gear, as well as C.S. gas and plastic bullets raises a question that is also relevant to the police and firearms, namely whether such equipment is an undesirable but necessary response to events and therefore essentially defensive, or whether it

enables the police to pursue more aggressive, conflictual policies and thus be used attacklingly? Have the police been forced by circumstances into resorting to such equipment or have they taken the initiative in adopting it and using it offensively?

The build up of such technical resources, and the proliferation of specialised groups of riot control officers within forces, coupled with the co-ordinated mutual aid operation during the miners strike have re-awakened concern over Britain's development of a body of specialist riot police under the general police umbrella. The ultimate fear of many, (and desire of others) is that, if the current trends continue, Britain will establish a separate full-time riot police; a 'third force' in addition to the police and army. Many European countries already possess such forces. Is Britain 'out of step' with other nations, or would such an innovation be anathema to British policing traditions and public opinion? The possibility of a third force of riot police being set up in England and Wales is considered in a comparative European context.

Finally, part four looks at police coercion and accountability and the practical impotence of control measures. Given the problems caused by police misuse of force, why can it often not be curbed or prevented by existing control mechanisms? Are the accountability arrangements a sufficient disincentive to using coercion in the first place? Again the dual approach is taken in that factors affecting both the accountability of individual officers, and the police force as a whole, are considered, with particular reference during the latter, to the roles of the chief constable and his local police authority.

Throughout, emphasis has been placed on the lack of legal regulation of police coercion, and several amendments to existing laws are suggested. However, the conflict between law and police ideology has also been stressed. The final chapter confronts this disparity and asks to what extent laws will be able to influence behaviour and control coercion.

In this way, a comprehensive picture of police coercion

in its various forms and the reasons why it occurs is provided. Although policing and coercion is in itself a large topic that overlaps into many other areas of interest, there is still much that has been left unsaid. For example, there is regrettably no section concerning coercion used to induce confessions nor is there anything specifically relating to racism and police coercion. These may at first be considered oversights but in fact both are subjects requiring the sort of specialised, detailed analysis that lies beyond the scope of the current work. Force used to extract a confession, and police interrogative techniques also encompass the kind of pressure that could be termed 'mental' or 'psychological' force (as opposed to physical). This is another area of police coercion that deserves further investigation elsewhere, but this work is confined to physical force. The institutionalised racism that pervades the criminal jusice system manifests itself in the distribution of police coercion too. People of ethnic minority origin are more likely to be treated violently by the police than whites, and a disproportionate amount of police assaults are committed against them. Again this forms part of a wider topic that can regrettably not be dealt with in depth here, although awareness of the racial element in much police coercion is important, and must be borne in mind.

There have been many occasions when brutality has been alleged against the police; there have been many suspicious deaths in police custody, and frequent public order clashes between police and public. Although a wide range of examples are used to complement the commentary, the simple itemising of such controversial incidents has been avoided. It would have been easy to compile a lengthy list of violent police incidents as 'proof of coercive policing', accompanied by reflex criticism, but this would have achieved little. Instead, examples are not used simply to demonstrate violent police behaviour, but to support a particular socio-legal point.

It is important to keep the examples in context; where these

have drawn on policing experiences in Northern Ireland, it must be remembered that no attempt is made to explain or understand the particulars of the situation there (it is simply outside the breadth of this study) and that any mention of policing in Northern Ireland is restricted to the particular point under discussion. This is also true, where the U.S.A. or other countries are referred to. Certain aspects of different countries policing systems are used comparatively to illustrate particular points but there is no pretence at a more general evaluation of such systems.

At law, the police are only allowed to use 'reasonable force'. If all force employed by the police was 'reasonable' and uncontroversial there would be no need for research and studies such as this. However, on many occasions when coercion is deployed, there is controversy and upset. Obviously any study on policing and coercion will concentrate on the misuse and abuse of force. This must not be interpreted as being subjective and anti-police. Naturally, the following chapters, recognising the seriousness of its consequences,are concerned with the excessive and illegal use of police coercion rather than with 'reasonable force'. To this end, the commentary may appear unbalanced. However, it is readily acknowledged that the majority of everyday instances of police force will be justifiable at law, and 'reasonable'. Concentrating on the misuse of force does not mean that this is the norm. This statement and belief must be remembered throughout, since although there may be an anti-police coercion bias, this must not be interpreted as an anti-police bias. That most police force is legitimate does not detract from the urgency of the problems created when this is not so.

The starting point and initial proposition here is that the level of coercion used by police in England and Wales is of concern, and that ways in which it can be better controlled or reduced are desirable. To try and attain a more informed, rounded view of the police use of force, it is considered in a broad social and legal context. Throughout however, the

influence of internal police values as opposed to laws and official regulations, is apparent. This is a major theme, together with whether recent coercive innovations in policing have been forced onto the police by increasingly violent opposition, or whether they have been consciously chosen as police options. Whether the police use force offensively or defensively (for containment or repression) is a contentious issue at the crux of public order policing. Can a reduction in the frequency and amount of police coercion be achieved by legislative change or other means? To what extent does the use of illegal coercion actually contribute to the smooth running of the criminal justice system, and does this help explain the tolerant attitude of the judiciary towards forceful policing?

Exploration of all the above is intrinsic to the consideration of whether or not the use of coercion in modern policing constitutes 'reasonable force'.

PART ONE

HISTORICAL AND RECENT BACKGROUND TO THE CONTEMPORARY POLICE USE OF FORCE

CHAPTER ONE

POLICING AND COERCION: A HISTORICAL OVERVIEW

An examination of the history of the British police force is instructive and illuminating when related to the problems of contemporary policing, with the issues of civil liberties, public order and control of the police revealed as ongoing sources of debate rather than merely current concerns. Interpretations of police history are varied and often conflicting, but can be broadly placed into two categories (which have been labelled 'orthodox' and 'revisionist', (see Reiner (1985), Chapter One), correlating approximately to the views of the political 'Right' and 'Left' respectively. The orthodox police historians regard the British policeman as a beneficial national institution and are inclined to the view that the 'British police are the best in the world'. Acceptance of this well worn phrase means that although faults in policing may be acknowledged, they will invariably be judged against this overriding supportive assumption. The traditional outlook also sees the police as the 'thin blue line' protecting society from crime and disorder and as guarantors of stability and domestic peace, without whom there would be anarchy and chaos.

In contrast, the revisionist or left-wing interpretation is more critical of police actions and motives, seeing them primarily as a State instrument of social control rather than crime prevention, designed to preserve the 'status quo' and to supress working class discontent.

The facts of police history have been twisted by exponents of both schools of thought to support their particular ideas, and so an ambivalence emerges in explanations of many events, however, the intention here is not to side with either faction, but rather to analyse objectively the law enforcement arrangements in England and Wales through the ages. Several themes will be explored in this chapter. Firstly the policing arrangements before 1829 will be looked at. What is revealed is a haphazard system using rewards, informers, parish constables, magistrates and militias to tackle problems as

and when they arose. Such an unco-ordinated and confused system falls well short of modern conceptions of efficiency, yet it was at least partially successful in that it endured for centuries and was apparently popular with those it policed, if their opposition to the replacement new police in 1829 was a reliable indicator of their feelings.

This look at early policing methods yields much information that is of value to the contemporary study of the police and reveals how certain accepted tenets of todays policing came about fortuitously rather than intentionally. For example, the wide powers enjoyed by todays chief constables, and the independence of the constable are well-known and widely accepted. Yet history demonstrates throughout how statutes and Parliament have consolidated on pre-existing measures, ideas and situations rather than created them deliberately as a matter of considered principle. Thus some revered basic principles of policing today do not in fact spring from the thoughts of prudent policy makers and legislators so much as from statutory adaptations of pre-existing situations.

The policing arrangements prior to Peel's creation of the Metropolitan police were proving too unwieldy and cumbersome for a changing society at the onset of industrialisation and were duly replaced. However this chapter secondly asks why were the police set up?, and in doing so addresses a question that remains a matter of debate in contemporary policing. Namely, were the police set up in response to crime, to fight crime, or were they set up to control public disorder? This question also contains within it the cause of much current and continuing argument regarding whether the police are 'political' or a dispassionately neutral organisation.

This is a matter that has greatly important implications. The claim that the police are an impartial body and independent servants of the Crown has been deployed with historical frequency to reassure the public about the police's trustworthiness, to bolster the idea that Britain is policed by consent, and to contribute to the popular orthodox image

of the police. Many of the 'virtues' traditionally and sentimentally accorded to the police force are, however, incompatible with the force that is influenced or dictated by political concerns. The question of how political the police are remains one of great sensitivity, particularly for the Conservative administrations of the 1980's. Any concession of the police's political function would seriously damage the populist propaganda web they have constructed around the police force and would instantly undermine many of their policies. For example, the use of the police in sundry industrial disputes during the 1980's is cast by the government in simplistically, even deceptively clear terms. That is, the police are neutrally upholding certain legal rights of certain people. If this conveniently one-sided interpretation of the police role is widened to include a broader political perspective, some may conclude that the police are acting not impartially, but with distinct partiality, for reasons that have less to do with an assiduous desire to see the law independently upheld than with wider political motivation and direction. This chapter's look at why the police were set up clearly identifies the presence of political motives at the outset, as well as practical ones, and thus demonstrates that despite whatever may be claimed today, politics and policing, and the political uses of the police, have a lengthy and discernible association.

Legitimacy for many police activities both today and in the past, has often been claimed because the public are said to be 'policed by consent'. Is this true, and if so, how was the consent achieved? Was it immediate or gradual? It will be seen that although the phrase 'policing by consent' is frequently used, it may not always be appropriate. Certainly the history of the police shows the police's difficult struggle for acceptance. In reality the police have always faced opposition. There was great trepidation and apprehension before Peel's New Police were set up in 1829 and this was slow to dissipate. Instead it later manifested itself in

various forms of opposition to the new Metropolitan, County, and Borough forces. The riots of the 1980's, which amongst other things, have been adjudged to have been in part the collective expression of resentment at certain policing policies, are thus nothing new, but rather,are a repetition of behaviour directed at the police, that has many historical precedents.

Whether the police are controlled locally or nationally is an issue that is of importance in studying the police use of coercion. There are fears that increasing centralisation and concentration of authority in a power elite consisting of chief constable and Home Office officials poses a threat to democratic policing, if such people are able to ignore or supercede the wishes of local police authorities and impose their own policies in their stead. This subject will be raised again in later chapters when looking at who makes the ultimate decisions on matters where the chief constables and his police authority are in disagreement. The local-versus-central power conflict has recently been seen clearly in the fracas over the supply of controversial weapons such as rubber baton rounds and other riot control equipment to British police forces. Furthermore, discussions on whether Britain ought to have a 'third force' of riot police inevitably raises the spectre of a national police force, as do the gradual moves towards centralisation administratively and tactically, that have seen inter-force co-operation and Home Office direction assuming a new importance in recent years. This chapter places such modern arguments in a historical perspective and shows how debate over local or central control of the police is a long-standing one. It is undoubtedly however, an area of relevance to the police's use of, or potential to use, force.

Finally, the chapter concludes with a brief overview of some incidents of police coercion throughout history. This is not, nor is it intended to be, an exhaustive list citing examples of coercive policing. Rather, the objective is to place modern examples of violent police behaviour (and the behaviour of the crowds it is in response to) in historical context. Thus,

forceful policing is nothing new nor is the hostility of the populace towards the police. It is important to realise that the police traditions are now simply those of policing by consent and reasonable force. Indeed such views must be reassessed and challenged in view of the police's historical willingness to use extreme force to overcome their opposition.

This introductory chapter, through its explorations of such themes as the old policing arrangements, the reasons for the organised police forces being set up, the attitudes towards them, local or central responsibility for policing and their use of coercion provides a historical background against which modern issues surrounding the police and reasonable force, can be set. In essence, the chapter's function is to enable such issues to be placed in a historical context. By doing so, many of the assumptions or claims made today about the police's traditions of consensus, impartial and non-violent policing are shown to be incongruent with historical fact.

a. POLICING ARRANGEMENTS BEFORE 1829

Before Peel formed the Metropolitan Police in 1829, there had been a variety of means of 'policing' society. In the preceding seventy or so years, the influence of the Fielding brothers (novelist Henry and his half-brother John) had seen the origins of a more structured, albeit extremely limited force, (the Bow Street Runners') in the late eighteenth century, but before 1750, the system of policing had been largely unchanged for centuries and relied upon the parish constable and watchman, under the control of the magistracy, to apprehend felons (see Critchley, (1978) Chapter One).

The Constable was only a small, relatively insignificant part of the eighteenth and early nineteenth century criminal justice machinery, which was based around the offering of rewards for information about criminals, and impunity for accomplices in crimes who betrayed their companions to the Justices. There were many voluntary Protection Societies and Societies for the Reformation of Manners and Morals who

encouraged the use of informers to report incidents of law breaking. Radzinowicz notes that 'In their zeal for reform the societies had become 'a kind of voluntary police.' (Leon Radzinowicz (1956) (Volume Two)p.14).

At the beginning of the eighteenth century public opinion favoured increasing severity of punishment even though capital punishment was already available for numerous offences, many of them trivial, but 'though the law and its administration were undoubtedly severe, they proved to be inadequate for the protection of society' (Ibid p.1). This would seem to be a rebuke for those who favour the return of capital punishment for it is evident that the very real threat of judicial killing if caught did not deter the increasing criminal fraternity and demonstrated that harsh penal measures do not automatically result in reduced crime. But if the capital legislation could not control crime there was overwhelming public support for the system of inducing people's co-operation by offering rewards; 'Instead of a demand for a better police force, the tendency seemed to be towards a reliance upon the offer of more and larger sums for the capture of criminals' (Ibid p.137). The populace were thus 'bribed' into participation in law enforcement, which was dependent not upon any notions of morality, honesty or good citizenship, but rather, which exploited the avaricious element of human nature.

Arguably more repellent than the widespread rewards system (both private and statutory), was the role of the informer. Henry Fielding had described them as 'odious' (Radzinowicz (1956) Volume Three p.26) but Jeremy Bentham favoured and advocated their use, and wanted to see respect accorded to them (Ibid p.436). The informer caused such differences of opinion because although their practice was parasitic and unpopular, it was simultaneously of great importance for 'Throughout the eighteenth century and in the early years of the nineteenth, a number of statutes were passed, which so widened the activity of common informers that an important section of criminal law came to depend upon them for it's

enforcement' (Radzinowicz Volume Two p.142).
They were used as 'voluntary policemen' and hopes were even expressed that their existence would provide competition for the regular police and so stimulate greater police activity. (Ibid p.146). So ingrained did the use of informers become that some years after the creation of the 'new police', legislation was still being passed designed for their use. (Ibid p.155).

Corruption amongst Constables

The system of rewards was hampered by the unscrupulous, corrupt practices of the magistrates and constables. The reputation of those men who acted as constables was poor; they were frequently only appointed because they had been paid to replace the original incumbent. This practice was widespread as constabulary duties were unpopular and those who could afford to, paid a substitute to undertake them instead. Unfortunately this avoidance of duty frequently resulted in ignorant and incompetent constables. Blackstone cynically commented that, 'considering the type of men usually appointed, it was as well that they were commonly unaware of the extent of their powers', (Ibid quoted at p.184), and the Home Office observed in 1818 that it was still possible to meet in the Metropolis police officers who 'from age and imbecility were not equal to any kind of service' (Ibid p.280).

There were frequent opportunities for the unscrupulous policeman to profit illegally from his office, and connivance with criminals, informers and magistrates for immoral purposes was usual. Control over reward payments was inadequate and police officers claims were said to be limited 'only by their consciences'. The boundaries between the legal and illegal were so ill defined that the active and ingenious policeman could reap a rich reward 'without stooping to downright dishonesty' (Ibid pp249,255). One commentator has recently observed in exasperation that 'it is difficult to understand why such an inefficient combination of justices and constables should have been so attractive during the subsequent debates leading to the reform of the police system' (Michael S. Pike

(1985) p.3). It is likely that the attraction of the old system lay in it's inefficiency - for those who feared the new police, as will be seen, did so largely on grounds of fear for personal liberty, something to which the old constables posed no threat. They were corrupt, it is true, but their collusion with criminals, in order to share out rewards, resulted in little direct harm to the public, who were accustomed to a criminal justice system reliant upon questionable methods and who held their constables in low esteem anyway.

It is interesting to reflect that the office of constable far pre-dates the formation of the police force and that it is the image of the honest, reliable local constable pounding his beat that is at the centre of orthodox police folk-lore. Quite when this ideal gained favour is uncertain, but although the appeal of the old pre-1829 police lay in it's localised nature, it can surely not date from this period. Hart says 'The emphasis on the antiquity of the office of constable is in some ways strange, as many of its previous holders have not approximated very closely to the modern British conception of the perfect constable' (J.M.Hart (1951) p.12).

Despite the acknowledged defects of the old law enforcement system, people were not keen to replace it. Another possible explanation why this was so, aside from fear of a dictatorial new police, can be found in the revisionist interpretations of police history which 'emphasises not so much the intrinsic ineffectiveness of the old privatised policing as its growing unsuitability for the new class relations of a capitalist society' (Reiner, (1985) p.24).

By modern standards the system was lax and inefficient, but it had operated for centuries, and it was only the urban changes effected by the Industrial Revolution that exposed it's shortcomings.

Police disunity and Public Order

Another deficiency in the old police which stemmed from it's localised organisation was the lack of co-operation and

co-ordination between different areas. (A thief being pursued by a constable had only to leave that constable's area to ensure safety). Different police areas were actually unwilling to help others, and the relationships between parish constables and the constables of the police office were characterised by 'mutual distrust and suspicion' (Radzinowicz Volume Two p.222). This was the case both within and outside London, but the situation did not improve after the setting up of the new police forces. The Select Committee on Police, 1853, found policing arrangements to be 'haphazard and confused', and although the new police were successful in some areas 'the whole was bedevilled by a total want of co-operation between the parts. Jealously between the Borough and County forces was intense' but the 'unhealthy rivalry and spitefulness worked only in the interests of the criminal and the disorderly' (Critchley (1978) p.105/106). The forces did not share any common services nor did they have any arrangements for helping each other in times of crisis, (J.M.Hart (1951) p.45), and the disjointed nature of the police, a legacy of the pre 1829 days, survived long after them.

Public Order, before 1829 was the responsibility of the local magistrate or sheriff, who, in the eighteenth century, were empowered to raise the militia by calling all fit men in their area to assist if necesssary in quelling any disturbances. (Radzinowicz Volume Two p.28/29). Radzinowicz details how, in the aftermath of the Gordon Riots of 1780, many localities formed their own voluntary emergency units for quashing disturbances, and he talks of the several quasi -military bodies that devoted themselves to maintaining order and quelling rioting. Many people thought these bodies were the best means of preserving public order, but 'This was indicative of the the weakness of the traditional police system, and of the lack of faith that there was any real prospect of it's ever being properly re-organised' (Ibid pp 209-211).

However, it has been said that 'A large scale police force was not created in England before 1829 because the authorities

were confident that they could maintain public order using the old system with 'ad-hoc' modifications. In this they were more justified than has often been allowed' (Stevenson J. (1977)

The Fielding brothers did attempt a reorganisation but did not succeed, although they did fashion the Bow Street magistrates office and it's attendant 'runners' into a celebrated institution, introduced the forerunners of the 'Police Gazette' and the principle of publicising the details of wanted criminals. Critchley has complained that all the noted police reformers were 'largely concerned with London's policing and were indifferent to policing elsewhere' (Critchley (1978) p.23). This was true and the fact that the Metropolitan Police were created first, laid the historical roots of it's continuing differences from the other forces, the most well known of which remains the Home Secretary being it's police authority. This link was historically necessary so that the Metropolitan Police could be accountable to Parliament through him, but resulted in the anomalous situation when other police forces were created, of Members of Parliament being unable to raise questions about them in the House of Commons because they were not the Home Secretary's responsibility and he was therefore not accountable for their actions.

Statutory strengthening of pre-existing policing arrangements

An important truth that emerges from studying the police prior to 1829 is what Critchley calls the 'legal obscurity of the office of constable'. He writes of changes in the last five-hundred years and observes that: 'it is manifest that the changes were neither willed from below, nor, until latterly, imposed from above. For the most part, the system simply adjusted itself, with local variations, to meet the pressures and needs of changing economic and social conditions' (Ibid p.16). H.B. Simpson, writing on 'The Office of Constable' in 1895, noted how it originated in the 'ancient administrative organisation of our race', although it has since been 'recognised, defined, sometimes amplified and sometimes limited by statute'. He points out that Parliament did not create the office and

did not become interested in it until the seventeenth century, but that 'recognition of the local constable by the central government has transformed by slow degrees the character of his office' (H.B. Simpson (1895), p.638).

Initial arrangements for policing (the system of local constables), evolved, if not quite by accident,then certainly not by design. However, the example of the constables uncertain power base being subsumed by legislation and given statutory authority was to set a precedent for the case of Chief Constables. The Chief Constable's wide powers today can be traced back to the Municipal Corporations Act of 1835. (see later chapter on Control of the Police on the relationship between Chief Constables and local authorities). It is clear that his current authority and power was historically based, not on parliamentary intention, but on opportunities after slipshod statutory draughtsmanship. However these origins of power through expediency rather than principle have seemingly been overlooked or forgoten, and the Chief Constable has reversed his initial situation and now enjoys powers that he regards as being given to him not so much out of principle, but as of right. The Chief Constable's office has now assumed a traditional, almost constitutional solidity that, judging by the historical beginning of the force, was neither intended nor could have been forseen. Throughout the police's history, Parliament has seen fit to attach itself to the polices pre-existing ofices, and by dint of bestowing powers upon them, to claim them as its own. Chief Constables in the nineteenth century used to be subordinate to their watch committees and to justices of the peace but history has gradually eroded this relationship and Chief Constables have been able to free themselves from such restraining influences. In the later Chapter on acountability and the impotence of control measures over the police, the rise of the Chief Constable is sketched in 'more detail'. A picture emerges of Chief Constables taking advantage of historical legal uncertainties over power and responsibility. As the power of the justices subsided,

it was seized by the Chief Constables, unhindered by legal rules to the contrary. Thus, the development of the position of Chief Constable is not marked by the distinct bestowal of statutory powers, but by the practical absorption of a variety of functions and duties.

The Royal Commission on Policing that preceded the 1964 Police Act recognised that, historically, the police has been sub-ordinate to the magistrates, but that as the magistrates influence waned, the Chief Constables had assumed new powers. In the early 1960's, police authorities were seen as rivals for this power, and the question facing the Commission was, who should now control police forces after the 'justices had opted out? (see Critchley, p.285). The answer to this was to distribute power between the Home Secretary, the police authority and the Chief Constable relying upon the tripartite structure to ensure that no one element should become unduly powerful. However, section 5 (1) of the 1964 Act provided that a police force was 'under the direction and control of its Chief Constable'. The ascending power of theChief Constable peaked with the authority he derived from this Act; authority that was arguably not intended by history. However, in practice today, such is the security of theChief Constable that he can comfortably override the wishes of his police authority.

b. WHY WERE THE POLICE SET UP?

The orthodox and revisionist perspectives disagree on the reason for the setting up of the police. Simply put, the former saw the police's creation as a positive response to growing crime and disorder, the latter, as coercive machinery to repress the discontented masses and maintain the ruling class's stability. 'In the revisionist view the motive for formation of the new police was the maintenance of the order required by the capitalist class, with control of crime riot, political dissidence and public morality, being separate subsidiary facets of this overall mission' (Reiner (1985) p.25). Such overtly political explanations are not accepted by all. One critique of revisionist theories charges that they have 'not

adequately explored the diversity and complexity of eighteenth century criminal activity and public reactions to it. They are too ready to impart to the eighteenth century somewhat premature notions of 'class conflict' and 'resistance' (J. Styles (1977), pp.978-81).

The Thames River Police, 1800, and the Metropolitan Police 1829

The facts surrounding the establishment of the Thames River Police, the prototype for, and forerunner of the Metropolitan Police in 1798, seem indisputable. The Port of London in the eighteenth and early nineteenth centuries was busy and congested, but easy prey to crime. Thieving and pillaging of goods was so widespread that the West India Company set up a Marine Police Establishment in 1798 to counter the problem. Patrick Colquhoun, the influential magistrate, published his treatise on Policing the River in 1800 and the Thames River Police Act followed in the same year.

The River Police had clearly been formed to protect property and commercial interests rather than people. It was successful at doing so and managed to avoid the disjointed and uncooperative nature of the local constabulary policing styles because although the river flowed through many areas, its business was the responsibility of the one River Police force. It was not welcomed by all however, and has been cited as the reason for the establishment of the money wage and the cessation of payment in kind in the docks, and therefore of tying the working class to the money wage. (see Tony Bunyan (1977), pp60-61. Furthermore 'from the very outset therefore, there was nothing impartial about the police. They were created to preserve for a colonial merchant and an industrial class the collective product of West Indian slavery and London wage labour' (Ian MacDonald (1973), cited in Bunyan, supra,p.61).

The River Police were successful enough to continue independently for a decade after the formation of the Metropolitan Police in 1829, but were another early example of Parliament and statute enveloping an existing body and investing it with new authority. The River Police were

initially formed from private initiative, but Critchley noted how the 1800 Act 'converted the private venture into a public concern' (1978p.42) and Radzinowicz comments 'Thus after two years of successful operation, the privately sponsored Marine Police establishment was transformed into a public institution regulated by statute and designed to safeguard commercial and other property on the river' (Radzinowicz (1956) Volume Two p.389).

The formation of the Metropolitan Police in 1829, as will be seen, had been opposed vehemently beforehand, opposition which did not abate for some time, but the passage of the bill through Parliament was strangely smooth considering the furore aroused by the idea of a police force. This is a tribute to Peel's political sagacity in centring the aims of his new force on prevention of crime, and trying to stress their useful, uncontroversial purposes. His arguments for an organised force would have been lent persuasive authority by a comparison with the existing inefficient individuals acting as local constables. There are divided opinions between those who believe Peel and feel that the new police were set up primarily to control crime, and those who feel that 'the motive for setting up the police owed far more to the problem of public order than to a rising crime rate' (Technocop BSSRS, (1985) p.96).

Hart inclines to the former view 'As to quelling mob violence and preventing industrial troubles, this appears to have been much less in Peel's mind than preventing and detecting the more ordinary types of crimes' ((1951) p.28). As an orthodox historian, Hart is also emphatic in asserting that there was no manipulative political reason behind the foundation of the Metropolitan Police. She predicted correctly that 'Some Marxist historian will no doubt one day assert that in reforming the police of London, Peel was the tool of the bourgeoisie who wanted their property protected and the working classes prevented from taking action to improve their conditions. This theory will not stand up against the facts. It was the

propertied classes who opposed all suggestions of police reform as attacks on personal liberty, and, more prosaically, on grounds of expense' (Ibid p.27).

Indeed, the rich had least need of a professional police force since they often had made their own security arrangements and employed protection societies to safeguard their interests. However, it has been seen that the River Police were set up to protect the interests of capital, and even if one accepts that Peel initially formed the London police to prevent crime rather than to quell political resistance and keep public order, it can not be denied that they were soon deployed for these purposes as well.

The County and Borough Police Forces

If the Metropolitan Police were not instigated to curb movements for reform, the borough and county police most definitely were. Their political purpose from the outset in response to the upsurge in radical feeling in the wake of the 1832 Reform Act is acknowledged by Critchley, who said that fear of Chartism and popular dissent 'led to a spate of legislation urgently rushed through Parliament in the closing weeks of the session of 1839.....by a Whig government nervous at what it had unleashed and resolved to provide police to quell the popular riots its liberal policies had done much to encourage' ((1978), p.61).

The Borough Police should have been formed by the Municipal Corporations Act 1835, which empowered councils to form watch committees able to appoint police. Yet, most councils, wary of the financial implications of setting up a force, had simply failed to do so. This was not surprising, for the 1835 Act was 'hastily prepared, hastily rushed through Parliament, and woefully incomplete', in effect reducing the Borough Police to being merely a 'by-product of the movement for parliamentary and municipal reform' (Ibid p.66).

The County Police Act in 1839 was a similar failure. It was intended to suppress Chartism but because it gave councils the discretion to form a force or not, many did not bother.

Despite these legislative efforts 'it is misleading to think of the years 1835 and 1839 as witnessing sudden and fundamental changes in the policing of the boroughs and counties throughout England and Wales. Police reform outside London was gradual, patchy and unspectacular compared with what happended in the Metropolis', (Hart (1951), p.31). and 'the level of efficiency was still low in the 1850's' (Hart (1955). Indeed after the government's initial fears of Chartism 'a certain nonchalant opportunism seems to have characterised the attitude of the Home Office towards police affairs during the 1840's' (Critchley op.cit,p.98).

Eventually the lack of co-operation between rural and borough forces, and their ineffectiveness compared to the Metropolitan Police saw the passing of the County and Borough Police Act 1856, which for the first time made it obligatory to recruit regular policemen. This Act was also influenced by the ending of overseas transportation as a penal measure, and the recognition that if habitual and dangerous offenders were to be returned to society after imprisonment, then there would have to be an effective nation -wide system of policing to deal with them' (see Radzinowicz (1968), Volume 4 pp 300-301).

A combination of practical and political aims had then lain behind the setting up of the professional police forces in the early nineteenth century.

c. FLUCTUATING ATTITUDES TO THE POLICE

The British policing system is often referred to as being one of 'policing by consent'. This implies a police mandate from the public to act as they think right for the public's benefit. If popular support for the police is wavering or appears to be withdrawn, (it is not a concept that could arguably ever be measured conclusively either way), then do the police have to change their tactics accordingly to win back public confidence? If not, do they cease to police by consent? The successful, smooth operation of policing is dependent upon enforcement policies acceptable to the populace, but the history of policing reveals a theme of fluctuating

attitudes to the force, and an ever present ambiguity of feelings towards them.

Critchley has complimented the 'generations of men to whose moral and physical courage English civilisation owes so much' (Critchley (1978), p.xxi). Such a grandiose claim is at odds with the picture painted by Radzinowicz in Volume Two of his history which shows early officers to be corrupt, motivated by greed, and often as dishonest as the criminals. Critchley himself recognises that during the fifteenth and sixteenth centuries the constable had been held in high esteem but 'within a short period of office was commonly regarded as appropriate only to the old, idiotic or infirm....The contrast between the lingering high status and dignity of the lawyers conception of the ancient office and the nature of the men who now filled it was acute' (Ibid p.10).

Throughout the eighteenth century, this poor image of the local parish constable endured yet if he '.....were seriously attacked the residents of the district, in their agitation, united to discover his assailant' (Radzinowicz, Volume Two p.121). Incompetent he may have been, but he was ultimately supported by the people, and there can be no useful comparison between feelings aroused by him and those kindled by the establishment of a police force.

Fear of the French police system

The very word 'police' caused great consternation in the eighteenth century; 'The threat to liberty, which so greatly alarmed many Englishmen of the day, lay not so much in any of these definitions as in the origins of the word and in the associations it evoked. It was thought preferable to have no word for it in the English language than to have the thing itself' ((Radzinowicz, Volume Three p.2).

This almost paranoic suspicion of the concept of a police force was fuelled by a comparison with the French policing system, and fears that a similar apparatus would be consolidated in Britain if ever a regular police force was to be set up. The French Revolution, with the storming of the Bastille in 1789,

and the formation of a Republican government in 1792, had further worried the British aristocracy and made the ruling classes wary of any mass insurgence. The French policing system was indeed oppressive and dictatorial, yet was not a product of the revolution. Remarkably, the police had remained constant despite the turbulence of France's political history: '.....The worst features of the French police as an instrument of political oppression were meticulously cultivated and unreservedly accepted as an indispensible element of public life, practically without any relaxation from the middle of the eighteenth century well into the third decade of the nineteenth' ((Ibid, Appendix 8, p.574). Indeed, as early as 1760 'when London could muster hardly a dozen professional policemen, Paris had long grown used to a surveillance so rigorous that to live without it seemed almost inconceivable' (Ibid, p.539/540).

The French system relied heavily on official spies and informers, and it was this aspect, of policemen infiltrating everyday life that was particularly abhorent to the British. This fear was an important reason for Peel's insistence that his police be uniformed and visible in 1829, so that the people could witness them acting openly rather than covertly, and so ease their concern about being secretly observed. It was ironic that people were so afraid of possible police spying, having been previously dependent on a widespread system of informers. It seems that 'informal' spying was acceptable whereas institutionalised state sponsored spying was repugnant.

In any case, fear of the French system ignored the potential diversity of policing systems and assumed that law enforcement arrangements would be uniform. In fact, there were, and are many different models of policing. Brogden (1987,p.7-8) identifies three types of police systems aside from the one adopted by Peel in London. Firstly, preventative police (where the police are involved in much intelligence gathering and protection of the State). Secondly, the administrative model, whereby the police work in administering social order and State

affairs, and thirdly, private or commercial forces such as Colquhoun's River Police. Therefore, simply because a new police force was being established in London did not mean it would follow the French model. Indeed, as Styles (1987,p.21) points out, French policing institutions owed much to two idiosyncratic characteristics of the seventeenth and eighteenth century French State; its determination to challenge localised power elites by centralising many administrative institutions and its policy of using the police as one of the instruments to help finance its bellicose foreign policy. Thus, 'The lack of police in England needs to be thought about in terms of the absence there of the administrative and fiscal imperatives that shaped the eighteenth century French system of policing' (Ibid, p.21).

However, although the conditions in France and Britain were different, and although this augured against a similar system, this was not what the populace thought at the time of the Metropolitan Police's creation. Concern at the French policing methods was understandable, but from the outset, British and French police worked from different perspectives; the latter not denying their concern with the security of the State. Doubtless Peel was keen to stress the law enforcement brief and independence of his force from the State in order to allay fears about a French style police force in Britain, and to demonstrate that the British police were working for the people not against them. The fear of an intrusive French style of policing continued to exert an influence however, as British forces developed; 'The traditions of 'la police generale' of the military nature of policing and policemen all of which went back at least to the seventeenth century, were maintained within the French police system, which emerged from the reforms of the Revolutionary and Napoleonic period. Traditional attitudes towards English liberty which influenced both rulers and the ruled meant that such elements were discouraged, or at least played down, in English police forces' (Emsley, 1983, p.163).

The police conceived as a threat to civil liberties

The idea of a police force was strongly held to be contrary to civil liberties, and whilst people were satisfied with the ancient partnership of justice and parish constables, which had attained a quasi-constitutional familiarity, there was no desire to reform policing, even after the pioneering literature of the Fieldings and Colquhoun in the late eighteenth century. Most people regarded the non-existence of organised police 'as one of their major blessings' (Ibid, p.374). It was thought that once a police force was admitted in England then 'the long cherished liberties of Englishmen would be swept away in a regime of terror and oppression' (Critchley p.35). The 1780 Gordon Riots did not alter this feeling.

Whist the founding of the Thames River Police in statutory form in 1800 seems an anomoly given the then hostility to policing, it was successful because the purpose for which it had been established was uncontroversial, and it's officers faced less prejudice because they were not regarded as potential instruments of oppression (Radzinowicz, Volume Two p.422).

The fears about a police force with far-reaching powers have been expressed throughout history, before 1829, and then periodically after the police's formation whenever new powers have been proposed for them. The River Police had been granted certain stop and search and entry without warrant powers, and these were greeted with scepticism in some quarters. The 'New Edinburgh Review' was particularly scathing, announcing that the Thames Police Act was 'remarkable for some specimens of preventive legislation, entirely repugnant as we think, to the spirit of English government' (see Ibid, quoted at p.393). It was also worried about the threats to civil liberties and the possibilities that the Act's wide powers would be abused. However, the River Police discharged their duties in such a way as to make these fears unjustified.

Pitt had earlier attempted, in 1785, to pass a radical Police Bill that in many ways was a forerunner of the 1829 Act. His efforts were in vain and the Bill was rejected, being described

by the Middlesex and Surrey Justices as 'a dangerous innovation and an encroachment on the rights and security of the people' (Critchley, supra p.37). (This did not deter the Irish who passed substantially the same Bill in Dublin in 1786 to lay the foundations of what later became the Royal Irish Constabulary). The Justices had a vested opposition to proposed changes in policing which advocated the separation of judicial and police powers, for it would mean a substantial reduction in their authority.

Another example of misgivings being voiced over extensions of police powers accompanied the County and Borough Police Act 1856 (Ibid. see pages 116,117). Although the Act passed, there was great opposition to it and again fears were expressed about personal freedoms. Such outcrys are reminiscent of the controversy that surrounded the passing of the Police and Criminal Evidence Act 1984, and the Public Order Act 1986. The strong opposition to these recent Acts and protestations of erosion of civil liberties clearly had many historical precedents but as with their predecessors, the dissenters failed to prevent the Bills from becoming law.

An obvious difference between modern times and the early nineteenth century, was that then, society was virtually united in its dislike of the idea of police. Indeed, three parliamentary committees, in 1816, 1818 and 1822 rejected the notion of a police force as incompatible with British liberty. (Spencer (1985) p.11). The most telling rejection came in a now celebrated and oft quoted passage from the 1822 'Report of the Select Committee on the Police of the Metropolis';
'It is difficult to reconcile an effective system of police, with that perfect freedom of action and exemption from interference, which are the great privileges and blessings of society in this country; and your committee think that the forfeiture or curtailment of such advantages would be too great a sacrifice for improvements in police, or facilities in detection of crime, however desirable in themselves if abstractedly considered' (440 Parl.Papers (1822) Volume 4

p.101 (quoted in Radzinowicz Volume Three p.360 and Critchley p.47). In the 1820's, the rights of the individual were accorded more importance than the interests of the state, a perspective that was soon to be inverted.

However there had been occasions when the notion of a police force had appeared attractive. There was a particular clamour for improvements in policing following the brutal murders of two families in Wapping, London, in 1811, which awakened dormant public feelings about police inadequacy and shocked public complacency. Radzinowicz comments 'Never before, not even after the Gordon Riots which brought the Capital so close to utter destruction, and gave so striking an illustration of the failings of the Justices and parish constables, did the public express so vigorous and persistent a condemnation of the traditional machinery for keeping the peace' (Radzinowicz, Volume Three, p.327).

The effects of these murders were felt outside London and throughout the country, wherever people feared their existing policing methods were ineffective. Interestingly, the ambiguity of public feelings towards the police role that remain today are manifested here, in that, at times of personal fear or crisis, the police are regarded as desirable and dependable, whereas at other more stable times, they are opposed and treated with suspicion and dislike. The government in 1811 realised this and were sceptical of the value of a public inquiry into the police, asking whether people were really desirous of reforming them or whether they merely wished to give an outlet to the fears and public alarm caused by the murders? (Ibid p.333). However, following the capture and execution of the culprit, the agitation for reform soom quietened.

Opposition to policing continues after 1829

Despite the deep-rooted hostility to the very concept of professional police, Peel remained singlemindedly undeterred. Critchley remarks that 'It is one of the most remarkable facts about the history of the police in England that after three-quarters of a century of wrangling, suspicion, and hostility

towards the whole idea of professional police, the Metropolitan Police Act 1829 was passed without opposition, and with scarcely any debate' (Critchley, p.50). Furthermore, public dissatisfaction with the force continued undiminished after their formation, and similar sentiments have been expressed about the County and Borough Police Act 1856; 'the relative ease with which the 1856 Police Act was accepted is remarkable given the concerted opposition to the Bill voiced by local authorities and others before it was enacted by parliament' (Barbara Weinberger (1981) p.66).

The continuing dislike of, and violent opposition to police at many levels is encapsulated in the events at Cold Bath Fields, Clerkenwell, in May 1833. The Police broke up a large meeting of the National Political Union of the Working Classes with baton charges, during which one policeman was killed. The inquest jury returned a verdict of 'justifiable homicide' and although this was later quashed on appeal, it was an indication that the police's legitimacy had not yet been accepted. One commentator has explained this verdict as being a result of the police being identified to their detriment, with the government, ((R.S. Bunyard (1978) p.12) but given the protracted and documented dislike of the police themselves this seems to be only a half-truth.

Weinberger has stated that 'the main roots of unpopularity lay in; suspicion of the police as an alien force outside the control of the community; resentment at police interference in attempting to regulate traditionally sanctioned behaviour; objections to the expense' (Op.cit p.65).

The upper and middle classes had opposed the police on grounds of; fearing for civil liberties, apprehension about central government encroachment in local affairs and expense, (Reiner p.40), whereas the working class disliked police because they were seen to be biased against them, they intruded in neighbourhoods where they were unwelcome, and they were controlled by alien class interests. (see Weinberger pp.72-76). The police were largely recruited from the working class, and

when they were deployed against them, it did not endear them to the communities they were policing.

Reiner writes that 'Whereas in the orthodox histories initial working-class opposition to the police disappeared fairly rapidly after the advent of the new police, the revisionists trace a line of intermittent overt hostility (expressing continuous latent conflict right down to the 1981 street battles' (Reiner p.26).

It is somewhat surprising that considering the history and strength of anti-police feeling throughout the country, it failed to have any effect either before or after the formation of the police. Colloquially put, all protests 'fell on deaf ears'. A possible explanation of why this was so may lie in what has been dubbed 'the franchise factor' (Lustgarten (1986), p.44). Despite the Great Reform Act of 1832, the electorate remained small, and the eligibility to vote was based on financial criteria. There were further Reform Acts in 1867 and 1884 that gradually extended the franchise, but it was not until 1918 that all men over 21 and women over 30 were given the vote, and it was 1928 before all women over 21 were finally en-franchised.

'Exclusion of the main targets of repressive police activity from political life ensured that on fundamental issues like the nature of order and acceptable public behaviour, local politicians, regardless of party, had the same standards and expectations. These were easily fitted into the substantive law, and came implicitly to define law and order.....Hence control over policing by elected representatives was acceptable to those who controlled British politics' (Ibid p.40).

This may go some way towards explaining why, despite the documented working class opposition and hostility to the police, it did not find a response in changes in policing. Local decision makers did not share their feelings, which they had no means of expressing 'legitimately' given the rusty and fatigued political machinery of the day.

This explanation may hold good for policing from the latter

half of the nineteenth century onwards and for the failure of the disgruntled populace to prevent the consolidation of the police, yet it is still inadequate and lacking in other ways. It leaves many unanswered questions about their formation and early development, starting initially in 1829, with the Metropolitan Police.

For example, if 'the franchise factor', and the restricted electorate are cited as reasons for the practical impotence of the opponents of the police (inthat they were deemed to have no political clout), the reverse of this must be examined. In other words, when the Metropolitan Police were formed, they were strongly opposed by the upper classes too, and by many who had the vote. Why did their representatives fail to communicate their displeasure and opposition? Financially the upper and middle classes greatly feared the development of police, feeling, not unreasonably, that the burden of funding would fall largely upon themselves. This, combined with them often having their own private security arrangements, and their libertarian fears over policing, made it strange that they were unable to influence Peel into abandoning his plans for a new system of police.

The comparitively smooth passage of the early police legislation thus remains a genuine historical puzzle - the reverse of the 'franchise factor', namely enfranchised opponents, counted for nothing. Emsley contributes to a partial explanation of Peel's success in pointing out that he had been involved in a rationalisation of the criminal law throughout his period as Home Secretary and a Police Bill was consistent with this. (1983, p.60). Furthermore after Peel's persuasion the same select committee that had advocated the creation of the Police in 1828, was appointed to scrutinise the Bill on behalf of Parliament. Also 'The propaganda of criminal law reformers including Peel himself, probably also had a significant effect in whittling away at traditional hostility to a system of police; it seemed that only such a force could conceivably ensure what the new system required, the certainty of rigorous punishment. There were, in addition, elements of luck and good

parliamentary management which assisted the Bill's trouble-free passage. The controversial issue of Catholic emancipation probably diverted much public and parliamentary interest and hostility. When Peel drew up his Bill he carefully forestalled opposition both from the City of London by excluding it from the new Metropolitan Police district, and from stipendiary and county magistrates by leaving their powers untouched' (Emsley, 1983, p.61).

Despite all these mitigating factors, there remains amongst commentators on policing, an inability to explain satisfactorily how Peel was able to establish a police force in such a relatively trouble-free manner.

Tacit acceptance of the police force

The working class gradually accepted that the police were ineradicable and here to stay. Although they were still suspicious of the police they would report to them if they had been victims of crime or wished to initiate a prosecution, whilst remaining mistrustful of the police's public order role.

The reputation of the police force seemed to be enhanced at times of national crisis. They emerged from the 1926 General Strike with great credit, (Critchley p.200) as they had done from World War One, and were to do so again after World War Two, when they had assumed many extra duties. Critchley further attributes credit to the 'Blue Lamp' film in 1950 (and the 'Dixon of Dock Green' television series that followed it) for 'taking the sting out of relations between police and public' and showing the human side of policing. (Ibid p.263). The 'friendly bobby' image though, has been criticised for ignoring the harsh realities of policing, and is said to be a contradiction in terms because there is an inherent tension in police work which is at variance with this concept, namely 'the protection of freedom and privacy demands the invasion of freedom and privacy' (R. Baldwin & R Kinsey (1982), p.7). Furthermore 'There is a danger.....that in recent years the idea of policing by consent and the image of the friendly bobby have been reworked to imply precisely the reverse of their original meanings. Today it

suggests that the police should and can be entrusted with whatever powers are necessary to enable them to do anything they think appropriate' (Ibid p.12).

The 'friendly bobby' image also contributes to the myth of a 'golden age' of policing, that still pervades today. The technology-orientated police of the 1980's are often rhetorically juxtaposed with the soothing image of the benign local constable on his old bicycle as a trusted friend of the people and reliable upholder of law and order. This is a myth that deserves to be destroyed, and those who subscribe to this opinion are probably letting their judgement be swayed by sentimentality rather than fact, for the reality is that 'the level of violence fluctuates with the level of social tension. The 1940's and 1950's were a relatively peaceful exception rather than the norm' (BSSRS 'Technocop' (1985) p.96). E.P. Thompson, writing admittedly before the Inner City riots of the 1980's, referred to a claim by the Association of Chief Police Officers for more powers because they could not prevent disorder on the street as '..... so much historical humbug.....In a broad secular view there has never been a time when public disorder in the streets has been less' (New Society, 15th November, 1979, p.380).

Indeed Weinberger relates how in Warwickshire in the 1860's and 1870's, there were certain 'no-go' areas, where the police were frequently stoned by youths and regarded as natural enemies. (Weinberger (1981), see pages 69-70). This evokes a clear parallel with the current problems in inner-city areas such as Toxteth, Liverpool, St.Paul's, Bristol, and Brixton, London, although protesters in these areas are now predominantly from the black community, whereas in the nineteenth century they were made up from poor whites and Irishmen. It is interesting to note that the Irish in the nineteenth century were prejudiced against, figured predominantly high in the crime figures for a minority group, and had poor relations with the police. (Ibid, see pages 68-71). The basic problem seems to be unchanged - but it is now the ethnic minorities who face racial prejudice and feel that they are victimised by the police,

and the experiences of the previous century have seemingly been of no use in defusing the tensions that still exist.

After the vociferous opposition to the police following their instigation, they were gradually accepted as the nineteenth century progressed. The fluctuations in public opinion towards them that are still characteristic of police-public relations today, continued but coincided with controversial legislation passed by Parliament. Thus, attempts at enforcement of the Poor Laws and Licensing Laws in the 1870's renewed public hostility towards the police. The basis of public dissent had therefore shifted; whereas at their inception, people objected to the very idea of police, to the institution of a police force per se, by the 1870's they had implicitly been accepted and the objections to them now stemmed from the unpopularity of the laws that they were obliged to enforce. This can also be seen from the 1920's onwards with the escalating use of motor cars. From the 1930's to the 1950's, the enforcement of unwelcome traffic legislation 'criminalised' the middle-classes and adversely affected their attitude to the police. Car ownership is now prevalent throughout society, and motoring-related offences still remain a cause of mutual ill-feeling between police and public.

d. LOCAL OR CENTRAL RESPONSIBILITY FOR POLICING?

The struggle for responsibility over policing between local interests and centralisation has been a dominant theme throughout history and has still not been satisfactorily resolved as is witnessed by the continuing conflicts between local authorities, their Chief Constables and the Home Office.

The issue manifested itself in many forms, most notably in the debates and arguments concerning whether or not Britain should have a national police force. Traditionally, such a development has been thought of with revulsion and the theory of forces being accountable to the local people they serve is seen as both democratic and a safeguard against the formation of a national police force, and ultimately, a police state.

As has been seen, early policing duties were solely localised,

but the historical tendency was for statutes to consolidate positions and powers that already existed. It seems, however, that the origins of the tensions between local and central control may lie with what are recognised as the first legislative steps towards a law enforcement framework, namely the Statute of Winchester, 1285, and the Justices of the Peace Act 1361, which set up the local watchman and constable, and their partnership with the magistrates respectively. Critchley asserts that '.....the two statutes were based on contrary principles; that of Winchester was directed to localising the means of law enforcement; that of 1361 tended to centralise these means' (Critchley p.8).

Indeed policing was viewed as a local responsibility until the nineteenth century. For example, when the eighteenth century rewards system operated, the government would offer rewards if public peace or state dignitaries were threatened, but would not do so when constables were injured or killed in the course of their duty. They neglected them, on the principle that it should be the Municipal or Parochial authority who should offer the reward for they were the ones who had benefitted from the constables services (see Radzinowicz Volume Two pp.93-95). The orthodox historians are keen to stress these local roots of policing, the ancient traditions of communal self-policing, in order to demonstrate that the police are not the police of the government, but of the community (Reiner (1985) p.17). That the police originated as local servants is certain, but whether they can still be said to be so is questionable in the light of successive governments historical persistence in increasing their involvement in directing policing.

In the nineteenth century then, it was 'local imperatives rather than national ones which articulated the local organisation and role of the police. (Weinberger (1981) p.88). In the central versus local debate, the notion of centralisation is cast in a sinister role, as has been noted, yet preoccupation with fears of the consequences of a national police system often masked failings of the local constables. The reasons why many

reformers wanted more centralised control are often forgotten but are important, for 'To them local control smacked of corruption and inefficiency. Their objections to local democratic control of parish forces echo precisely the arguments of contemporary Chief Constables about the supposed threat to their professional independence' (Reiner, p.46 The quote is from Reiner, the fact from Davy (1983) p.192).

Thus those who did favour a more centralised police did so often from laudable motives, and in the interests of more efficient policing. However, the continual wrangling on this issue had a detrimental effect on the development of the criminal justice system; 'The process of building up the machinery for keeping the peace in this country has been continually hampered by the conflict between centralisation, preached in the name of efficiency and economy, and traditional local control, defended in the name of freedom' (Radzinowicz Volume Two p.405). Patrick Colquhoun had proposed the separation of police and judicial powers in his 'Treatise on the Police of the Metropolis' in 1797, and advocated control to be vested in a board of commissioners under Home Office supervision, but such moves towards the dismantling of the old system were not publically popular. Ironically, however, whilst the debate on central control raged, Radzinowicz observes that... 'in a characteristically English way, much of what remained controversial in theory had been conceded in practice'. (Ibid, p.406).

That is, the tentacles of central control had been extended and had begun to take a grip on local offices before Peel's creation of the police. For example, the Secretary of State and the Home Office had developed such links with the magistracy that they effectively controlled them, and in emergencies, would openly direct activities.

Those wary of central direction of policing who believed that deeper political reasons rather than a quest for efficiency were its underlying objectives, appeared to be vindicated by the events surrounding the Birmingham Police Bill hurriedly

rushed through Parliament in 1839. (See Critchley pages 80-87). There had been particular problems maintaining order in Birmingham and this Bill was the official response; to create a police force for the city answerable to the Home Secretary. This caused a political controversy, the government was only acting because it did not want to leave a county force under the charge of the Birmingham Corporation who they feared, correctly, were sympathetic to the Chartist cause. Instead a centralised force was to be created there. The Bill was passed, as were similar measures in Bolton and Manchester, and with them, surely any myths of policing being a non-political function concerned solely with impartial law enforcement were dispelled. Critchley adds; 'The government's thinking about the right role for the police in the State, as a body subject ultimately to the control of the Home Secretary, had emerged clearly enough in the course of these spirited debates' (Ibid p.86).

The Royal Commission of 1839 set up to look at the need for county forces had considered whether a centrally directed professional police force would endanger liberty and concluded that it would not, a finding that was to be historically echoed by the Desborough Committee of 1919, and more recently, the 1960-62 Royal Commission on Police. The Desborough Committee considered and rejected nationalisation but outlined proposals to standardise police pay and conditions throughout the country. The 1962 Report of the Royal Commission also rejected nationalisation but admitted there was a strong case for bringing the police under complete central control, and rubbished the idea that a national police force would lead to a police state; 'British liberty does not depend, and never has depended, upon the dispersal of police power.....To place the police under the control of a well-disposed government would be neither constitutionally objectionable nor politically dangerous'. (CMND 1728 (1962) paras 135-9). In a dissenting memorandum to the 1962 Commission, Dr. A.L. Goodhart strongly advocated nationalising the police and argued for a centrally controlled police force, administered regionally, adding that the danger

in a democracy did not lie in a central police that was too strong, but in local police forces that were too weak. (See Critchley p.283).

Although successive government appointed committees had not found the idea of a national force abhorrent, none had argued strongly for it. Why? Probably for the simple reason that it was unnecessary. Lustgarten has pointed out that nationalisation of police was not viable in the nineteenth century, however desirable it may have seemed to government; 'This nationalisation option was foreclosed, even had the Home Office wished to control the police directly. The tradition of policing as a local service was far too strong. It would have required an enlargement of the central bureaucracy that would have been economically and ideologically impossible in an era of financial crisis and retrenchment'. Furthermore, '....the presence of the Chief Constables made it unnecessary. Without requiring explicit dictation, they could be relied upon....to share the government's views on the danger of 'extremists' and it's definition of 'order' in relation to anything regarded as politically dangerous, such as major strikes and demonstrations' (Lustgarten (1986) pp.45-46).

A national force by name was too controversial; instead the Home Office had started to extend its influence in a more subtle way. The 1856 County and Borough Police Act, 'a notable experiment in reconcilling the principle of central supervision with local management in a politically acceptable form' (Critchley p.116), introduced the obligation on government to fund a quarter of each police force's pay and clothing costs (if the force was certified as efficient by Inspectors of Constabulary, and not to do so otherwise). This amount was increased in 1874 and again by the Police Act 1919, which effected the Desborough Committee's recommendation that half the total cost of policing should be borne by the Treasury.

This exchequer grant would be withheld if a police force for example, was not up to the strength recommended by the Home Office, and so was an effective way of controlling the local

forces. However, Hart claims that the exchequer grant system acted 'more as a stimulant to spending than as a curb on extravagance' ((1951) p.85).

Fears that the financial grip on local forces exerted by government was a dangerous unwaranted misuse of state power are for once not borne out by comparison with the French funding of police in the nineteenth century. In France '.....the central government maintained absolute control over the entire police of the country.....without contributing to the cost except in Paris and a few other places. With these exceptions the entire police of France was, at the end of the nineteenth century, paid out of local funds, unassisted by the central government but it was far more closely controlled by the government than was the English provincial police' (Ibid p.36-37).

This demonstrates that central financial control is not necessarily less desirable than local control and in fact many areas welcomed the relief to ratepayers afforded by the exchequer grant. However, whatever its advantages to local authorities, the grant system undeniably did increase central supervision covertly, at a time when centralisation of police was a strongly contested issue. In disagreements with socialist dominated local authorities, Chief Constables were able to enforce their own policies backed by the Home Office and the threat of withdrawal of grant. (Lustgarten (1986) p.44-45).

At the beginning of the twentieth century, developments in policing were marked by a steady increase in Home Office influence without a commensurate extension of it's accountability to Parliament. (Spencer (1985) p.20). In both World Wars One and Two, the state of emergency meant that the police assumed many extra duties, and communication between the Home Office and police forces increased to cope with them, and has been the norm ever since. In the inter-war years, Critchley points out that the Home Office had built up a position of remarkable influence, but was 'exercising great power without formal responsibility', for the administration of the police was still largely governed by nineteenth century laws which

gave the Home Secretary few powers and called for scarcely any accountability to Parliament. (Critchley op.cit p.219). In fact in 1926, the Speaker had said that provincial police matters are not the responsibility of Parliament, but of their local authorities, a view repeated in 1936 when it was strongly contested by M.P's (Hart (1951) pp 86-87). Such an opinion was at variance with the facts - the Home Office had gradually insinuated itself into a position of influence over provincial forces on both an organisational and policy basis, and to deny this was so by emphasising the local nature of police arrangements was unrealistic and undemocratic. The Police Act 1964 eventually gave the Home Secretary the statutory responsibility for policing, which he had possessed in practice since the early part of the century.

In the debate over local or central control, it used to be said that the existence of many smaller independent forces was one of the valuable facets of the system, for they were a 'safeguard against tyranny and the police state' (Ibid p.180). If this was true, they were a safeguard that no longer exists, for the number of police forces in England and Wales is now comparatively small. Many urban forces today police over one million people, and 'approximately one-third of the population of Britain is policed by five forces.' (Baldwin and Kinsey (1982) p.105). This bureaucratic organisation means that the notion of local police forces accountable to the community is unrealistic. The term 'local control of police', had a meaning in the nineteenth century that has no relevance to the structure of modern forces. Hart hypothesized that 'the larger the area under the aegis of a local police authority, the more independent of central control it will probably be', ((1951) p.187), but this has proven an erroneous assumption and the opposite is true. The large size of modern forces has meant that they have grown closer to the Home Office, and the reduction in force numbers has also made central control easier, so that the idea of local control of police is now a largely hollow concept, a notion without substance.

e. POLICE COERCION THROUGHOUT HISTORY

The favourable reputation of the British police, which has developed throughout history and continues today compared with other countries, is often attributed to the fact that the police are unarmed. The ordinary constable has never carried firearms as a matter of routine (except for a brief excusable period during the Second World War) and although specialist squads today do carry guns, the largely unarmed character of the police continues. The importance of this, and the trust it has engendered amongst the public is considerable; 'The device which is most characteristically English has been to arm the police with prestige rather than power, thus obliging them to rely on popular support'. (Critchley p.xviii).

As the twentieth century progressed, 'the principle that the police were an unarmed civilian force with the responsibility to protect and not oppress the public was firmly re-established'. (Pike (1985) p.18). However an interesting historical paradox emerges, for the police are traditionally noted on the one hand, for their unarmed state and their friendly image, yet on the other, they have historically shown themselves to be adept at suppressing disorder, riots and industrial troubles using force where necessary, in a clinical fashion.

'While the violence of the workers was against property, that used in response by the state through the army, militia and yeomanry was against people.....Public order was maintained by the extensive use of force' (Bunyan p.61).

The most notorious example of this was the massacre at St. Peter's Field near Manchester, or 'Peterloo' as it became known, in 1819. Eleven were killed and hundreds wounded by over-zealous army tactics in breaking up the demonstration. This terrible abuse of state power has been overlooked by Pike, who incredibly, in contrast to historical opinion, feels that the real message of the 'Peterloo Riots' was that 'unless the angry working classes could be subdued by force, the whole fabric of society was threatened and anarchy would ensue' (Pike p.9). This is nonsense and deserves to be dismissed as such. To

cloak unwarranted state coercion in such emotive language ignores the fact that the 'fabric of society' in early nineteenth century Britain consisted of an undemocratic political system dominated by a rich elite, in which corruption and 'rotten boroughs' were common-place and only a small minority of the populace were enfranchised.

The old system of suppressing riots using extreme violence was actually not as ineffective as some orthodox and revisionist historians have suggested, and Reiner noted that both the army and the local magistrates were expert at cooling down potential disorder. (He adds that it is more appropriate to ask why there was not **more** political turbulence in the light of the economic upheaval and distress of the early nineteenth century, and with revolutionary France as an example). (Reiner (1985) p.35). Although the old law enforcement arrangements were effective in suppressing dissent, their methods were counter-productive for they inflamed discontent, alienated popular support, and supplied demonstrators with a further grievance against the state.

Soon after the inception of the Metropolitan Police, their ability to maintain order was tested by the Reform Bill riots of the early 1830's. These 'provided endless opportunities for the police to perfect techniques of crowd control and practise the newly acquired art of baton charges' (Critchley p.54).

On July 1st 1855 vast crowds gathered in Hyde Park to oppose Sunday trading legislation. The police resorted to force to disperse them and provoked such a mass of complaints that the government appointed a Royal Commission of Inquiry into the events. (Williams (1967) p.71). This concluded that the commanding police officer had allowed 'staves' to be used too freely, and had 'exercised less control over his men than a due regard for the safety of unoffending individuals required' (Ibid p.71-72).

Such tactics were to become a familiar part of policing disputes, and during the Tonypandy Riots of 1910, Winston

Churchill, then Home Secretary, instructed the police that 'vigorous baton charges may be the best means of preventing recourse to firearms' (Ibid p.181). These riots were also notable for the degree of personal supervision exercised over them by Churchill, who sent large numbers of the Metropolitan Police to South Wales to assist in quelling the disturbances. Baton charges have been used in the 1980's by the police and been greeted with outrage, yet the above incidents show that they are not new, and do not necessarily indicate increasing levels of force, because they have historically been regarded by police as a legitimate tactic.

The police experience of the Reform Bill riots meant, according to one writer, that the true importance of the later Cold Bath Fields demonstration in 1833 (and the justifiable homicide verdict) was that it showed how a properly constituted police force could deal with a hostile crowd without the need for arms or resort to the military. (Bunyan, (1978) p.12).

By the 1870's and the Trafalgar Square Riots, the responsibility for domestic order lay solely with the police. The hard-line police tactics taken by Commissioner Sir Charles Warren in denying a right to assemble in Trafalgar Square meant that the police defended it from demonstrators with their truncheons, resulting in many casualties. (see Williams, 1967, p.77-82). C.T. Clarkson and J.H. Richardson, writing in 1889, observed the pressures on, and attitudes of, policemen in policing these troubles; 'The temper of the constables, overstrained by long hours of duty, was beginning to give way, and there was a good deal of significance in the observation of one policeman as he bound up his bruised fist in a handkerchief after a hard bout, 'this is what we have been waiting for. We are not going to do double duty for nothing!' (p.205, quoted in Critchley, p.165).

This perceptive insight into the inner frustrations of the police function being outwardly expressed in violent conduct remains relevant today. The above quotation could be comfortably transposed into the 1970's or 1980's to describe

situations in, for example, the 1984-85 Miners Strike. It also hints at an important fact, namely, that some police may actually enjoy using violence, and is reminiscent in content, to findings made a century later by the Policy Studies Institute, who found that some policemen had trivialised the use of violence. One, talking of the Grunwick Dispute in 1977, felt that the fighting had been conducted so sportingly that 'when it was all over I felt like shaking hands with the opposition and thanking them for such a good contest'. (David J.Smith, J.Gray,PSI Volume Four (1983) p.88). Similarly another officer, talking of his involvement in the disturbances at Southall, 1981, concluded that 'it was a great day out fighting the Pakis. It ought to be an annual fixture. I thoroughly enjoyed myself'. (David J.Smith, J.Gray, PSI, Volume Four (1983) p.88).

Another historical parallel between the 1870's and 1980's is the charge that the police are becoming increasingly militarised. This criticism was being made more than a century ago; 'A common indictment of the Metropolitan force was that it was too militarised to perform the duties of a civil body. Since 1869, according to one M.P., the police had been transformed into a quasi-military force, drilled, distributed and managed as soldiers' (Bailey (1981) p.106, quoting Moylan (1934) p42-43. of the British police is of a benign, unarmed force. This was strengthened by individual incidents such as that described by the Chief Constable of Durham, who told of one of his men in the 1850's, who had gone unarmed 'into a crowd of upwards of 1,000 men, a great number of those being armed with picks, and some with guns, and merely from the fact of his being dressed as a policeman, and seeing that there was another force of policemen at hand, captured the ringleaders.....' (related by Critchley p.109)

Such instances contributed to the successful reputation of unarmed policing in Britain, which has now been accepted proudly as being a singularly British innovation, an important component of the national psyche. Reiner shows how some sociologists argued that this distinctive character of British policing,

it's relative legality and eschewal of force, was a product of social homogeneity and tranquility, especially when compared to the U.S.A., 'But the opposite is the case. The architects of the benign and dignified English police image, Peel, Rowan and Mayne (First Commissioners of the Met.Police) adopted the policies they did because of the strength of opposition to the very existence of the police' (Reiner (1985) p.51).

That the helpful, non-threatening service role of the police was intended from the beginning, is echoed by Weinberger who found that middle and working-class fears of early police 'resembling a standing army or a spy system were allayed by the fact that the police were unarmed, and by the cautious introduction of detective services' ((1981) p.67), and Bowden, who said that the British 'police advantage' of public support rather than lethal hardware as a means of crowd control, was a deliberately chosen strategy designed to ease fears of an 'oppressive gendarmerie' (Bowden (1978) p.35).

'The nineteenth century police reformers quite deliberately cultivated the service role in order to secure legitimacy for more coercive policing functions' (Reiner op.cit p.57). The appealing orthodox image of the British police has unwittingly caused many problems, for whenever police behaviour does not conform to this image, public support is jeopardised.

Overall, the British police have not resorted to force as frequently as their foreign counterparts, but this does not mean that they have been slow to do so where necessary, and history shows two ambivalent themes here; An unhestitating resolve to suppress serious disorders forcefully, can be contrasted with the police being unarmed, and their keenness to establish a rapport with the public. Public approval of policing has emerged as the most important factor throughout history, for successful policing. Critchley concluded that 'So long as the police are unarmed and have few powers not available to the ordinary citizen, they are compelled to reply not on the exercise of oppressive authority, but on public support' (Critchley p.328).

The police may be unarmed, but whether it is public support that they rely upon in the late 1980's must now be debateable.

CHAPTER TWO

FORCEFUL POLICING IN A MODERN CONTEXT

The use of coercion by a police constable, and the reasons why it can be, or is misused, must be seen against the background of prevailing police policies, which will help to shape the law enforcement climate and thus provide limits for the acceptable amount and frequency of force. The whole issue of force or coercion, and the police approach to it, is inexorably part of the wider 'law and order' debate, and it is important to look at whether the police operate as a force or a service, that is, adopt the 'control' or 'social service' model as a basis for their behaviour, for this has wide reaching consequences. For example, if it is felt that 'fighting crime' is the goal, then coercive tactics (such as Swamp '81) will rely upon the police's capacity to use force as an intrinsic facet of that policy. Conversely, if the maintenance of stability and peaceful police-public relations is the ideal, then the use of force and intrusive tactics will be less readily accepted as a policy option to achieve such goals. In deciding whether 'control' or 'social Service' orientated policies are desirable or necessary, consideration need be given to the wealth of crime statistics currently available to help determine what the police's priorities should be, and the emphasis they should place upon coercion. Similarly, awareness of the politics of policing is important, for, despite frequent assertions that law enforcement is impartial and apolitical, this is not the case. Political reasons lie behind many police policies and operations and thus directly affect the way the country is policed.

There has been much written about community policing and the social service model of police work, but this has been accompanied by the practical development of the contrary, militarised model. This chapter looks at what is understood by this 'authoritarian' model.

a. Policing today, Force or Service? Neither or Both?

What type of policing is Britain subject to today? The debate is often generalised by over-use of the two terms 'force' and

'service'. That is, do the police act as an instrument of state control, a force, against the populace, or do they provide a service, and respond to the needs of the community? It is misleading to see these antithetical models as presenting a clear-cut 'either-or' choice for in a pluralistic society such as modern day Britain it would be both impossible and unnecessary to impose a uniform style of policing, whatever it might be, on the entire nation, and to see, to do so would ignore the diversity of social situations and problems that exist. One of the main criticisms aimed at John Alderson's advocacy of community policing after his successful introduction of it in Devon and Cornwall in the late 1970's was that a style of policing that proved suitable for rural Devon was no guarantee that a similar policy would suceed in inner city areas with a different set of social variables. The wide range of differing localities and their attendant variety of social problems must be borne in mind whenever there is vague talk of a particular style of policing being prevalent throughout the country.

Having stated that the 'force' and 'service' models are not simply 'either-or' alternatives is not to say that they are compatible. Indeed, one of the criticisms made of Lord Scarman's report of the Brixton Riots of 1981 was that although he declared himself in favour of closer links between police and the community and a more community-orientated style of policing, he also acknowledged that there would be occasions when the 'harder' policing methods such as stop and search operations and deployment of the Special Patrol Group would be appropriate (Scarman (1981) eg paragraphs 5:46,5:53,5:54).

So although the two broad policing models are not strictly compatible they are not to Scarman's thinking, mutually exclusive, and elements of both may be necessary. Baldwin and Kinsey certainly thought that this approach misunderstood the concept of community policing as they saw it; 'The major point Scarman misses is that a degree of community involvement cannot simply be tagged on to a predominantly reactive, pre-

emptive and non-consensual form of policing. The whole of policing strategy and organisation has to be reformed or else all his proposals amount to little' (Baldwin and Kinsey (1982) p.245).

The police are perhaps traditionally thought of as being there for purposes of law enforcement and 'crime-fighting', and thus as agents of social control. However as seen in the previous chapter, there was such deep opposition to the 'new' police in 1829 that Peel, Rowan and Mayne deliberately cultivated their helpful, service role from the outset. It is the social service model of policing that is undoubtedly the preferable way of regaining public confidence in the force by forging trusting relationships at grass roots community level. One could argue, that the crime control model is capable of restoring public confidence, if the police, by concerted efforts, were to improve their efficiency, reduce the crime rate, and make people feel secure enough to live without fear of crime and therefore to support the police.

The construction of public consent to policing methods, or at least of the image of consensual policing was initially '..... furthered by Rowan and Mayne's insistence on an image of politeness and courtesy, impartiality and independence, and the minimum use of force. Reality, of course, was rather different for many who experienced police behaviour, particularly in some inner urban areas, but it seems that elsewhere the popular perception was of a low key service, quietly but effectively keeping the peace. Consent was furthered by the service role of the police, and by their image of closeness to local communities' (Benyon (1986) p.17).

Nowadays the idea of a social service model of policing is identified with the broad notion of community policing. There has been much discussion and writing about this style of policing, encouraged, as mentioned earlier, by John Alderson's high profile period as Chief Constable of Devon and Cornwall, and fuelled by Lord Scarman's report on the Brixton Disorders of 1981. Amongst Scarmans many observations on the subject

were that amidst the many long term social causes of the riots, a more immediate and identifiable cause of the uprising had been a loss of confidence in the police by significant sections of the community (Scarman (1981) CMND 8427 para 4:1), and following from this he recognised that 'community relations are central not periphal to the police function' (Ibid, para 4:80).

The latter statement may appear obvious in a society that claims to police by consent, yet it seemingly needed to be spelt out by a High Court judge to stimulate fresh thinking about police-community relationships and to replace the matter on the political agenda.

Prior to the public order troubles of the 1980's that highlighted the problems and failures of policing, the method of policing had been since the mid-1960's, centred on Unit Beat policing, with it's emphasis on unit areas being patrolled by small groups of police on foot and in 'panda' cars (For a more detailed explanation of Unit Beat policing and it's failings, see Baldwin and Kinsey (1982) pp30-51). The technology that allowed instant radio contact with patrolling officers and their cars had been welcomed as a step towards greater efficiency but in practice, although response times to emergency calls improved greatly, the system served to alienate the mobile police from the public, and inadequate resources meant that they could not cope with the work generated by higher public demands and expectations of them. The optimism about the benefits to be gained from advances in technology was not to be fully justified, and the side-effects of unit beat policing were damaging. Alderson warned that 'Most serving police officers in this new age have become 'technological cops' who barely meet their public outside conflict or crisis.....loss of human contact, knowledge and understanding, the very essence of democratic policing, is too high a price to pay for technology'. (Alderson (1979) p.42-42).

Academic and police opinion now seemingly favours the idea of community policing, that is, the adoption of the social service

role for the police. The range of the police's social duties has long been recognised, (for example see Punch and Naylor (1972), but as Whitaker points out, few of them were deliberately intended from the outset, and most are not declared anywhere in law; '.....the police's success brought developments which had never been anticipated by their founders; society incessantly has transferred fresh new responsibilities onto their shoulders.....modern governments have designated policemen as their agents for implementing measures dealing with everything from aliens and London taxis to diseased animals and certificates for firearms.....No legislator or judge has ever declared that the police must give first-aid, act as a local lost property office, understand the three-card trick, tackle rabid dogs, or rescue the drowning, the flooded, the snowed in, the burning or the trapped, but they do not hesitate to do so' (Whitaker (1979) p.45-46).

However, it is important that any community policing programme, when implemented, is made not the preserve of a few specialised units, but of the whole force and of every constable. Indeed, the attitude of the police themselves can be a problem because past research has shown that officers tend to view community work with distain, and as 'soft' policing. Evelyn Schaffer followed an early experiment in Scotland and found that the police use of a specialist team of officers devoted to community policing was mistaken because an antipathy developed between these men and those who were working on what were regarded as more 'conventional' areas of policing (Evelyn B. Schaffer (1980) p.71). The PSI report confirmed that the social service role of the police is not viewed as 'real' police work by officers, and offered this analysis: 'What police officers generally regard as most characteristic of police work is the element of conflict. By intervening to resolve conflicts they see themselves as helping the innocent parties; they may also in these circumstances, offer sympathy and support, though they vary very much in their ability to do so, and in the importance they attach to it. Where the element of conflict

is not present or is very much in the background, police officers tend to regard the matter as 'not proper police work'' (Smith and Gray (PSI) Volume Two (1983) p.97. (See also Reiner (1978) p.213-217).

Reiner too, noted how the police hierarchy were warmly endorsing socially-orientated policies whilst those officers required to enforce them displayed little enthusiasm; 'Whilst this consensus was emerging at the top, there was a developing underswell of protest mainly rooted in the police rank and file. Severalstudies of lower rank police views document the resentment of many at the extent to which 'service' calls detract from 'real' police work. (e.g. Skolnick (1966), Cain (1973), Holdaway (1977)', (Reiner (1985) p.113).

In the debate over force or service it seems that recognition has officially been given to the social service side of policing and this has been encouraged, for example, by section 106 of the Police and Criminal Evidence Act 1984, that requires consultation committees to be set up locally, whereas simultaneously the police have been required to use increasing force to suppress demonstrations, or have used such force unnecessarily on occasions. The trend of arming the police with further legal powers in the 1984 Act and the Public Order Act of 1986 coupled with the Conservative government's desire to see the police given controversial equipment such as rubber bullets to combat disorder, has caused disquiet in many quarters and points to contradictions in policing policies. There are instances of two types of policing very much evident in Britain today. Lea and Young comment that 'The result of population movements engendered by fear of crime and all the related signs of urban decay and deprivation is to divide the city increasingly into 'respectable' and 'non-respectable' parts. Around this popularisation grow two types of policing; one in the inner city based on force and coercion, the other in the suburbs and the smart parts of town based on consensus' (Lea and Young (1984) p.65). This analysis attributes much to environmental factors, which of course, should not be under-

estimated in their effect, however neither should they be allowed to blur the fact that hard or soft styles of policing do not merely occur as natural responses to certain areas problems, but are moulded to the intentional decisions and initiatives of police policy makers according to how they feel the area should be policed. Decisions which may be based on stereotyped judgements about the population of high crime areas, and which, with the resultant concentration of more intensive policing in such areas, eventually serve to perpetuate the poor reputation of the district.

Some critics feel that the talk of whether the police should be essentially a force or service has obscured the true basis of police work. Reiner is in no doubt that 'order maintenance is the core of the police mandate' (Reiner (1985) p.115) and he states that 'Most police work is neither social service nor law enforcement, but order maintenance - the settlement of conflicts by means other than formal law enforcement.....The craft of effective policing is to use the background possibility of legitimate coercion so skilfully that it never needs to be foregrounded' (Ibid p.116).

This definition, by implication, sees the use of force by the police in many circumstances as a failure in policing, or as unskillful police work. Following from Reiner's order maintenance model are consequences that also seem to warn against putting too great an emphasis on the social service role of policing. Reiner comments '.....to say that the primary police role is order maintenance is not to give the police responsibility for all elements of social order. Their task is the emergency maintenance of order not the creation of it's preconditions, as the broadest philosophies of community policing seek'. (Ibid p.116).

If one accepts Reiner's argument in preference to the opinions of those such as John Alderson, who wanted to see greater police involvement with the other social agencies, then it could perhaps precipitate a fresh look at the extent and even desirability of 'community policing'. If one accepts that the

police should be essentially reactive then there could be a a re-examination of their social service role and we could ask whether they should actually be involved in certain areas in the first place. For example, arguing hypothetically, one could ask would it not be preferable for the police to start relinquishing some of their 'softer' social service duties to other public agencies, so that they would be free to deal only with order maintenance problems, for which they are uniquely equipped, in that unlike other social agencies (the social services, education bodies and so forth), they have the capacity to use legitimate force where necessary. Would it not be better to designate those tasks that do not require force, to bodies that have no power to use it?

Of course such an approach, even if it was perceived to be of great benefit, would take much time to effect since it would mean the police abandoning many of their unwritten traditional tasks and require a huge reversal both in public perceptions of police usefulness and in public habits. Even if positive legislation was passed transferring, for example, the duty to care for lost pets to the RSPCA, the responsibility for letting forgetful owners into their locked cars or homes to the AA or RAC and local councils respectively, it would be some time before the alternative organisations were considered the automatic solution - most people would still call the police first. Although this disagrees from Reiner's original point, there is perhaps scope for further research here. Research that could establish whether there are many duties currently undertaken by the police that could be fulfilled easily and practically by others would be of obvious use in streamlining the force and possibly even allowing the pressure on resources, and thus might have a beneficial 'knock-on' effect throughout the police by saving time and paperwork in the station and by releasing manpower for more pressing tasks on the streets.

Reiner's talk of order maintenance as the core of the police mandate is reduced to even starker definition by Egon Bittner who saw 'the capacity to use force as the core of the police

role' (Egon Bittner (1985) p.15). He talks of the association of the basis of police work with law enforcement and crime control but thinks it preferable to look at the police's coercive capability; 'It makes much more sense to say that the police are nothing other than a mechanism for the distribution of situationally justified force in society' (Ibid p.17). This is more accurate than definitions of the police as primarily crime control or law enforcement agents for three reasons Bittner suggests, firstly because 'it accords better with the actual expectations and demands made of the police (even though it probably conflicts with what most people believe to be the proper police function); second, it gives a better accounting of the actual allocation of police manpower and other resources; and third, it lends unity to all kinds of police activity' (Ibid).

Many of the police's social service functions are bestowed upon them because of their coercive capacity, for example, dealing with mentally ill or disturbed people whose irrational behaviour may need to be curbed by force, and police arbitration in domestic disputes. The latter is unpopular amongst policemen because of it's intrusive nature, yet it should not really be seen as part of the 'social service' role at all. That most murders are committed amongst families and acquaintances is an established fact, and the dangers of domestic disputes escalating into at least an assault and at worse serious injury or death must be realised, and the situation treated accordingly. Thus domestic disputes between couples need to be classified and viewed as potentially dangerous and criminal situations, and therefore should often be the preserve of the police, who should afford high priority and resources to dealing with such situations.

The case of the dangerous or violent psychiatric patient is possibly different. One could clearly argue here, correctly, that the police's involvement is purely due to the fact that they can legally use force to restrain the problematic person; their 'expertise' in any medical way is not such as to justify their use here, it is simply coercive. This then would seem

to be a prime case where the need for police could be removed if the relevant medical authorities were granted powers of physical restraint. However, for the moment the use of police in dealing with the mentally disturbed directly backs up Bittner's claim that police coercive ability lends unity to different types of police activity. In fact, after consideration of the many different situtions facing the police, and the options open to them in dealing with these, Bittner suggests that 'the role of the police is best understood as a mechanism for the distribution of non-negotiably coercive force employed in accordance with the dictates of an intuitive grasp of situational emergencies' (Ibid p.23).

This specific formula has developed the argument a stage further than the general talk of policing as being a force or service. As highlighted earlier, the police hierarchy feel that a more community-orientated policy is best suited to policing Britain in the 1980's, yet legislation such as the Police and Criminal Evidence Act 1984, and Public Order Act 1986 are then passed giving the police potentially confrontational powers amidst a background of passionate debate in Parliament. However the views of the police themselves should not be neglected and it is interesting to note the considerable gulf in opinions between civil libertarian critics of such legislation and the police, concerning the effect that the Acts will have. The 1984 Act, following the terms of reference of the 1981 Royal Commission on Criminal Procedures (chaired by Sir Cyril Philips) (CMND 8092), sought to balance the powers given to the police with safeguards of suspects rights. Although critics may have felt these safeguards to be inadequate protection for the suspect, the police conversely feel that they may actually hinder policework. For example, the Chief Constable of Merseyside, Mr. Kenneth Oxford, has written that '.....certainly I and my fellow Chief Constables feel the balance has been tipped too far in favour of the wrongdoers against the interests of the law - abiding citizen and an effective police service' (Kenneth Oxford (1986) p.68).

This disparity of views seems to indicate that whilst the police pay lip service to the importance of their social service role, they still place great emphasis on possessing the powers one would associate with the law enforcement model of policing. Is the police conception of what powers are necessary for their social service role, different to the layman's? This apparent contradiction can be partially reconciled when we realise that the police will still need to use coercion in their social service role, and that such coercive powers are in fact central to the role. In the social service model '.....the police arrest criminals and stop crime because they already have the commission to use coercive force when necessary. It is thus false that the police have the power to use force because their prime responsibility is to arrest criminals and stop crime. Social service is not a secondary part of their job, and the ability to employ force is as basic to emergency social service as it is to crime control' (Joseph Betz (1985) p.187). In Britain it seems as if the crime control or social service debate is riddled with contradiction and confusion and is likely to remain so. However it does seem that policing is becoming more military, and recent legislation has pandered to police demands. Furthermore, recent public order problems such as the Miners Strike of 1984-85, the treatment of the hippy convoy at Stonehenge in 1985 and the Wapping Dispute 1986-87, have seen uncompromising police action. In such a climate, whereby force, although technically a last resort, is used before all peaceful options have been explored, then it would not be surprising if individual illegal acts of force by policemen were to be tolerated when seen as a means towards an end, for such behaviour would not be at odds with general trends in policing. An environment exists today in which the use of coercion by individual policemen will be seen as tolerable in many instances, and necessary in many others.

b. The influence of crime statistics on policing

There are many variable factors that influence policymaking in policing not least of which are the whims of the country's

political leaders of the day. The priorities that they wish to see the police working on may be partly due to political instinct but will also be in response to particular trends and problems in crime, which are partly determined by the compilation of a wide variety of statistics and official data.

The malleability of statistics

That statistics are portrayed as being the third and therefore worst type of untruths after the 'lies' and 'dammed lies' of popular saying, demonstrated well the natural suspicion with which many people treat them. That statistics can be used to provide misinformation as well as information, and can be carefully manipulated and adapted to suit ones own arguments is also quite clear. (see for example, Huff (1979). Furthermore, their effectiveness as a form of lie is increased by the air of authority and truth that specific figures on a page produce; often a statistical conclusion of fact will seem to be so overwhelmingly certain that it will be accepted as accurate. The limitations of crime statistics were recognised as long ago as 1829, by Edwin Chadwick in his tract on 'Preventive Police'. He talked of statistical returns being of little assistance, and, interestingly, his criticisms of crime statistics remain true today, namely; 'The discrepancy between the number of crimes committed and those recorded was enormous and varied according to the particular offence. An increase registered in one period as compared with another, provided no justification for the inference that the actual volume of crime had increased, because the recorded increase might be the result of many factors operating unequally.....'(cited in Radzinowicz Volume Three, p.451). The need to view statistics with caution is as important in the criminal justice system as in any other field, and it is well to be aware of the likely methodology in compilation if one is to gain a realistic, rather than an exaggerrated or underestimated picture of their worth.

For example, statistics that seem to indicate alarming trends in certain crimes 'may reveal more about the changing attitudes and decision-making of those involved in the process than about

any changes in offending behaviour itself' (Bottomley and Pease (1986) p.3). This can be illustrated by looking at violent crime. Although violent offences have never constituted more than 4% of the total notifiable offences, (Ibid p.5) they attract a disproportionate amount of media attention relative to their overall impact on the public, and this, coupled with their serious effects on the victim can help to foster an inflated picture about crimes of violence, which in turn may lead to great fear of crime. Even though violent crimes are statistically comparatively few, the number recorded is steadily rising. In 1985, violence against the person in England and Wales showed a 7% rise from the previous year, and this rose again in 1986 by another 3% (The Guardian 17.3.87 'Rapes lead rise to record crime rate). It would seem that fear of violent crime is superficially justified (and it may be reasonable for those in high risk groups), yet it must be realised that increases in the figures do not necessarily mean there is a considerable rise in the actual number of crimes committed. 'One of the main causes for an increase in the recording of violent crime appears to be a decrease in the toleration of aggressive and violent behaviour, even in those slum and poor tenement areas where violence has always been regarded as a normal and acceptable way of settling quarrels' (F.H. McClintock (1963) p.74 Quoted in Lea and Young (1984) p.13).

Furthermore, the recording of a crime under the broad heading of violence against the person gives no real information about the nature of the offence; '.....statistical grouping of offences can be misleading by it's implicit suggestion of homogeneity within a category. This is particularly important when offences of hugely different degrees of seriousness are included within the same category' (Bottomley and Pease (1986) p.5). These are two examples that help to warn against accepting crime statistics at face value and drawing possible erroneous conclusions from them.

It must be stressed that this is merely intended to be a brief look at how crime statistics can effect the police and how they

can often be misinterpreted with unfortunate consequences for policing; They may lead to unreasonable demands being made upon the force. However they are relevant to policing because they help to mould decisions about where priorities lie and where resources should be deployed.

The failure of crime control policies

Crime figures are responsible for exerting great pressure on the police. Although crime has been inexorably increasing now for some time, each fresh crop of data will bring with it questions about the efficiency of the police, and why they are seemingly failing to reduce the number of crimes committed, coupled with defensive tales of how some areas of crime are being tackled successfully and that progress is being made. A good example of the pliability of the official crime statistics can be found in a publication by the Conservative government in November 1985 entitled 'Criminal Justice'; 'A Working Paper'. This reports that many of the governments main goals for tackling crime have been achieved, and highlights, under the heading of 'police achievements', that the number of offences cleared up by the police, rose every year from 1979-1985, (Cited in The Guardian 27.11.86), but 'it does not explain that the number of crimes cleared up has increased because the crime rate has risen' (Ibid). and furthermore, it does not show that in the three categories of particular concern, namely robbery, theft and burglary, that the rate of increase has been much faster than under the previous Labour government. (Ibid). This partisan use of the figures encapsulates what might be termed the 'credibility problem' of crime statistics, whereby although many of them can be of value, doubts about the impartiality or otherwise in their presentation can lead to cynicism about their accuracy.

The rise in crime figures by 7% in 1986 to a record 3.8 million offences, and the decline in the clear-up rate by a further 4% (The Guardian 17.3.87 'Rapes lead rise to record crime rate) do not seem to have had the effect on the Conservative government that might have been expected. Mrs. Thatcher's government have seen themselves as the custodians of law and order and

sought to portray their Labour opposition as an anti-police party who would seek to bring the police under political control and thereby to undermine their authority and operational independence. However, the Conservatives gut-reaction style of dealing with crime has patently not worked; 'They have presented themselves as the party with simple answers; more police, tougher sentences, stronger powers, no nonsense. They have fed these instincts and fed off them. Nobody can deny that, in the legislation they have enacted since 1979, the Conservatives have tried to put their solutions to work. The trouble - and politically it could be very big trouble if the voters cotton on - is that they have failed' (The Guardian, Editorial, 7.3.86 'Law, but very little order').

The electorate in 1987 either did not realise this, or if they did they chose to ignore it by returning the Conservatives comfortably to power. The full extent of the government's inadequacy in dealing with crime needs to be appreciated and understood, for if their crime policies are faltering and inappropriate, does not the same apply to their thinking about the way the police should be operating? Again, to quote from an editorial in 'The Guardian'; '.....crime has risen by 50% since the government took office in 1979.....Crime isn't rising because the laws are not strong enough, or because the sentences are not tough enough, or even because their aren't enough bobbies on the beat. It is rising because the agencies and individuals who can have a preventitive effect on crime are not pulling together or in the same direction.....the Government has tried to foster the deeply misleading notion that crime prospers because of soft laws, namby-pamby sentencing and inadequate support for the police. Eight years of steadily rising crime ought to be enough to show that this strategy does not work and has not worked' (The Guardian 17.3.87, 'The soaring graph of crime).

Curiously however, although the crime figures seem to indicate the failure of the government's policies they have used them simply to enforce more of the same policies by arguing that

such statistics show the need for their favoured solutions. It is an astute political conjuring trick that ignores the causes of the problem and yet gains the popularity by taking action which popular belief thinks will succeed, whereas such evidence as exists on the police and formulation of their policies; more crime can lead to calls for more police to deal with it, despite evidence that this has little effect, or alternatively, to unfair criticism of the police for failing to reduce crime. Either way results in pressure on the police force, furthermore it is pressure borne out of ignorance and misunderstanding of exactly what the police are able to achieve in any case.

Availability of crime statistics should be used to counter this ignorance and to destroy archaic misconceptions such as those which abound whenever there is talk of putting more men back on the beat and increasing police numbers as the answer to society's ills; 'The party of the law and order has presided over record crime rates and over spectacular increases in popular fear of crime. The constant strengthening of the police has failed to stop those trends - and may in some respects even have contributed to them' (The Guardian, Editorial 9.10.86, 'Crime and a cul de sac). Indeed, strengthening of police may lead to increased expectations of them, which can prove difficult to live up to.

Crime statistics and police effectiveness

The most important theme that should emerge from increases in crime and decreases in clear-up rate is that the police alone can do litle to counter criminal activity without extensive public co-operation; '.....the remedy for declining clear-up rates is not to be sought solely in increased police manpower. The clearance of most routine crime, as various research studies have shown, derives from the help supplied to the police by the public, rather than from the efforts of the police' (Burrows and Tarling (1982) p.14). Acceptance of this fact must lead to a re-assessment of exactly what is expected of our police force, and this in turn must be compared to what is realistically achievable. There is a dichotomy here that needs to be tackled.

The public clearly expect more from the police than they can possibly achieve, (and this is referring to the police law enforcement crime fighting duties alone). The key concept here is effectiveness, and more specifically effectiveness in fighting crime. The public need to be under no illusions as to what extent the police are actually capable of alleviating the crime problem. However, because the truth is likely to be unpalatabe, the mythology of what the police could achieve if given certain powers and resources persists. As Skolnick has said 'The question then becomes: is it possible for police to prevent crime? The answer is a firm 'maybe'' (Jerome Skolnick (1986) p.9). Clearly the police's effectiveness, if measured merely in terms of crimes cleared up, is low, yet curiously, the poor clear-up rate could itself be an indication of effectiveness in police-public relations. That is, if more people have become aware of their responsibilities to help the police and so have reported crimes to them, or if the public have greater confidence in the force and have notified them of offences, then this would offer an alternative explanation for the higher number of crimes reported yet, would still be consistent with a claim of police effectiveness in the field of police-community relations. This confidence in the police could result in the reporting of too many crimes for the overburdened police to cope with, leading to a poor clear-up rate.

Attention has recently been drawn to the cost of policing. The Association of Chief Police Officers 1987 summer conference was told that the public do not think that the police give good value for money. (The Guardian 19.6.87). This would appear to be borne out by the costs of clearing up crime; '.....The Home Secretary, replying to a question in the House of Commons (Hansard 9th February) said that in 1983, the cost of clearing up a single crime in the metropolitan counties was £1,461, while in the Metropolitan Police District it was £5,578. Figures such as these reveal a monstrous inefficiency, particularly when one considers the very broad meaning of 'clear-up' (Kinsey, Lea and Young (1986) p.28-29).

This again sees the question of efficiency in terms of clear-up rates. There needs to be a new realism, accepting that the police can only have a limited impact on clearing up crime, and a negligible one if they do not receive public co-operation. To talk in terms of police efficiency being linked primarily with the clear-up rates is to help subtly perpetuate the mistaken impression that good policework and detective work can actually have a significant impact on crime. The truth may be that it cannot, but to admit as much would be interpreted not as realism but as political defeatism. There is a real danger that those who condemn the police for their ineffectiveness may be cherishing an ideal of police effectiveness that is in reality unattainable; '....in no way is society held together by the 'thin blue line' of one policeman for every 418 members of the public of England and Wales. Anti social behaviour is controlled first and foremost, by public disapproval' (Lea and Young (1984) p.62).

The 'bobby on the beat' - the solution to rising crime?

A standard response in the past to rising crime was to increase the number of policemen in the expectation, (or possibly just the hope) that they would have positive effects on controlling and preventing crime. This assumption has not been backed by documentary proof, but was presumably seen as common sense. It has been a theme popular with the Conservative administrations of the 1980's, yet even they realise now that more police does not equal less crime. Indeed, this fact is now widely acknowledged by academics, police and politicians alike; '.....increasing the numbers of police does not necessarily reduce crime rates nor raise the proportion of crimes solved. Neither does simply boosting police budgets. Certainly there would be more crime if there were no police. But once a threshold has been reached, neither more police nor more money helps very much' (Skolnick (1986) p.9).

Whenever the old idea of more police to tackle crime was floated, it seemed to concentrate on one particular area of policing, namely in putting more bobbies back on the beat.

Quite how the bobby on the beat attained this mythical status as being partial solution to crime seems puzzling in the light of recent Home Office research; 'Crimes are rare events and are committed stealthily - as often as not in places out of reach of patrols. The chances of patrols catching offenders red-handed are therefore small, and even if these are somewhat inceased, law-breakers may not notice or may not care.....a patrolling policeman in London could expect to pass within 100 yards of a burglary in progress roughly once every eight years - but not necessarily to catch the burglar or even realise that the crime was taking place'. (Clarke and Hough (1984) p.6-7).

Skolnick backs this up and notes succinctly that even intensive policing may not yield results; '.....Moreover, even when an area is saturated, police rarely see a serious crime in progress. Only 'Dirty Harry' has his lunch disturbed by a nearby bank robbery'. (Skolnick, op.cit,p.9). The latter may not be strictly true - it has doubtless happened to Starsky and Hutch and Crockett and Tubbs too, however the acute difference between media and fictional entertainment images, and the reality of policing is surely a factor that has contributed to the misunderstandings about the bobby on the beat, and led to false expectations of him. That he cannot significantly decrease crime is recognised by the police force. Mr. David Phillips, an Assistant Chief Constable of Greater Manchester, told the Association of Chief Police Officers (ACPO) that the man on the beat's central role in public perception was largely over-estimated, and what the public expected of him against the real situation was largely illusory'. (The Guardian 18.6.87 'Bobby on beat 'no instant cure for rising crime''.

The Conservative government have continued to pledge increases in police numbers despite their realisation that men on the beat are not effective crimefighters. The Home Secretary, Mr. Douglas Hurd told ACPO that the Greater Manchester Police faced a considerable problem with thefts from cars, yet they '.....have had quite a substantial success here in reducing

that crime, but not by having more uniformed bobbies on the beat. That's not the way to do it. What you have is plain - clothed people, and they target particular areas and produce results'. (The Guardian 20.6.87 'Hurd promises 2,000 more police for provinces'.

The notion of the bobby on the beat remains popular with the two main political parties in England and Wales. The Labour party were pledging before the 1987 election to put more bobbies back on the beat by releasing them from time-consuming routine duties, (The Guardian 1.5.87 'Bobby on beat plan launched by Kaufman) and clearly wished to benefit from popular sentiment by seeing such a policy as a potential vote winner. However, what must be realised is that the local bobby on the beat in yesteryears folklore bears litle similarity to todays bobby on the beat. The crucial word here is local - in the halcyon image of the trusty bobby, he is a local man born and bred, who knows his public well, and who serves the community that he grew up in and lives in. Whether this friendly system was ever widespread or not is unimportant, for what matters is that the image has endured. Yet any talk of putting bobbies back on the beat today would not result in the re-creation of this cosy system - the policeman would probably be strangers and live elsewhere. This has particular implications for community policing schemes; if the Officer does not come from the community, his acceptance by them will be so much harder, as consequently, will his job.

The patrolling officer on the beat is seen as the lynchpin of the force and it's most important component, for it is his contacts with the public that help to mould police - community relations, however, 'In contradiction to the importance of the front line as indentified in the ideology of the beat, the uniformed patrol branch, in manpower terms, is a very weak section of police organisation. In the main, the patrol function is staffed by inexperienced officers and others who are considered less than adequate for the heavy demand of the role' (J. Mervyn Jones (1980) p.13-14).

Given this information and the lack of effectiveness of the beat policeman in law enforcement terms, it seems that calls for more officers on the beat are misplaced. However, when people realise that they will not reduce crime in this way, they are still keen to see more officers on patrol. In research conducted by Shapland and Vagg between 1983 and 1985 in both rural and urban areas they found that '.....in many ways the most important role in which the public in our study wished the police to undertake, was the symbolic one of, by their very presence, proclaiming a state of order. This was the basis of the demands, found in many studies, for increased foot patrols. (Car patrols did not seem to provide the same reassuring presence). This demand has often been dismissed, usually on the grounds that foot patrols do not provide an 'effective' use of manpower (for example, Hough, 1985). However, our residents in both urban and rural areas did not seem to be expecting concrete results from their wish for increased foot patrols. 'Effectiveness' for them was not measuring solely by deterrence. The task of the police was to be seen in the area at least occasionally to 'show those youths they're around' and to provide an opportunity for the passing on of concerns about problems and information about disorder' (Shapland and Vagg (1987) p.60).

So there is a legitimate justification for putting more police on the beat, but it is not a crime fighting one. This 'reassurance' role of the beat policeman should be recognised, for it is a more realistic function than local crime-fighter, albeit less politically attractive.

Unfortunately, the spiralling crime figures have been used to ill effect as far as the police are concerned, exacerbating great pressure on already stretched resources. The continuing rise in crime reflects badly on the police in the eyes of the public, who may be ignorant about what little the police can achieve,and how effective they can be. However the manipulation of the figures has allowed the government to skilfully call for more police, and to give these police potentially repressive

powers, ostensibly to deal with the trends of rising crime, whilst simultaneously being well aware of the police's limitations. The police need greater public support and co-operation to begin to reduce the crime rate, yet this is unlikely to be forthcoming when statistics fan the fear of crime and to indicate the police's helplessness in the situation. This results in a loss of public confidence in the police - people may think that going to the police is unlikely to help them (unless for insurance reasons) - and this all contributes to deteriorating police-public relations, the withdrawal of public consent to many policing initiatives, and the resultant reliance on forceful methods by the police.

An authoritarian, militarised police force

The police's inability to deal with the mushrooming crime problem and the support that they have been given by successive governments has enabled them to turn to new, and more conflict laden approaches, to their job. The social service model of policing may be battling for recognition, but it is the military model that remains prevalent at the moment. The police operate a military model in two senses of the word; firstly, in that their day-to-day policing methods may be tough and uncompromising, and secondly, that they may be equipped and trained with a wide array of military style technology for use in controlling public disorder. Lea and Young have documented the former understanding of military policing (1984 Chapter 5), in which they cite the type of operations such as 'Swamp 81' in Brixton, as components. This large scale stop-and-search exercise involved the random stopping of large numbers of citizens in the hope of catching those who had committed street crimes. It was also intended to have a deterrent effect on the number of muggings that had been taking place. In fact out of over one thousand people stopped, fewer than 100 were charged with criminal offences. (Ibid, p.177). Lea and Young note that the military policing results from; rising crime and the assimilation of the lifestyle of the petty criminal with the general lifestyle, racial prejudice within the police force,

and the changes in policing methods following the introduction of modern technology and communication (Ibid, p.179-181). They also assert that miliary policing creates a vicious circle that sustains further military policing since it alienates the community and the flow of information from them to the police dries up, thus necessitating more such policing (Ibid, p.182). This is similar to the vicious circle that is created by the second type of military policing in public order situations.

In public order military policing, the use of coercive methods or willingness to resort to force before other means of solving the problem have been explored, means that violence can become a customary way of dealing with disorder. This becomes more likely if the police have the equipment that enables them to behave in this way. Perhaps if they did not possess such protective equipment they would consider at greater length whether to get involved. However, the increased training and technology increases the polices chances of successfully dispersing or controlling a crowd by forceful tactics, even though the cost of this may be high in terms of the public's confidence in the police being damaged, and respect for them being undermined or destroyed. More importantly however, violent or coercive methods used by the police are not likely to be met with acquiescence in those who are being controlled and there is a strong probability that they will provoke violence and resistance from the crowd. Thus, police coercion and use of force may result in a circularity of violence and cause counter-violence in the crowd.

Militarised policing in either form is now sadly acceptable in Britain, and may rather pessimistically be seen by some as the only way in which to govern and control the more unruly elements of society. This type of policing is, as seen, strongly counter-productive and so its worth must be questioned if it creates as many problems as it solves. Yet, how has it achieved legitimacy in the first place, since it seems to be contrary to all the traditional ideals of policing by consent and so forth, upon which British policing claims to be founded?

The rise in crime and the moral panic over the fear of crime have played their part in this process, with new police powers being welcomed as valuable tools against the criminal whilst their potential for abuse is naively ignored. The Conservatives championing of the police has meant that their side of the argument will often be believed by government and has represented a mandate for Chief Constables to chart their own policies, unfettered by either local or national constraints and trustingly backed up by the Home Office. The emergence of the police hierarchy as a powerful lobbying body is also significant. The police were once the upholders of policies designated from above. They now contribute to the formation of these strategies and have a large degree of self-determination. They have gone from being instruments of policy to policy makers as well. All these factors have contributed to the police being able to change the way in which they work and to reply upon increasingly coercive methods. Yet the police are not alone in this, but are instead part of the system that sees increasing state power being exercised at the expense of individual liberties.

Public attention has been focused on the expansion in police powers that has been brought about by the Police and Criminal Evidence Act 1984 and the Public Order Act 1986, and these have been given a contemporary flavour to a trend that started many years before. Hall (1979) detailed how Britain was 'drifting into a law and order society'. By this he meant that British society as a whole was becoming subject to a more authoritarian ethos in many ways such as the undermining of welfare rights and the freedom of organised labour as well as in policing and criminal justice. To a certain extent however, this can not be attributed to one particular political party. Hall et al (1978) record that this hardening process started long before the 1980's, and that the state was 'structurally on a collision path with the labour movement and the working class' from 1967 onwards (Ibid p.277). They identify the 1970 election as a turning point in this social trend. Britain was said to be developing a more repressive state machinery,

yet in a piecemeal fashion. There was a 'slow drift to control'. Whereas before January 1970 the authorities used repression when pressed into responding by crusading groups, after this 'The state itself has become mobilised - sensitised to the emergence of the 'enemy' in any of his manifold disguises; the repressive response is at the ready, quick to move in, moving formally, through the law, the police administrative regulation, public censure, and at a developing speed. This is what we mean by the 'slow shift to control', the move towards a kind of **'closure'** in the apparatuses of state control and repression. The decisive mechanisms in the management of hegemonic control in the period after June 1970 are regularly and routinely based in the apparatuses of constraint. This qualitive **shift** in the balance and relations of force is a deep change, which all the token signs of moderation and retreat, responsibility and reasonableness in the councils of government should not, for a moment, obscure'. (Ibid, p.278. Their emphasis).

Over a period of nearly twenty years this shift to control has created the legal climate where repressive laws and coercive police action are not seen as being primarily dangerous to civil liberties but are presented as necessary for the preservation of stability and the social order. It has thus become possible for the police to employ increasingly harsh tactics relying upon their coercive capacity, and to do so largely unchallenged by the establishment and state in whose name they are acting. Perceived and actual crises in the in the rise in crime have enabled the police to adopt more dubious strategies on occasions to try and curb such social excesses. Even though the police's conduct may be contrary to policing principles on occasions, this will be overlooked if it is portrayed as being part of the battle against crime or subversion. The central argument here is then, that the levels of coercion that the police will feel able to use is strongly related to the social and legal climate prevailing at the time, which in effect will set the parameters of

acceptable force. For example, if the police use baton charges or some other contentious tactic and it goes uncriticised by their hierarchy even if it was accompanied by a high level of police violence, then such measures will automatically become part of the police options and liable to be used by the same people again should the opportunity present itself, regardless of whether it was actually necessary in the first place, and whether it had any negative consequences. Repressive legislation sets the tone for it to be upheld by repressive tactics.

Currently, British society is amenable to the military policing model, with such policing becoming prevalent in the everyday policing of cities as well as in dealing with public disorder. As repressive policing now enjoys a legitimacy that stems from the twenty year shift to control, so the police no longer just react to problems as and when they occur but instead will initiate action. This is a prominent feature of the militarised model; the police are unhesitant in 'forcing the pace' of a difficult encounter. For example, rather than attempting to contain outbreaks of trouble at demonstrations and so forth, the police will try to repress it. Military policing sees a more interventionist approach than consensus policing and one in which the approval of the community is not considered a pre-requisite for action. Such a policing style is currently in vogue in Britain in both respects of the term as discussed earlier, namely in harsher everyday methods and in the use of modern technology for crowd control.

PART TWO

THE INDIVIDUAL OFFICER AND POLICE COERCION

CHAPTER THREE
REASONABLE FORCE AND THE LAW

The British police have been happy to perpetuate the idea that they are merely citizens in uniform and are really no different from the public that they are there to protect. Whether one subscribes to this view or not is not important, (although the heightened social role of the police throughout the last three decades and their increasing range of powers make it hard to sustain), but what is significant in this image of the police is that whilst their similarities to the public are stressed, they are acknowledged to differ in one crucial aspect; namely that they are legitimately able to use coercion where the occasion demands it for the fulfillment of their duties. It is the power to use force that is at the crux of policing and upon which policing ultimately relies, it is this that sets the police apart from other citizens and from which they derive their authority.

Throughout the 1970's, and particularly in the 1980's, the police have become a major topic of public debate and political argument to the extent that their actions are not now accepted as those of a neutral law enforcement agency, but instead are subjected to searching criticism and sociological analysis. The inner city riots of the 1980's, whatever their long term causes, focused on the police in the short term, and indeed were often expressly directed at the police as a result of certain policing methods or policies. Policing today is a cause of resentment and tension in Britain's inner cities, and Chief Constables are acutely aware of the need for sensitivity in areas where the smouldering resistance can be ignited by tactical mistakes or isolated malpractices in policing. In this situation, the importance of the police as either protectors of law and order or potential catalysts of disturbance is of great social significance and must not be underestimated. More specifically, the police use of force must be recognised as a vital element in this; if force is used properly it may defuse ugly situations and safeguard people and their property, but all too often when flashpoints and crises

occur between police and public, it is because of legitimate but coercive and unpopular policing, or due to violent police misconduct. As one commentator has observed, 'If.... force is at the core of police work, the misuse of force must be at it's moral core'. (Elliston and Feldbert, 1985, p.173).

With this in mind, it is surprising that there is both very little legal guidance determining how the police may use their coercive powers, and inadequate methods of redress when they have abused them. This is an area that has escaped detailed attention at a time when there is a widely recognised need to boost police-public relations, and despite the damage to public confidence in the police that inevitably results whenever there is unwarranted violent police behaviour.

The legal factors affecting a policeman's ability or tendency to use force will be looked at. The legal position, both statutory and case law, governing police use of coercion will be examined critically to see whether it presents adequate controls on policemen or whether they are too restrictive, and if they can be improved, tightened or relaxed. Issues such as police discretion and the hierarchical structure of the police that makes it's exercise possible are relevant here - the command structure of policing is such that the Chief Constable can not be certain that his instructions have percolated through the ranks and are being enforced at ground level, and the low visibility of many policing decisions, and freedom from immediate supervision that officers enjoy, means that discretion can potentially be misused. The Police and Criminal Evidence Act 1984 did make some changes to the police complaints system, most notably the creation of the Police Complaints Authority and the introduction of an informal resolution procedure for minor complaints, but whether this revised system will be adequate to control police misconduct remains to be seen.

Arguably more important than legal factors affecting use

of coercion, are the cultural influences on a policeman and sociological explanations for his violence that will be explored in the next chapter. Police culture may tacitly endorse the use of violence as a means towards an end, to achieve what is seen as 'justice'. Thus, for example, if a suspect is regarded by police as guilty but unco-operative, they may feel that, in 'the public interest' they have a mandate to use unlawful means to elicit information. If there is a problem with officers overindulging in use of coercion, then it's crux lies here, in the disparity between the legal rules and the practicalities of their enforcement. However, the fact that the vagueness of the legal framework makes the exploitation of this disparity possible must not be forgotten. Police culture has thrived in the accommodating legal climate.

Looked at in more detail, it becomes clear that the use of coercion and violence in varying degrees by the individual policeman may be commonplace, and to attribute it all to the 'rotten apple' in the good policing barrel would be mistaken. It is only the more sensational or serious cases of police brutality that tend to attract the widespread bad publicity that is so damaging to police - public relations, yet at least when these incidents occur, they are clearly unlawful and are condemned by the police chiefs, even if a culprit cannot be found. However, there is a danger that because they do attract such attention, they will mask the fact that there are less serious, niggling, examples of coercion used on a more regular basis, but which although probably illegal, escape notice because they are not as newsworthy. If anything, these myriad instances where it may be legally uncertain if the force used is excessive but where it is used nevertheless, should be of more concern if they are to be prevented from becoming acceptable police methods unhindered by legal restraint. Are such practices already routine among Britain's policemen? Does the lack of legal guidance contribute to this state of

affairs? Can we frame regulations that will reduce discretion and promote clarity with regard to force, or is it an area where the multitudinous demands of policework make it simply impossible to legislate effectively against unwarranted coercion, and police use of force is either inevitable or necessary anyway?

This chapter looks at the statutory laws relating to reasonable force, and how they have worked in practice, with reference to various judicial interpretations of the law. Following the Police and Criminal Evidence Act 1984, the 'Judges Rules' that relate to police treatment of detainees, were replaced by the detailed codes of practice that supplement the Act. Since these do not have the status of law, the implications of this where they relate to the use of coercion, will be discussed.

Because the statutory laws on reasonable force are so vague, judicial guidance is necessary to illuminate the provisions. However, the relevant judgements on 'reasonable force' have raised as many questions as they have solved. Two issues that merit particular consideration are; firstly whether 'reasonable force' is understood to be a subjective or objective standard, and secondly the need to recognise the difference between force used to effect an arrest after an offence has been committed, and that used preventitively in anticipation of a possible offence. This is a distinction that ought to be clearer in law where coercion is concerned.

Awareness of legal factors that indirectly facilitate police coercion is important. The natural tendency of the judiciary to side with the police is noted, this surely casts doubt upon their usefulness as a means of controlling excessive police coercion. Furthermore, as the next chapter explores in depth, police cultural influences shape a great deal of coercive police behaviour. Although the conflict between law and police ideology is a central theme throughout this work, that they are also inter-connected must not be

forgotten. This chapter looks at how the sparse legal framework for police coercion acts as a contributory factor to police malpractice, before finally recommending ways in which legal changes might clarify the situation.

THE LAW GOVERNING THE CONSTABLE'S USE OF FORCE

The judiciary as an ineffective constraint on police coercion

As noted earlier, when looking at the legal guidance determining how much force the police may use, and when, what is immediately striking is the scarcity of such rules, and, where they do exist, their vagueness. Similarly, where there have been issues of police using excessive force in case law judges have seemed content to merely decide whether the force used was unnecessary and unlawful, that is, whether it was broadly right or wrong, and award damages or maybe utter condemnations accordingly. In other words, the issue has been treated by the judiciary at a relatively simple level, and been located in terms of police use or abuse of their statutory powers of discretion. There has been no attempt to question whether or not the discretion that allowed the police to use coercion illegally, could be tightened, or more rigorously controlled, there have been no efforts to look at the conditions that create the opportunities for violence. The judiciary seem to be of the opinion that violence is unfortunately but inevitably, a part of policing (which of course it is), and it is only to be expected that the acceptable limits of force will occasionally be transgressed, and, that when they are, a verbal ticking off and reinforcement of the traditional rhetoric of reasonable force is sufficient corrective action. But is it?

A recurrent theme in looking at the police's use of coercion, is that where malpractices occur, they may be tokenly recognised by the institutions of the criminal justice process such as the courts (both judicial and coroners), yet ultimately, the institutions are so supportive of the police that they are loathe to criticise them too harshly, and in fact treat them in a preferential way to ordinary citizens, with the

result that justice is not seen to be done by the public, who may feel that the police's more violent operations and instances are virtually being licensed by the courts. Examples of cases where the courts have backed up dubious police action can be found in the Waldorf, Groce and Shorthouse cases (to be dealt with in a later chapter on guns). In each of these, the verdicts reached by the courts have undermined public confidence in the police and judiciary. It may well be that the courts are not always the impartial body dispensing justice fairly, that they are supposed to be in theory, and this is true when it comes to dealing with cases of excessive police force. The courts' approach is unbalanced in the police's favour, and opportunities to analyse the reasons behind illegal uses of force and to try and clarify the law in this area frequently go unheeded.

However, whilst being critical of the criminal justice establishment and asking for more guidance in this area, one has to assess the effectiveness of rules and regulations, and to ask whether there are ways in which their enforcement can be guaranteed, so that any changes in law would also prove to be changes in practice. Indeed, the issue needs to be looked at in a realistic rather than idealistic fashion, and such an approach appreciates the difficulties and complexities of modern policing and the necessity for the legitimate use of coercion in many situations. This begs several questions, namely is it actually desirable to legislate tightly against police use of coercion, or would this hinder police work? Ought we to recognise that frequent, non-serious but strictly illegal uses of force by the police are essential to their work, or is this to make the police above and unaccountable to the law? Alternatively, are they in this situation already, and how effective is the law, and other methods of police accountability in preventing abuses of police coercion?

Statutory provisions and codes of practice governing police coercion.

There are two statutes that govern the general police use

of force; the Criminal Law Act 1967 and the Police and Criminal Evidence Act 1984. Section 3(1) of the 1967 Act states that 'A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of persons unlawfully at large'. This is an extremely broad section which allows 'reasonable force' to be used generally to prevent crime and in arrest. This does not only refer to the police, and indeed could be used against them, for if the police are making a wrongful arrest or are being unnecessarily coercive in doing so, this would constitute a crime and entitle the the suspect to use 'reasonable force' to prevent this. However, use of this section against the police is unlikely, unless the suspect were certain of his or her rights and had the confidence to act accordingly. Even then an action would be unlikely to succeed, for the police can always claim that the suspect was obstructing them in the execution of their duty. It can be immediately seen that problems are caused by the words reasonable force. The Criminal Law Act itself gives no further guidance as to what it means by this and so the matter has been left to the individual policeman's discretion, or to be decided by the courts if contested. As will be seen, not the least of the problems has been the confusion between the subjective and objective elements in deciding what is reasonable.

In the Police and Criminal Evidence Act 1984 (PACE), the power of the constable to use reasonable force is provided by section 117 as follows: 'S.117. Where any provision of this Act - (a) confers a power on a constable; and (b) does not provide that the power may only be exercised with the consent of some person, other than a police officer, the officer may use reasonable force, if necessary, in the exercise of the power'. This power is available only to police officers and differs in this way from the 1967 Act. It is similar though in it's great breadth; it allows force to be used in the exercise of any of the police's powers

conferred by the Act that do not require the consent of the suspect. It merely states that this force may be used 'if necessary which appears to have a more subjective inference than the words 'reasonable in the circumstances' in the Criminal Law Act. This one general section authorizing use of force was ultimately deemed to be preferable to making various references to different sections to the use of force in conjunction with certain powers, as had been done in earlier drafts of the Police and Criminal Evidence Bill. (Zander, 1985, p.152/3).

There is another reference to force in PACE, contained in it's 'Code of Practice for the Detention, Treatment and Questioning of Persons by Police'. Under the 'Conditions of Detention', it is provided that; '8:9 Reasonable force may be used if necessary for the following purposes; 1. To secure compliance with **reasonable instructions,** including instructions given in the pursuance of the provisions of a code of practice; (my emphasis), or 2. To prevent escape, injury, damage to property or the destruction of evidence'.

This is another example of a section that is unsatisfactory due to it's vagueness and potential for abuse, but is of additional concern because it is a code of practice and not law. Therefore it is not clear how it will be enforced, and how a policeman who fails to observe it will be treated. It has been noted that 'As the code does not have the force of law, and as such use of force does not appear to be sanctioned by any other rule of law, the legality of the Code on this point must be open to question'. (Harrison, 1987, p.65).

The 1984 Act does say that failure to comply with a code of practice can make an officer liable to disciplinary proceedings (s.67(8)), but this is by no means certain and will probably not be a sufficient disincentive, if an officer's actions are likely to be contrary to the code, to make him think again and act differently. The codes have replaced

the Judges Rules which themselves did not have any legal authority but were for guidance, yet are far more comprehensive than their predecessors. Baldwin and Kinsey commented; 'Sir Henry Fisher had already found that (in spite of disciplinary procedures applying to their breach) the Judges Rules were routinely ignored by the police - why should the Royal Commission on Criminal Procedure expect the code of practice to be observed to any greater extent?' (Baldwin and Kinsey, 1982, p.203). Furthermore, even when the Judges Rules were broken, it did not necessarily mean that evidence obtained as a result of that breach would be rejected by the courts. Indeed in R.v Prager (1962), such evidence was not made inadmissible because this would have had the effect of exalting the Judges Rules into rules of law. It can perhaps be expected that the codes of practice will be treated similarly by the judges, who may feel that if Parliament had intended the codes to have the force of law, then they would have expressly provided for this.

Breaches of the code of practice on the use of force may not necessarily be condemned by the courts then, but of more importance is the behaviour and use of coercion by police that may be legitimately covered by the code and which would not break it's provisions. The code allows force to be used to secure compliance with reasonable instructions, but there is no further guidance on what sort of circumstances would justify force here. It must be remembered that at this stage the suspect is already in the station cell. Many of the people that the police have to deal with behave loudly and can euphemistically be described as extremely awkward.
In the case of O'Connor v Hewitson and another (1979), the plaintiff had been arrested for drunken, aggressive behaviour, and he had continued to behave in this way for several hours in the police cell. Eventually he was injured when the police entered the cell, and he sued the officer concerned for assault. The trial judge found that the severe provocation of the officer was relevant here, even though it was conceded

that he used unnecessary force, and this was accepted by the Court of Appeal. In situations such as that in O'Connor, if a prisoner is making a lot of noise and so forth, is an order to quieten down a reasonable instruction that may be enforced coercively if ignored?

The code also allows reasonable force to be used to prevent injury, and damage to property. These provisions refer to conditions of detention and so refer to those held in the police cells. In such circumstances, the injury referred to is likely to be self-inflicted as it is injury to a fellow prisoner or officer. There have been several unexplained suicides in police cells that have generated enormous mistrust of the force, and the police now take great care to make cells safe and free from any potential weapons. For example, the West Midlands force, when PACE was enacted were set a problem by the general provision in section 1:2 of the Code of Detention stating that the code of practice must be available to all detained persons. They thought of providing suspects with normal copies of the codes of practice but concluded it would be too expensive as too many would be destroyed. They then thought of providing an indestructible version of the codes in laminated form, yet had to reject this because such an object would provide a prisoner with a cutting edge with which he could inflict injury. (Information given during the course of an interview with West Midlands police for LL.B dissertation). It is therefore perhaps slightly ironic that the police will be able to use reasonable force against a suspect to prevent him using force against himself! This may end in the same result of an injury to the prisoner, legitimately inflicted under the code.

The police may also use force to prevent damage to property, yet the only property likely to be damaged here is the police cell. If this interpretation is correct, then the sort of behaviour by the suspect in O'Connor (above), such as banging continuously on the cell walls and doors, and generally being a nuisance, could be met by legitimate repressive force. If

this is so, it would be most undesirable, because once a suspect is detained in a cell, then, although if behaving noisily it would undoubtedly be a severe cause of annoyance the police should arguably be able to tolerate this if no actual harm, as opposed to inconvenience and nuisance results.

The above points consider hypothetically, the sort of police behaviour that is technically possible (or probable) under PACE's codes of practice and reasonable force provisions. However such points (that the police would doubtless see as groundless academic speculation, unlikely to occur in practice whilst possible in theory) all assume that the police would have the code of practice in mind before they acted. Translated into the circumstances of O'Connor, this supposition would mean that a police officer, faced with a difficult and objectionable prisoner, would consult his codes of practice first, and then, realising his options, would issue 'reasonable instructions' to calm down, and then use force if necessary, to enforce them. Yet the danger in having such broad provisions is that this is not how matters are likely to be governed in practice. An American study, whose findings are echoed by cases in Britain, found that, 'Whether or not a policeman uses force unnecessarily depends upon the social setting in which the encounter takes place .....What is most obvious and most disturbing is that the police are very likely to use force in settings that they control'. (Reiss, 1971,m p.157/58). That is, the station. If this information is coupled to the fact that many occasions when the police use force will be snap decisions 'in the heat of the moment', then it can be seen that the code of practice will be of great use as a post-hoc justification for coercive police action rather than as an authority to be consulted before the action takes place. In the same way that the police will often cross petition someone who has accused them of assault by charging the complainant with obstruction and so forth, to cover the fact that they were at fault and had behaved aggressively, and to undermine the complainant's

credibility, the police can use this code of pracice to explain their use of force even if it was unwarranted. The code can be used as a sort of all pervasive legal excuse for force, even if it's provisions had not been contemplated by the officer at the time.

Another worrying feature of the code is how it may relate to confessions. Of course, the use of oppression by police whilst interviewing suspects is outlawed later in the code (section 11:1), but assuming that this is strictly adhered to, the use of force in the exercise of 'reasonable instructions' is still permitted. If there was a blurring of these two functions, would it be immediately apparent? More pertinently, if force was used to elicit a confession, (and thus, presumably a conviction), and the suspect complained, how could he establish that the force was not in fact used to secure compliance with reasonable instructions? This would be extremely difficult, if not impossible to prove, for the police are notoriously close-knit and back each other up, even when one of their number has behaved illegally. This mutually supportive behaviour even when crimes have been committed by policemen, is another theme of central importance to the issue of police coercion. As will be seen, so often when there are allegations of police misconduct, including assault and violent behaviour, they are not upheld due to lack of evidence. That is, their fellow officers are unwilling to testify against the offending policeman, and by doing so give implicit support to his actions.

It is therefore submitted that the power in section 8:9 of the code of practice on detention is undesirable in it's present vague formulation. There is no elaboration on the meaning of 'reasonable instructions', and in any case, concepts of reasonableness will vary considerably in the police station where suspects may be frightened, upset, excitable, angry, drunk and so forth, and the police may feel exasperated, irritated or provoked by them. It seems to be unnecessary to grant the police this discretion to use force if their

reasonable instructions are disobeyed, rather than for example, citing explicit examples of prisoners behaviour that would warrant use of coercion, particularly when, as mentioned earlier, the suspect is in the police cell anyway, and is under control either totally, or to a certain extent. Such objections to the wording of the code are not merely speculative, even if there is as yet, a lack of particular examples proving abuse of the provision. It must be remembered that 'petty' instances of police force (maybe a thump, slap push or kick) that do not require medical attention, can be defended under section 8:9 of the code if necessary, even though illegal, yet may never come to the public attention, for the suspect may not have the confidence in any of his complaints succeeding, and the matter will remain unreported.

The legally uncertain position of the codes contributes to the overall vagueness of these provisions, and this could work against the police too. If there are no limits or further information supplied about the use of force in the station, then officers might conceivably use what turns out to be excessive force even though they believe it to be licensed by the codes, or could perhaps in some cases face disciplinary or criminal proceedings, (if the wall of police secrecy is breached) for behaviour that they had not realised was outlawed. A major theme to be developed in the next chapter, is how the much discussed difference between the substance and the ideology of the law helps to create the conditions for, and toleration of, police violence. Section 8:9 of the code is a prime example of quasi-legislation that, due to its general, equivocal drafting, provides the opportunity for the substance to differ from the ideology, for the practice to exceed the theoretical limitations. This creates a climate in which illegal police force may be used as part of the job, undetected and unpunished, and achieve the unquestioning status of routine, viable police work. Again it is worth adding that the level of coercion envisaged in this discussion is not necessarily of the head-

line making hospitalisation variety, but is that which in different circumstances (such as a pub brawl) would be regarded as trivial: this does not mean that it is legal.

There was no provision in the Judges Rules that allowed the police to use reasonable force in the station, but it was presumably taken for granted that if force was necessary, the police could be trusted to use it properly or appropriately. It seems that section 8:9 of the code of practice is setting a potentially dangerous precedent in actually allowing the police to use force in the station on their own terms. It is to be welcomed that the code at least recognises that force is used in the station by police, however it is regrettable that the code is not more precise on what circumstances warrant such use of force. In PACE's 'Code of Practice for the Exercise by Police Officers of Statutory Powers of Stop and Search', annex B gives further details on what is meant by 'reasonable suspicion' and points out (Annex B, para 3) that a persons colour, dress, hairstyle or previous conviction for unlawful possession is not enough to constitute reasonable suspicion, neither is his or her membership of a group within which offenders of a certain kind are relatively common. The information in this code thus helps to clarify an otherwise vague criterion. It is this type of additional information that is necessary to clarify section 8:9 of the code on detention, and until, or unless it is forthcoming, the provision remains unsatisfactory.

Case law as an illumination of statutory provisions?

Because the statutory provisions are couched in general terms, it has been left to the discretion of the individual constable to interpret them, and if his actions are challenged in court, then it is ultimately the task of the judge to state what he understands by the law and to direct the jury accordingly. Therefore it is to the case law that reference must be made to seek enlightenment of the murky uncertainty of the statutory law on force. There are not many cases that

specifically address the issue of police use of force, although there are cases involving force that relate to the Criminal Law Act that have not concerned police, and all are relevant. There is as yet no or little case law on section 117 of PACE. It is as well to note here that s.117 refers to the individual policeman and does not apply to general policing operations. (Indeed the 1984 Act can be criticised for it's lack of application to a police force as a whole throughout, and its emphasis instead on the actions of the individual). Therefore PACE can not be used by a concerned citizen (a la Blackburn) to bring an action against the police if he or she feels that they have acted unnecessarily coercively.

The contentious part of section 3 of the 1967 Act concerns the words 'reasonable in the circumstances'. Who will decide what is reasonable, and in what type of circumstances? In a case concerning a British soldier in Northern Ireland shooting and killing an unarmed man, (Attorney-General for Northern Ireland's Reference (no.1 of 1975-1976), Lord Diplock pronounced that 'What amount of force is 'reasonable in the circumstances' for the purpose of preventing crime, is in my view, always a question for the jury in a jury trial, never a 'point of law' for the judge. The form in which the jury would have to ask themselves the question in a trial for an offence against the person in which this defence was raised by the accused, would be; Are we satisfied that no reasonable man (a) with knowledge of such facts as were known to the accused or reasonably believed by him to exist (b) in the circumstances and time available to him for reflection (c) could be of opinion that the prevention of the risk of harm to which others might be exposed if the suspect were allowed to escape justified exposing the suspect to the risk of harm to him that might result from the kind of force that the accused contemplated using?' (Ibid, p.947).

Although Diplock stated that this formula should be used in trials where the exercise of force had resulted in an action

against the user, it seems of particular relevance to the case in hand, which was dealing with deadly force against a suspected terrorist, whom the soldier had reason to believe could be a threat to the public if he escaped. Does Diplock's formulation apply equally to a police officer who sees a suspected petty criminal (for example a shoplifter or small-time burglar) and to prevent his committing further crime, uses such force against him in arrest that it results in a court case against the officer? It would appear that it does not, for it balances risk of harm to others against risk of harm to the suspect. Could possible future thefts be regarded as harm to the person who suffers it? The formula also justifies force on the grounds of what might happen if the suspect escapes, rather than whether it was immediately necessary to apprehend him. Lord Diplock's direction, although appropriate for the military case before him, is not then, applicable to more mundane matters where the suspect is not violent and does not pose a violent threat, and should be of limited use, rather than an automatic test to be used in every case where force is used against someone and results in the user raising a section 3 defence. However, Diplock's point of what force is reasonable in the circumstances being a question for the jury, is sound and of considerable importance.

Another case involving soldiers shooting and killing in Northern Ireland, namely Farrell v The Secretary of State for Defence, (1980), turned it's attention to the meaning of the words 'reasonable in the circumstances' of section 3 (1), and it was held in the House of Lords that the only circumstances which were relevant for the purposes of section 3 (1) were the 'immediate circumstances' in which the force was used, and the phrase 'in the circumstances' was to be construed accordingly. There had been criticism of the operation that resulted in the deaths, yet the House of Lords held that the 'circumstances' did not include the planning of the operation.

These two cases both refer to lethal force in a military context in Northern Ireland, and so factually at least, these are situations that are unlikely to occur, or are very rare, on the British mainland. Legally, the cases also refer to section 3(1) of the Criminal Law Act 1967, but to the part of the section that allows 'such force as is reasonable in the circumstances in the prevention of crime'. Whether force is used to prevent crime, or whether it is used to arrest offenders or suspected offenders as licensed by the second part of the section, is of material significance because the amount of force allowed varies considerably, depending upon it's function. The distinction between preventative force, and coercion used against someone already judged to have offended is of crucial importance. The two Northern Ireland cases cited above show that lethal force was sanctioned in order to prevent the escape of people whom the soldiers, rightly or wrongly, presumed to be terrorists, and therefore highly dangerous. Smith and Hogan comment that; 'It cannot be reasonable to cause death unless (a) it was necessary to do so in order to prevent the crime or effect the arrest and (b) the evil which would follow from failure to prevent the crime or effect the arrest is so great that a reasonable man might think himself justified in taking another's life to avert that evil. It is likely, therefore, that killing will be justifiable to prevent unlawful killing or grievous bodily harm, or to arrest a man who is likely to cause death or grevious bodily harm if left at liberty. The whole question is somewhat speculative. Is it reasonable to kill in order to prevent rape? or robbery, when the property involved is very valuable, and when it is of small value?'. (Smith and Hogan, 1983 p.325). (It seems that to be able to kill in order to effect an arrest is a legal illogicality, and although it is only allowed in very serious cases, it is in actuality, a license to kill. Posthumous arrest would appear to serve no purpose.).

Where coercion is used preventively it 'seems clear that

the amount of force used must be appropriate to the crime that it is intended to prevent.' (Molyneaux, 1985,p.189). This differs from the law concerning the use of force in arresting someone who had already offended; there the amount of force allowed is not relative to the seriousness of the crime, but rather, depends upon the circumstances; the suspect's behaviour and the subsequent necessity, or lack of it, to use force. Thus, the man who has murdered his wife, yet is not deemed to be a threat to any one else, may not be arrested by violent means simply because he has committed such a serious crime. Only if he resists arrest violently may he be subdued forcefully. Conversely, if the shoplifter who has stolen a packet of crisps become agitated and violent, then the police may be justified in using such force as is necessary to arrest, even though the crime committed is not serious.

In **Reed v Wastie (1972)**, the plaintiff parked his lorry on the hard shoulder of the motorway, and when talking to the police he stood on the motorway in contravention of road traffic legislation (he was causing an obstruction). He became violent and two police officers had to struggle to remove him from the road and handcuff him. Whilst one officer radioed for a van, the other sat on the plaintiff to restrain him, and punched him in the face, breaking his nose. The plaintiff brought an action for assault and it was found that the striking of him was unlawful, yet the use of force in handcuffing him was legal under section 3 (1) of the 1967 Act to prevent him committing the crime of obstruction. The judge in the case, Geoffrey Lane J, (now Lord Chief Justice remarked in an often repeated quotation that, 'In the circumstances one did not use jeweller's scales to measure reasonable force....' which was 'judgespeak' for saying that the amount of force used is not only dependent on the type of crime committed, and a concession that other factors are involved, (such as the behaviour of the plaintiff).

The Reed case gained academic attention for it appeared to

contradict Criminal Law Revision committee (CLRC). In their seventh report, the Committee considered what was to become section 3 of the 1967 Act, and offered the following help in it's interpretation; '...the court, in considering what was reasonable force, would take into account all the circumstances, including in particular the nature and degree of force used, the seriousness of the evil to be prevented, and the possibility of preventing it by other means; but there is no need to specify in the clause the criteria for deciding the question. Since the clause is framed in general terms, it is not limited to arrestable or any other class of offences, though in the case of very trivial offences it would be very likely be held that it would not be reasonable to use even the slightest force to prevent them.' (CMND 2659, para 23). The commentary on Reed v Wastie in the Criminal Law Review contrasted the judgement with this opinion of the CLRC and concluded that it now appears that a considerable degree of force might be used to prevent the relatively trivial offence of obstruction of the highway. However this commentary seems to have misinterpreted what happened, and has confused force used to prevent crime with force used after a crime has been committed. In Reed v Wastie the facts can be ambiguously interpreted; the plaintiff was causing an obstruction and so had already committed a crime when the force was used to prevent this continuing. So the police could have been either acting to prevent a crime, or after the commission of it. It is an exaggeration to hold out Reed as an authority on the use of force to prevent a trivial crime; for example, if the shoplifter with the penchant for crisps (hypothetically cited earlier) was spotted by an officer in circumstances that made his belief of an impending crime reasonable, then he could not under Reed use his truncheon in effecting the arrest if the suspect remained passive. It is not just the fact of a crime committed that is important, but the behaviour of the suspect too.

The degree of force used by the police differs then depending

upon whether the officer is acting to prevent a crime (and this should normally be to prevent an immediately impending crime, although as seen by the Northern Ireland cases, the likelihood of serious crime in the future is excuse enough to use force), or whether he is acting to apprehend someone who had already committed a crime. In the latter instance, the force used does not bear a relation to the crime, but to the reaction of the suspect - if he complies with police instructions and co-operates, then coercion is not justified no matter what crime has been committed. However, force can be used to prevent crimes of differing degrees under section 3 (1), and here, the amount used in prevention will increase with the seriousness of the crime as the first consideration, and the behaviour of the suspect as secondary. The standard is different in the two situations even though both are part of the same statutory section, and this has led to undesirable consequences.

One of the best known cases of misuse of police force in recent years was the shooting of the innocent Stephen Waldorf by the Metropolitan Police, who had mistaken him for a dangerous criminal. The two police officers who shot him (and they had continued to fire at him when he was lying injured on the ground and clearly no threat) were acquitted on charges of attempted murder and wounding with intent to cause grevious bodily harm. The trial was looked at in terms of self-defence and what the officers were consequently entitled to do, (which was absurd given the facts and the complete lack of threat posed by Waldorf to the officers when he was shot), yet the court would presumably have cleared the officers if they had used section 3 (1) of the Criminal Law Act as a defence. This would have created a situation analogous to the two Northern Ireland cases. If section 3 (1) had been used as a defence it would have been likely to suceed because of the confusion between preventive and arrestive action and the different amounts of force allowed for both. The great problem in identifying that

there are two separate elements here is that they will often be, from a police point of view, capable of interpretation either way. That is, the violent police action in the Waldorf case was ostensibly to effect an arrest; to this end it was clearly excessive, yet itcould have been claimed that it was done to prevent future crime. This would still have been outside the bounds of the CLRC's recommendation that the possibility of preventing the crime by other means be explored (e.g. by arresting the criminal) (op,cit.), but it may have been accepted by the court.

However, if the law was changed and amplified by creating a clear distinction between preventive and arrestive uses of force, then such instances as the Waldorf shooting would clearly be unlawful. At the moment the Criminal Law Act s.3 (1), allows force to prevent crimes, and force to arrest offenders at large - these are surely two quite different matters, with, as has hopefully been demonstrated, different levels of force permitted for their fulfilment, and different criteria to be considered before they are used. The trouble is that they have been treated as one and so allow the police a generous interpretation of the reasons for their actions. A re-drafting of this section with emphasis on the behaviour of the suspect at the time the force was employed, and suitable annotated guidance in the code of practice or equivalent, would be welcome to resolve the ambiguities and uncertainties of the present law, and to give the police firmer guidelines on what is 'reasonable in the circumstances'.

There may be cases where the person being arrested resists violently but where forceful police action in reply may still not be justified. For example, if the arrestee is an old lady who upon being charged with a minor offence or assault, starts to shout and aim blows at the police with her walking stick, this does not enable the officer to use for example, a neck lock to bring her under control. This is obviously an exaggerated example, but it illustrates well that the legality of the amount of coercion used also depends upon the

type of person it is being used against and their ability to withstand it. This is demonstrated by Sturley v Commissioner of Police for the Metropolis (1984). A middle-aged lady was arrested by a policewoman for assaulting her. Another officer was present, but the policewoman held the arrestee's arm behind her back and twisted her wrist (used a hammerlock and bar in police parlance) to restrain her, yet this resulted in a broken wrist. Mars-Jones J held that this was not a proper form of restraint in the circumstances, when another officer was available to help control the suspect. Bevan and Lidstone observe that 'Obviously, what may be reasonable force in respect of a muscular man may not be reasonable when applied to a woman of small stature. One constable alone may use greater force than two or more, but, when assistance is readily available which will reduce the amount of force necessary to restrain the arrested person, it must be called for and used.' (Bevan and Lidstone, 1985, para 5:62, p.168).

Must force used be objectively or subjectively reasonable?

There have been several cases that have looked at the use of force where the user claimed that he genuinely and honestly believed that the force was necessary and justifiable, but where this may have seemed doubtful. In such a situation, is this belief examined by reference to an objective or subjective standard? In R. v Fennell (1971), it was held by the Court of Appeal that a genuine mistake of fact would not deprive one of the right to use reasonable force by way of defence. Widgery LJ commented that 'The law jealously scrutinises all claims to justify the use of force and will not readily recognise new ones.' (per Widgery LJ, p.431,F.). The case in Fennell involved the defendant assaulting a constable, and it can be accepted that the Court would be reluctant to see new powers of force available to the public as a matter of policy, however whether the court is as reluctant to recognise new police powers of force is perhaps debatable.

In Albert v Lavin, (1981), Hodgson J held that it was not

a defence to a charge of assault that the accused honestly but mistakenly believed that his actions were reasonable in self-defence if there were no reasonable grounds for his belief. This clearly evaluates 'reasonable grounds' objectively, and although the court were not entirely happy with this, they duly followed similar earlier judgements that had reached this conclusion. Donaldson LJ did add however, that an ill-founded but completely honest and genuine belief that the self-defence was justified, removes all or much of the culpability in the assault, and therefore provides powerful mitigation. This seemed to be swinging back to a subjective interpretation as had been suggested by the Criminal Law Revision Committee (CMND 7844, 1980,) who had recommended that 'The defendant should be judged on the facts as he believed them to be but subject to that it should be for the jury or magistrates to decide whether in their opinion the defendant's reaction to the threat, actual or imagined, was a reasonable one.' (Ibid para 284).

The matter came before the Court of Appeal again in **R. v Williams (Gladstone)** in 1984, and Lord Lane, the Lord Chief Justice, delivered a judgement that has brought the common law into line with the CLRC's law reform proposal. It was held that if the defendant was labouring under a mistake as to the facts, he was to be judged according to his mistaken view of the facts, whether or not that mistake was, on an objective view, reasonable or not. Lord Lane said in an important passage that 'The reasonableness or unreasonableness of the defendant's belief is material to the question of whether the belief was held by the defendant at all. If the belief was in fact held, its unreasonableness, so far as guilt or innocence is concerned, is neither here not there. It is irrelevant.'

The scope of this judgement is wide even though it applies not to mistakes of law, but to those of fact. In Williams, the defendant saw a man knock a black youth down. Unbeknown to Williams, the man had seen the youth stealing a womans

hand bag and was apprehending him for this. The man claimed to be a police officer (which he was not) and when he offered no proof of this, a struggle ensued in which Williams punched the man and was subsequently charged with assault. His initial conviction was quashed on appeal after Lord Lane's direction. It is important to be clear about the distinction between mistakes of law and mistakes of fact. For example, if the man apprehending the youth had proved he was a policeman and Williams still tried to free the youth because he thought the man's arrest was unlawful, then this would have been a mistake of law and, even if it was a genuinely held belief, it would not be a good defence to the assault charge. Bevan and Lidstone comment that...' the contradiction between mistake of fact in self-defence and mistake of fact in the use of force to effect an arrest is apparent...If W (Williams) had sought to arrest M (the man holding the youth), and, wrongly believing him to be armed with a weapon, used what was in fact excessive force, he is to be judged not on the facts as he believed them to be but as they appeared to a reasonable man.' (Bevan and Lidstone, 1985, p.169).

This view of the law limits the decision in Williams strictly to cases where the use of force is used in self-defence following a mistake of fact. It indicates that a similar mistake of fact leading to the use of force in making an arrest, will be judged objectively, not subjectively. This latter statement is the one that has implications for police officers, for it states that the level of force used in an arrest, if challenged, is to be assessed objectively. However, this may not always be the case, if the process of arrest is legally confused with self-defence the opposite, subjective evaluation may result. This proposition can again be explained with reference to the Waldorf shooting. As noted earlier, the police justified their actions on grounds of self-defence for they thought that Waldorf/Martin had a gun and was dangerous. Now several years later, a clinical analysis of the facts of the case and the circumstances in which the force was used (namely opening fire on a car)

amidst busy traffic without warning), would surely lead one to the objective conclusion that this was a mistake of fact to effect an arrest, and therefore would be found, under Bevan and Lidstone's interpretation of Williams, to be unlawful excessive use of force. Yet, if, as was claimed, the police were acting in self-defence, and this was accepted by the court, then the action would appear to be licensed by Williams. Lord Lane did say; 'Even if the jury come to the conclusion that the mistake was an unreasonable one, if the defendant may genuinely have been labouring under it, he is entitled to rely on it.' (R v Williams,1984, p.281).

Although the Williams case was decided after the Waldorf shooting, the judges in both used a similar rationale, namely that if a mistake was made, if it was done so genuinely and honestly, then it could be accepted by the court as a defence to the use of force. This is a subjective approach that has endorsed the recommendation of the CLRC, and so been welcomed as sound law, yet it can lead to injustices.

The whole debate about whether force should be assessed objectively or subjectively is a complex one that differs depending upon the purpose that the force is used for, and whether mistakes of law or fact have been made, as seen above. It must surely be desirable that where the police use questionable force in the performance of their everyday duties (and not defensively), then this should be assessed objectively by the courts, so that the limits of, and restraints on police use of force are decided externally and not by the police themselves. In this context it is therefore slightly ironic that the objective standard for evaluating 'reasonable force' in police actions may not always be invoked at trial because at an earlier stage of the criminal justice process, the police have the choice of how to portray their actions, that is, as self-defence or otherwise. (This self-defence happened not only in Waldorf, but has also been used as a justification for recent police shooting incidents, see The Guardian, 23.11.87, and

24.11.87 for accounts of the shootings of an armed robber and violent man where self-defence could be claimed by the police.) This has resulted in miscarriages of justice, for when the police use a self-defence justification for their actions, the courts are prepared to sanction what would otherwise be unreasonable levels of force. In a criminal justice system where the judiciary are fiercely and provenly independent, the self-defence argument of the police would only succeed in cases where this was the only possible interpretation of police action. However, where, as in Britain today, the courts comply with the police to produce a pro-establishment verdict as a matter of policy, the police are allowed to locate their actions within the ambit of self-defence, and because the judges accept this wider explanation for force, the police are in effect setting the parameters of what force they can use, and being judged on their own terms.

There are wider implications of the Williams judgement that merit discussion. As noted above, the ratio decidendi of the case applied to cases of self-defence and mistake, and thus allows the reasonableness of the decision to use force, to be assessed subjectively. This could have possible repercussions in the interpretation of section 117 of the Police and Criminal Evidence Act 1984 that empowers a constable to use 'reasonable force' where necessary in the exercise of powers available to him under the Act. PACE has been criticised overall for it's abundance of sections that rely on seemingly vague criteria such as reasonable grounds, reasonable suspicion, serious arrestable offence and so forth, that have been seen as potentially too subjective and therefore problematic. Whereas attempts have been made to define reasonable suspicion, there have been none as regards reasonable force. In the Code of Practice for the exercise of powers of Stop and Search for instance, reasonable suspicion is described as follows; 'Reasonable suspicion, in contrast to mere suspicion, is an

objective basis for action. There must be some concrete basis for the officers' belief, related to the individual person concerned, which can be considered and evaluated by an objective third person.' (Annex B para: 1).

An officer's declaration of reasonable suspicion is clearly going to be judged objectively. If his suspicion is genuinely held but unreasonable, it is insufficient. The introduction of the objective third person is a device that would have been useful if applied to the reasonable force provision; as it is there is no indication as to whether reasonable force used will be judged objectively or subjectively. One would expect that reasonable force, and whether it was necessary, would be a question for the judge and the jury, but if an officer used unreasonable force which he honestly believed was necessary, then could he argue that the subjective definition of reasonableness in Williams should apply? Technically he could not, but if he claimed he used force in self-defence, then he would be able to do so. For example if an Officer sought to arrest a suspect using force and the suspect resisted, then any resulting force used by the officer in arrest could also be said by him to be force used in self-defence, and even if out of proportion to the threat presented by the suspect, it could be used as an adequate justification for coercion. Such circumstances would represent a blending of the constable's section 117 power and the decision in Williams.

The major problem with section 117 and PACE is that it is, as yet, untested by the courts. Because PACE has been enacted since the Williams case, it may be unrealistic to talk of subjective definitions of force applying only where used in self-defence. The fact is that section 117 is a broad provision that gives no indication if the force used must be objectively reasonable, and so it maybe, at the moment, technically possible for coercion that is used for purposes other than self-defence to be used subjectively and justified under the section. Ideally, a test case is needed to explore the nature of the reasonable force in section 117. Until

this occurs, it will be assumed that the reasonableness of any force used under this section must be objectively reasonable (ultimately a question for the jury), as is the case with section 3 of the Criminal Law Act 1967, however, it is by no means certain that subjectively reasonable uses of force will be outlawed by the Act. The vagueness of the situation as it now stands is undesirable, and if not an encouragement, is certainly not a deterrent to the arbitrary use of excessive force.

Judicial control of police force; blunt tool or sharp instrument?

Although it has been argued earlier that the judiciary are not strict enough where police malpractices occur and that they often back up dubious police actions despite the resentment this engenders in the general public, there are cases where the opposite is true, and the judges recognise the illegalities and condemn the officers concerned. It does seem however, that if the matter is one of alleged abuse of discretionary power, where the limitations of that power are not clearly delineated, then the judge will as a matter of policy, be reluctant to convict the aberrant police officer. in contrast, if the officer commits a clear breach of a precise law or procedure, then the judge will have no hesitation is condemning the officer's action.

Where the police's powers are wide and discretionary, there is little case law that has attempted to clarify the position. 'The absence of case law may, of course, indicate that police officers only ever act on objectively reasonable grounds. Alternatively, it may simply reflect a lack of confidence on the part of those aggrieved that a court will be prepared to hold that the policeman 'on the spot' has acted on insufficient grounds. One would perhaps expect courts to be reluctant to 'second guess' a police officer acting in difficult circumstances, however broad the courts' powers in theory.' (Bailey and Birch,1982,p.475).

The trust that judges have in the police force behaving essentially honourably, seems undiminished by allegations of misconduct. During the Court of Appeal hearings reviewing the case of six Irishmen imprisoned for the Birmingham Pub

Bombings of 1974, it was alleged that the suspects confessed to the crime after being beaten. One of the judges hearing the case, Lord Justice O'Connor, professed himself to be mystified as to why the police should use violence. (The Guardian 21.11.87) Such a statement apparently demonstrates a lack of comprehension of police working practices and a belief that everything would be done 'by the book' in a procedurally correct manner. Such an attitude appears to cast the judge in the detached from everyday life, trustfully naive role, so beloved of modern comedians and satirists, but perhaps reveals his natural propensity to back the police force and reluctance to criticise them.

The judiciary's trust in the police, or at least their willingness to 'turn a blind eye' to illegal practices that nevertheless yield results, is demonsrated by the House of Lords decision in R. v Sang (1979). On the question of admissibility of evidence it was held that the court was not concerned with how evidence was obtained, but how it was used at the trial by the prosecution. A judge was deemed to have no discretion (except in cases of admissions, confessions and evidence obtained from the accused after the commission of the offence) to refuse to admit relevant evidence merely because it had been obtained by improper or unfair means. Lord Diplock elaborated; 'What is unfair, what is trickery in the context of the detection and prevention of crime are questions which are liable to attract highly subjective answers.' (Ibid, p.1226,d.)

Furthermore he added 'It is no part of a judge's function to exercise disciplinary powers over the police or prosecution as respects the way in which evidence to be used at the trial is obtained by them. If it was obtained illegally, there will be a remedy in civil law; if it was obtained legally but in breach of the rules of conduct for the police, this is a matter for the appropriate disciplinary authority to deal with.'

The implication in Diplock's first statement above, is that questionable police practices will be tolerated as a means

to an end, that is, they will be accepted as necessary for the greater good, which is the fight against crime. It seems unrealistic of Diplock to believe that someone convicted on illegally obtained evidence will then seek a remedy in civil law against the use of that evidence. Similarly, will the police scrupulously discipline the officer that has just secured a conviction because of the way in which he obtained evidence? It seems unlikely. Lord Diplock's judgement is also useful in that, although it broadly backs the police, it reveals that he is aware of the disparity between rules and practice, and is tantamount to an agreement that 'bending the rules' is a necessary part of policework. Indeed a refusal to disqualify illegally obtained evidence is admitting implicitly, or perhaps even quite explicitly, that it is not the procedures that the police follow in bringing suspects to court, but the results that are important. It is admitting that practical policework may be hindered by some rules, but more importantly, it is almost saying that it does not matter, it is an irrelevance, if the rules are broken, so long as the end justifies the means.

Evidence obtained illegally, or in breach of the police's rules of conduct, should result in the officer being disciplined as Diplock suggested, even if this disciplining is not to be done by the judge. Lustgarten feels this is a shallow expectation; '.....This seems a priori implausible, since if the organisational goal is 'nicking villains', bending the rules - at least within understood limits - is bound to be regarded as an excess of otherwise admirable zeal. Indeed, one of the most common, if bizarre, arguments offered in favour of the provisions of the Police and Criminal Evidence Act 1984 that increased police powers, was that police were regularly exceeding their existing powers and that the law should be brought 'up to date' to accord with practice.' '1986, p.143/44). Lustgarten also feels that the exclusion of evidence in criminal trials, under present law is unlikely to have any impact on controlling illegal police behaviour. (Ibid, p.145).

The Police and Criminal Evidence Act, section 78, allowed the court discretion to refuse to allow evidence if '.... having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.' (section 78 (1)). Such a rule is important, for the power to exclude evidence '....may be the only means by which the breadth of police powers may be defined and it's exercise challenged. To put the same point in reverse, it's absence in English Law means in some circumstances the police define their own powers.' (Lustgarten, ibid,p.145). Unfortunately the latter may be true in Britain since the exclusion of improperly obtained evidence is rare. Section 78 could be an opportunity for judges to regulate police behaviour, but it's wording in such that it is effectively inviting the judge to weigh up what is the greater evil - accepting illegally obtained evidence, or refusing it and risking letting a guilty man go free. The police are likely to be backed here; 'Even if the (police) misconduct is serious, the gravity of the offence under investigation or the probative value of the evidence may outweigh the misconduct, or simply the public interest in the due administration of justice will sway the court towards the admissibility of evidence.' (Bevan and Lidstone, 1985 (2:41f, p.31). Bevan and Lidstone also note that ''Including the circumstances in which the evidence was obtained' is sufficiently open-ended to cover breaches of the Act, Codes of Practice and all other laws, the unreasonable exercise of discretionary powers, deception or tricks. The problem lies not so much inthe sections vague terms, but in the fact that it concentrates on the position **at trial.** It will be extremely difficult to argue that previous police conduct affects the accused's defence at trial. Indeed the record of the courts in excluding evidence is very poor.' (Ibid, 2:41, (e), p.31, their emphasis).

The exclusion of evidence should be not only a disciplinary measure against an officer but also a safeguard for the suspect to ensure that he is tried fairly. Section 78 would doubtless be cast as one of the safeguards in PACE that help to balance the police's powers, remaining true to the Act's aims. However it appears to be a provision without teeth, and one which is not likely to make the police think twice before bringing illegally obtained evidence. It is another example of a vague power, that coupled with an accommodating judiciary, loads the criminal justice process in favour of the police and securing of a conviction, and creates the opportunity for regulations to be comfortably circumvented in practice without official reprimand.

The case of Swales v Cox (1981), shows that where a clear technical breach of the law has occurred, the courts will not uphold the police action. In Swales, the police were pursuing a suspect under section 2 (6) of the Criminal Law Act 1967. This empowers the police to use force to enter premises if need be, and they duly entered the house where the suspect had gone. However, the power could only be invoked when they had made a request to enter and had it turned down. Since they had not done so, the owner of the house (a friend of the suspect) was found not guilty of obstructing the police in the execution of their duty, because they were acting unlawfully. This may at first seem a rather trivial matter, and in view of the previous discussion on exclusion of evidence, one would perhaps have expected the judge to overlook the police's omission to request entry since they eventually arrested the man they wanted anyway, and pressed charges against him.

On a case stated to the High Court, Donaldson LJ held that if force was used under section 2 (6), then the policeman had to prove that it's use was necessary. Furthermore, 'force', for the purpose of section 2 (6) was defined as the application of energy to an obstable (such as a door handle) with a view to removing it. Donaldson LJ said that

'The statute says that force can be used **'if need be'**..those words are of immense weight and importance, and if the question arises 'was it necessary?' the constable will have to prove that it really was necessary before he will be able to justify an entry by force....' (Swales v Cox, 1981, p.1119g). Donaldson gives no indication of how this standard of proof is to be decided, objectively or subjectively? Was the force necessary in whose opinion? One must assume that the standard here is objective, but it would have been helpful if Donaldson had elaborated on this. Although Bailey, Harris and Jones note that 'There was no longer any legal requirement that there be a prior request before force might be used, but any person who sought to enter by force without a prior request would have a 'very severe burden to displace' in establishing 'necessity'' (1985, p.49). Donaldson thought that the Crown Court had reached the wrong conclusion in finding the houseowner not guilty of obstructing the police because they had not made a prior request to enter, and thought that the real issue here should have been, did the police officers need to use force? It has been said that the police can use force only where it is reasonable and necessary and that this case therefore shows that even reasonable force may be unneccessary, if the plaintiff would have consented to it (the police action). (Harrison, 1987, p.65/66). This is certainly one of the implications from Swales, which is also of interest for the way in which the Crown Court quashed a conviction for obstruction because the police had not complied with a technicality.

Swales v Cox is not an isolated example of the Court deciding against the police. In R v (Yvonne) Jones (1978), a squabble had developed over car-parking which led to an altercation between Miss Jones and the police. She was forcibly removed from her car and charged with criminal damage, then taken to the station and bailed. The police obtained a justices order under section 40 (1) of the Magistrates Court Act 1952, to take Miss Jones' fingerprints,

after she had refused to be fingerprinted voluntarily. The Act said that these should be taken at the place the court is sitting for persons not in custody, and this was to prove crucial in the case, for when the police tried to take Jones' fingerprints at the station she struggled against this and was charged with assaulting a policeman in the execution of his duty. She was initially convicted but this was overturned on appeal. It was held that the conviction be quashed because the police were not acting legally in attempting to take her fingerprints forcibly at the station and therefore she was entitled to use reasonable force to resist this. Peter Pain J observed that the case was a 'storm in a teacup' that the appellant behaved with a lack of dignity, 'while the police, sadly enough, failed to live up to the high standard which they set themselves and normally attain.'

It would probably be an accurate guess to say that Miss Jones refusal to be fingerprinted was because of a determined lack of co-operation and defiance on her part, rather than her sound knowledge of the Magistrates Courts Act and her belief that the police were acting illegally. This defence was doubtless raised later at trial, yet as a technical breach of the law was committed by the police, the courts were quick to seize on it. (If the fingerprinting had been done at the court, Miss Jones would presumably have had no defence.) Miss Jones was a middle aged lady of good character, and one could speculate as to whether the court would have treated a suspect with a string of past convictions, in a like manner. Interestingly then, R v Jones, and Swales v Cox indicate that the courts may proclaim police conduct to be illegal if it contradicts certain rules of law, even if that breach is not particularly serious. The courts are loathe to criticise the police misconduct as a matter of policy, but are quick to do so if it transgresses merely technical considerations. This lends weight to the argument that tighter regulations on the use of coercion would actually be a help in controlling police. As the situation stands at

the moment, the use of coercion is largely discretionary, and unless it is obviously excessive, then the judges will back the police as a matter of policy. However, where there is guidance as to whether force is excessive or not, the judges may decide against their natural inclinations and against the police, if rules have clearly been transgressed. Part of the discussion later will centre on how the police ignore formal rules and prefer to conduct themselves according to their informal 'working rules', and so questions the usefulness of rules anyway if they can not be enforced. Yet where police use of force is concerned, the opportunity to ignore the legal rules and rely on internal police cultural standards, arises not because of the unenforceability of the law on coercion (although this is a factor), but rather due to the vague nature and wide interpretations of the law, and the dubious behaviour that may be justified under it. Violence can be used in varying degrees simply because there is no law to cover it; the legal framework governing police coercion is inadeaquate. When this inadequacy is combined with the 'increasing reluctance on the part of the judiciary, to subject police powers to law rather than discretion' (Baldwin and Kinsey, 1982, p.163), then it is time the situation was reviewed and changes made.

The legal framework as a contributory factor to police malpractice

The Police and Criminal Evidence Act was the subject of much criticism for it's alleged widening of police powers, whilst being defended by some as a balanced piece of legislation or even criticised by police as being favourable to criminals. McBarnet's research suggests that the contemporary debate on whether the police should have more powers was misplaced anyway, since 'Both sides of the debate are framed in terms of the ideology of civil rights, not in terms of the realities of legal procedure and case law...which... have all to often already given the police and prosecution the very powers they are demanding.' (McBarnet, (1981) p.155). Nevertheless PACE purported to regulate police behaviour by clarifying existing

law, and was undoubtedly a hefty and important piece of legislation. Yet in practice the Act is not always likely to invoke the use of legal powers excessively because it relies largely on police discretion, where such concepts as reasonable suspicion and reasonable force are mentioned. That is, whereas PACE appears to have brought more law, it does in many instances leave the individual officer's judgement untouched by law. This is true of police coercion where the law in controlling police use of force is as important for what it does not say as for what it does, for by leaving so much unregulated it creates the opportunities for discretion to be exercised. As will be seen, many of the cultural reasons why the police use violence are possible because of the police's wide discretionary powers. Similarly, it is discretion that enables the police practices to differ from the legal ideology, and is central to the issue of police use of coercion. Where police practices do differ from the ideology, this is not simply because the police are behaving in a mildly deviant way and therefore a poor reflection on the police themselves; it is because the loose construction of the law permits this, and recognises it's utility: 'One should not look just to how the rhetoric of justice is subverted intentionally or otherwise by policemen bending the rules, by lawyers negotiating adversariness out of existence, by out-of-touch judges or biased magistrates; one must look also at how it is subverted **in the law.** Police and court officials need not abuse the law to subvert the principles of justice; they need only use it. Deviation from the rhetoric of legality and justice is institutionalised in the law itself.' (McBarnet, 1981, p.156, (her emphasis).

This is a theme that has been taken up by Lustgarten. He mentions the abundance of sociological comment there has been about policing, but points out that 'The custom and practice of police work has evolved within contexts; it did not just 'happen'. One of these contexts is substantive

law. Treatment of suspects is not simply the result of what police think appropriate; it has flourished within a structure of rules and judicial attitudes that puts few restraints upon them.' (1986, p.180).

This clearly links the cultural influences on an officer with the law, and indicates that they should not be looked at separately. Lustgarten feels that it is 'highly likely more restrictive rules, effectively enforced, would seriously modify police behaviour'. (Ibid, p.181). This is easy enough to state, but putting it in practice may prove rather more difficult. For example, who would enforce these rules, senior police or judges? Would police band together and unofficially boycott restrictions that they felt were too harsh, and thus make them unworkable?, and so forth. However Lustgarten's enthusiasm for the law as a means of regulating police behaviour remains undiminished; 'perhaps because it has been thought technical and boring, or perhaps because many social scientists seem to regard formal rules as far less determinative of behaviour than various informal practices, the substantive content of criminal law, the rules enforced by the police when they invoke their powers - has been almost wholly ignored....unless the elasticity of the legal definition of offences is tightened and the scope of criminal law is curtailed, many elements of police behaviour that have excited so much criticism will remain unaltered, because they are a direct product of the substantive law as presently structured.' (Lustgarten, 1987, p.23/24).

This statement can be applied to the law on police use of force. As remarked upon previously, it is striking that there is so little law on this area. The police, since their inception, have stressed the principle of minimum force, (see Pike, 1985, chapter six) and have been fairly successful in promoting a like image, despite, (as chapter one shows) a readiness to use considerable force when deemed neccessary. The notion that the police use minimum force whenever possible remains today but it is only a notion.

There is no legal requirement, nor has there ever been, that the police should use 'minimum force'. It is a concept that, when viewed retrospectively after the force has been used, is not likely to be agreed upon in any case. Today, the standard, as has been seen, is reasonable force - but as a maxim, it too is subject to differing interpretations. The law on how much force the individual officer may use is at the moment quite unclear, and muddled, and indeed always has been. This is surprising given that 'it has... been widely recognised that public support for the police is directly related to the manner in which lawful force is applied or the manner in which the right to use force is abused.' (Pike, 1985, p.116). The poor police-community relations today perhaps indicate a lack of trust brought about implicitly, in part, by coercive policing, if Pike's statement is correct. Should we then be concerned that policing is becoming more violent and that there is consequently a greater need now for tighter laws to limit police use of force, than there was in the past, when relations with the populace were better, and violence did not need to be resorted to? Reiner thinks not; 'There is no adequate basis for the view that police abuse or disregard of legality is increasingly prevalent, although there is, of course, a plentiful number of highly disturbing 'causes celebres'. But police lawlessness was rife in the past too.....(Sir Robert Mark).....documents the prevalence in the late 1940's of interrogation by physical force (such as holding suspects' heads down lavatories) and the meting out of brutal summary justice to those who assaulted the police. I am not suggesting that police practices are now more law abiding, rather that we don't really know what the trend is. Increasing concern is as likely to be due to changing public sensitivity and values as to a growth of real police misconduct.' (Reiner, 1985, p.179).

This study of the police use of force is not intended to be a response to the view that the number of forceful

incidents are rising and that the police are becoming more violent, nor does it necessarily endorse that opinion. This may in fact be the case, but if so, it would be extremely difficult to verify (given the improved statistics and information available today as opposed to the past), and any judgement that reached the conclusion that policing today is more violent would be pandering to the mythical view of a golden age of policing in the past, and be inferring that reasons for police violence are different today than previously - that is, that the basics of policing have changed. Similarly, any claim that the police are becoming more violent today leads one into political territory and doubtless, open to charges of alarmism and being anti-police from those on the Right of the political spectrum. More fundamentally, any complaint of increasing police coercion is likely to be met quite effectively with claims that the police are merely a reflection of the increasingly violent society that they are after all, drawn from, and that they have to police, and that this would be borne out by rising crime figures. Whether this is actually true or not may be immaterial, as long as it is accepted by a largely mute populace, who are then told that the violent police action is for their protection and on their behalf, rather than against them, and thus the idea of policing by consent could be shakily upheld. No, allegations of increasing police violence could in all probability, be comfortably deflected, and by doing so, the vagueness of the law that allowed it, would be cleared from scrutiny.

This study is not then complaining that levels of police misconduct and violence are rising disturbingly, but rather, is asking that, given the frequency with which allegations of violence against the police arise, and have done throughout history, and, bearing in mind the great harm that results from them, then is it appropriate to merely censure each individual case when it arises rather than trying to change the system that allows it? Several cultural reasons can

be indentified as to why the police resort to force (see next chapter). If these are known, surely they should be tackled rather than disciplining the individual later.

The laxity of the law, the discretionary nature of policing, the suspects ignorance of possible methods of redress, and his/her lack of confidence in the success of a complaint anyway, have combined to mean that the chances of punishing an officer who has used excessive illegal force, are reduced to a lucky dip. Another theme of this thesis is that the use of force being talked about does not have to be of the type that results in manifest physical injury to be illegal. Any case against an officer that reached the internal police disciplinary machinery, let alone the courts, is likely to be just the tip of what may well be a substantial iceberg. Other examples of police use of non-serious but still illegal force, may have become so commonplace that the victims may not even realise that their treatment has been against the law, and the police themselves may use such force quite freely, rightly confident that they will not be reprimanded for it. However, the free use of trivial amounts of force may shade into the grey area of harmful use of force. When this happens, the policeman is extremely likely to 'get away with it'. Even if sanctioned, the poorly defined laws governing force make it probable that a plausible defence may be put forward by the officer. In any event, the system is ineffective in dealing with, or even detecting, individual abuses of police coercion to the extent that the punishment of one officer will be the exception rather than the norm, and will not alter the future behaviour of other officers, (indeed it has not altered the conduct of others where this has happened in the past). Policemen will not be deterred from using force where they think it necessary, even if illegal, because of the overwhelming chance that they will not be caught and punished for it.

CONCLUSIONS

i. The law relating to police use of force is harmfully vague and inadequate. The statutes, case law, and codes

of practice cater for an objective approach to use of force in theory but allow subjectivity in practice. The vagueness means that, not only are the police not fully aware of the law and can not be sure if their actions are covered by it, but neither are the public. This public ignorance contributes to the police being able to use illegal violence with an air of legitimacy when unchallenged.

ii. The law on coercion is individually orientated but ineffective if exceeded. More regulations are needed to define the amount of force necessary in types of circumstances that occur frequently in policing. For example, injuries being inflicted whilst a suspect is in custody in a police cell. Experience should enable the police to be aware of what sorts of behaviour to expect from different types of inmates, such as drunks. Therefore they should be able to draft regulations detailing how such behaviour is to be dealt with, and expressly forbidding force as a response in situations where it is not necessary.

Although it is obviously impossible to legislate for the amount of force appropriate on every occasion, it is possible to give examples of when force is excessive or inappropriate in general policing situations - such guidance should be given.

iii. The police will often talk of 'minimum force' (see for example (Bartlett, 1985), even though such a doctrine does not exist at law. Would a standard of 'minimum force in the circumstances' be preferable to 'reasonable force' if this is what the police often teach, and purport to believe? 'Minimum force' would arguably be less open to subjective interpretation and would thus prove a stricter, less vague standard. However its adoption might lay the police open to much 'wise-after-the-event' criticism. That is, opponents of the police, when reviewing their methods, will always be able to think of an alternative, less forceful solution that the police could have used. However, if

policemen persist in using the language of 'minimum force', consideration ought to be given to introducing this standard into law, particularly if it is acceptable to the police themselves.

iv. Although stricter guidelines and laws on force may not change the subcultural police ideology that endorses the use of illegitimate force, it would surely have some effect in controlling unwarranted coercion. If there are rules that have been clearly transgressed, then judges will have to decide against the police where clear breaches and excessive force has occurred. The current policy of judges backing the police must be contrasted with the need to satisfy the public that justice has been done and reaffirm their faith in the police being a disciplined and well-controlled organisation.

v. Legal changes on force must include clear distinctions between; the amount of force permitted to prevent a crime and that allowed to apprehend someone who has already committed an offence, and the amount of force permitted in self-defence as opposed to that allowed in making an arrest and so forth. Most importantly, the objectivity or subjectivity of the term 'reasonable force' must be clarified and expanded upon.

What can not be contradicted is that the current legal situation governing police entitlement to use coercion is sparse, muddled, highly unsatisfactory and long overdue for review.

CHAPTER FOUR

SOCIOLOGICAL AND CULTURAL INFLUENCES ON POLICE COERCION

The previous chapter looked at the admittedly sparse laws that relate to, and purport to govern, the police use of force. (Namely, the Criminal Law Act 1967, Section 3(1) and the Police and Criminal Evidence Act 1984, Section 117.) The generality of these laws and their reliance on maxims such as what force was 'reasonable in the circumstances' means that where force is contemplated or necessary, it will be largely left to the discretion of the police as to whether it will be used or not and factors other than the law are likely to determine this. It is these factors that will be examined here.

When looking at the individual constable's use of force, coercion or violence, the intention is not to compile an anthology of incidents of 'police brutality', many of which are reported only in anecdotal fashion anyway, for this would ultimately serve little purpose. There have been, it is true, and there still randomly occur, cases of suspects being taken to the police station and emerging in a poorer state of health and there have been several deaths in police custody that have not been explained to everyone's satisfaction, but these still remain largely unusual and isolated episodes. Culpability is rarely admitted by the police for deaths or injuries sustained in custody, but it may be later recognised after legal prompting, (in the form of out of court settlements and damages payments) that officers do on occasions use undue force and 'beat up' suspects. When this happens, the public, although outraged, will accept the 'rotten apple' theory, namely, that whilst the majority of policemen are decent, honest, straightforward, law-abiding folk, any violent police conduct is perpetrated by one or two less savoury individuals, whose presence in the force is explained, or perhaps even guaranteed, by the laws of probability. There is a paradox in public perceptions here, for although instances of violent unreasonable police behaviour are seen as the fault of one or two individuals, the effect on police - public relations can be damagingly disproportionate, with the whole force often

likely to be characterised as brutal and untrustworthy.

There is surely some truth in the 'rotten apple' idea and it is perhaps inevitable that there will always be a minority of police who wilfully abuse their powers. It is realistic rather than cynical to accept that future allegations of brutality will periodically surface, yet it would be naive to think that they are all the fault of an unrepresentative few. If one delves behind the simplistic dismissal of misconduct as the work of a 'rotten apple' or over-enthusiastic young probationer, more questions present themselves. For example, why does the presence of other officers not deter such behaviour in the station? Why are prosecutions of wayward police so infrequent? and more importantly, why is such violence not precluded but rather made possible under our policing system, and can it be curbed? The answers to these questions are necessarily complex, but they do show that the 'rotten apple' theory is an inadequate explanation for violent police deviancy.

It is important to stress the area of policing that this chapter deals with; this is the day to day policing of the streets and the arresting, apprehending and taking to the police station of suspected offenders by individual officers. It does **not** relate to force used in public order policing (which will be dealt with in part three) nor to force used during formal interrogation with the intention of soliciting a confession. The field of interrogation and confession, although of definite interest where police coercion is considered, is nevertheless a separate area of the topic, and one which merits study in its own right. Where force is used to elicit a confession, problems lie in both proving that the resulting evidence is unlawfully obtained, and in establishing the worth of such evidence. Yet, one thing is unanimously agreed upon; namely that such use of force is illegal and worthy of judicial and societal condemnation. It is quite clear why the force is used - to help secure a conviction, and equally clear that its use is wrong.

This chapter will be looking at other instances of police force, both legal and illegal. Underpinning any discussion of police coercion must be the understanding that the police derive authority from their statutory power to use force. They would be an ineffective body if they could not back up their orders and demands by forceful action where necessary. Even if the police do not need to resort to using coercion the fact that it is available to them, that is, the threat that it will be used, is of inestimable value in dealing with certain types of people. Obviously policing is a function where a certain amount of force is going to be inevitable in the fulfillment of certain duties; this is a basic truth. This chapter acknowledges the need for legitimate force but will be examining the grey areas where legitimate coercion shades into possible illegality and abuse of power.

There have been many examples where the police have undoutedly used excessive unlawful force and violence against suspects. These will be looked at in terms of why such force was used, and the reactions to it by fellow officers. When such cases occur, the illegality of the police violence is not in doubt and justifies the label 'police brutality', with its connotations of unwarranted coercion. However, more important than these well publicised controversial incidents are the lesser uses of police force that do not always result in obvious physical injury but may still be illegal, and cause unnecessary discomfort to the recipient. How widespread are such niggling instances of force such as the occasional slap, thump, push or kick? Is it reasonable to expect the policing function to be fulfilled without such actions, or is it petty and unfair to the police to draw attention to them? The police use of force, in its varying degrees is of fundamental importance because of its influence on police - community relations, and public confidence and support for the police. It is therefore worthy of deeper analysis.

This chapter looks at why the police use force. The

sociological and cultural influences that lead a policeman to use force will be examined. This will entail a discussion of what can be termed 'police culture'. An understanding of policemen's attitudes towards their job is crucial to their use of force, and cultural norms and values need to be contrasted with official regulations to see which have the dominant influence on police behaviour.

Linked with an examination of police culture is the question of whether or not the police attract a certain type of personality to the job, and by so doing, perpetuate the cultural ideology. Obviously existing police values will have some influence on a recruit and he might reasonably be expected to assimilate them in any case, but if he is the type of person that readily agrees with such views, (including the use of violence for particular reasons), then he is less likely to object to using the illegal methods adopted by his colleagues, rather than to resist them. Does a particular type of person join the force, and if so, can he or she be comfortably classified as authoritarian or liberal etc? Can recruits be reliably monitored early on to provide the types of policemen sought by management when they develop as police officers.

An understanding of the police sub-cultural background helps to make the reasons that police use coercion clearer, and even more so, the reasons why they are able to do so and remain unpunished and unregulated. The tension between legal and cultural ideology is central throughout this chapter's exploration of the various factors germane to the police use of coercion. It is firstly seen that law-breaking by the police is an unavoidable by-product of their mandate. The police's ability to deviate from the law is unsurprising when set against an analysis of the different types of rules and how they function. In practice the police have much discretion and are able to retrospectively justify their actions under certain wide ranging laws.

The characteristics of police culture are identified and

discussed. These focus principally on perceived public hostility and the resultant social isolation of the police, which is in turn linked to the internal solidarity of the police force. The practical effects of police solidarity are demonstrated with reference to two well-known cases, that of the harassment of students in Manchester, and of John Stalker's investigation into the Royal Ulster Constabulary. Both reveal, in different ways, the extent of police solidarity, and how impenetrable it can become. The use of the Stalker case is instructive for its demonstration of the extent to which internal solidarity pervades throughout the ranks. The use of the RUC in an example is solely to make a point about internal solidarity, nothing more, and neither pretends nor intends to analyse policing in Northern Ireland.

Following from these two examples, the look at the core elements of police culture is concluded with discussions about the dominance of machismo attitudes and thinking, (and the correspondingly condescending attitudes to women police officers), and the police culture and racism. All these factors coupled with the question of whether there is a definable police personality, aid a better understanding of the conditions that make the police use of force possible.

POLICE CULTURE AND IT'S INFLUENCE ON THE USE OF FORCE

It is perhaps only to be expected that groups of people sharing common experiences and undertaking similar duties will develop similar views and opinions; in effect their own cultural values. There has been much written about so-called 'police culture', as will be seen, most of which is implicitly critical, or at least, certainly not complimentary. The strength of police sub-cultural values, and their influence on police use of force are the major issues here, but before tackling them it is as well to be reminded that this is not an exercise in listing incidents of excessive police force and applying the simplistic critical label of

'police brutality' to them. Indeed, as seen in the previous chapter, there is no attempt being made here to evaluate whether or not levels of police coercion are increasing or decreasing; it is the reasons why it is necessary or used that are under scrutiny. However, to place matters firmly in perspective (and to avoid generalised exaggerations about the police) it must be clearly stated and accepted at the outset that the cases when the police do have to resort to force, coercion or violence are comparatively few in proportion to the overwhelming majority of police matters that are dealt with or resolved peacefully.

The Policy Studies Institute's report into 'Police and People in London' is not viewed with much affection by police officers (opinions/information gathered in conversation with serving police officers) despite its attempts to portray the police at work in an unbiased, objective and realistic way. But it found that '...fighting and violence are not a regular occurrence in the working lives of most police officers; in fact for many they are really quite rare events.' (PSI Vol IV, 1983, p87.)

There are always going to be such incidents where it is necessary to use legal force and the police will readily admit to this whilst being slower and reluctant to acknowledge that there have been frequent occasions when excessive force has been used. This hints again at the pervasive theme of the difference between what is allowable and admissible in theory and in practice, and the difference between the substance and ideology of the law. Although the law proscribes excessive or unreasonable force, this may be at odds with the values of police culture that tacitly endorses violence or coercion in certain circumstances. Before looking at the identifiable elements of police culture, the conditions that enable it to flourish must be mentioned.

A) **The conflict between cultural and legal values**

The use and abuse of police discretion is a perennial topic of discussion on policing. The existence of a police sub-

culture that operates with values different to those enshrined in statutory law, and the fact these internal values are often the dominant ones in police decision making can in part be attributed to the police's wide discretionary powers. Uniquely for any organisation, the lower down the scale you are in the police, the greater is your discretionary power. In the case of constables on patrol (whether by car or on foot), they are subject to very little direct supervision. Advances in technology may have made continuous radio contact a feature of modern policing, but directions from a desk-bound radio operator usually concern logistical tasks rather than operational instructions; contact is not synonymous with control.

Discretion in everyday policing is for the most part both desirable and inevitable, yet it can be easily misused for the advancement of individual or group aims even where these conflict with legality. As seen at the end of the last chapter, discretion leading to dubious police practices can not be divorced entirely from the influence of the law. As Lustgarten and McBarnet pointed out, the vagueness of the laws governing the police help to create the conditions where discretion will operate, and cultural values dominate. It is in the police's interest that this should be so; their discretionary powers could undoubtedly be tightened and checked, and their actions monitored more closely, however it might have a debilitating effect on police efficiency and morale if they felt constrained by rules and increased supervision that they did not agree with. As it is, the exercise of discretion is often in what was termed by Goldstein (1960) as 'low-visibility' areas; that is, where the workings of the criminal justice system take place behind closed doors or where it is not easy to call police actions to account or prove them to be contrary to legal procedure.

Where the police do stray from the strict path of the law in their dealings with citizens (for example if amounts of force used are excessive), the latter, in most cases will

still accept the police's actions and may even be unaware that the police are acting illegally. Where illegal police actions stem from cultural values and beliefs, yet are accepted by the citizen (who is ignorant of their true nature) as law, then the wide reaching potential of police culture's deviation from legal rules is apparent. Cultural norms, due to discretionary powers can comfortably replace legal norms where convenient for the police, yet maintain a cloak of legality that remains undisturbed due to lack of public awareness of police power. This was realised by Westley, who proposed that '...the customs of the police as an occupational group give rise to a distortion of statutory law, so that the law in force, as it affects the people of the community, can be said to arise in part from the customs of the police.' (Westley, 1970, p10.)

The development of the police cultural values leading to objectives that differ from legal aims can not be explained simply as the result of individual policemen's views and personalities. As seen, the law, and its provision of discretionary powers, have encouraged the existence of an effective police culture, albeit indirectly. The explanation may run even deeper, and be connected with the disjointed nature of the criminal justice process itself. The piecemeal nature of criminal policy is clearly seen as a factor by Bottomley, who attacks what he labels the 'diversification of objectives' among the different groups working in the criminal justice system, for this means '...that justice is displaced by short-term goals that are perceived as more appropriate for practical purposes. This 'displacement of justice' in favour of more attainable objectives is not simply the fault of occupational groups directly involved, but stems directly from society's own ambiguity and failure to articulate any clear policy for criminal justice.' (Bottomley, 1979, 1982, p91.)

The lack of a co-ordinated and consistent criminal justice policy can be broken down further and said to be perpetuated

by poor police management, according to the PSI researchers. They found that senior officers in the Metropolitan Police did not seem to have clearly stated objectives, even though there must be a set of objectives implicit in the pattern of policing. The PSI found that in the absence of the explicit definition of objectives by the police organisation, constables were able to pursue their own objectives, informed as these were, by the individual's preoccupations, prejudices and perceptions. Thus, even though the police organisation may not always have a clear idea of what they are trying to achieve, individual officers may have their own personal goals, influenced by the cultural 'norms' of precedent, custom and the expectations of the group. (PSI, Vol IV, p49.)

Both the laxity of the law and the muddled internal police management have contributed to the easy sustainment of police cultural values and their dominance where they conflict with the law. Where there are objectives in policing, these may not always be legally attained. The PSI found that 'trying hard to reach a goal is often associated with improperly bending the rules and regulations. This is another reason why the objectives and norms that actually shape police behaviour tend to be unofficial, unacknowledged and implicit.' (Ibid p51).

The inevitability of 'bending the rules'?

It is not just the existence or otherwise of official and unofficial objectives of the police that are of interest, it is the manner in which they are attained. Striving for specific official objectives is not always a good thing in any case - what some might see as a priority for deployment of police resources will inevitably not be a view shared by everyone, and the over-zealous policing of an area in pursuit of a particular goal is not always sensible, as witnessed by the insensitive policing in Brixton in 1981 that was intended to reduce street crime but sparked serious rioting. A fundamental truth about policing however, is that the meeting of objectives or fulfillment of everyday police tasks can not

be accomplished to the satisfaction of the police without them bending the rules and breaking the law. This can be illustrated by a simple example. Police cars are not permitted to drive to calls to which they have not been assigned (PSI Vol IV p170) and should be under a duty to drive carefully when they do respond. However, the PSI report details an incident to which seven area cars, four panda cars and two vans responded, often at speeds of 90 mph and over in suburban areas (Vol IV, p53) and suggested that car chases are greatly enjoyed because of their excitement value, in contrast to the boredom of routine police tasks. But it is undoutedly 'the informal police routine in responding to radio calls that operates in practice, not formal rules.' (Benn/Warpole, 1986, p71.)

The police's preference for extra-legal methods can be perversely compared to the actions of one who conscientiously objects to a law that he or she feels is morally wrong or unnecessary, and so consciously refuses to adhere to it although aware of the consequences. The police may feel that certain rules are unworkable, or may simply disagree with others, and so feel comfortably able to ignore them in good conscience if their preferred alternative is seen as just. That is, although aware that their actions are technically wrong, the police may feel that they have acted correctly. This has long been recognised by criminologists and the police themselves. Skolnick quotes from an English study by W Fryer in 1957 which included the following opinion of a serving police officer; 'You can see that if we worked according to the strict letter of the (Judges) Rules we would get nowhere ... We have to break the law to enforce it...' and concluded that 'Evidently, the British policeman does not conform to rules so much as he knows how to present the appearance of conformity.' (Skolnick, 1966, 1975, p66.)

This finding is echoed more than twenty years later by a constable of five years experience interviewed by Baldwin and Kinsey; 'I could just imagine if the media got hold of the

things that a practical policeman does when he's catching criminals and trying to get something legal - or something that looks legal - on paper. If they were ever to get hold of that there'd be a bloody outcry. But people don't realize that's the only way ... the **only** way. There is no other way you can do policing.' (1982, p51, his emphasis.)

Senior police officers too have admitted that policing does not always comply with rules. Sir Robert Mark (1978, p55-56, 58) details incidents when laws were clearly transgressed, and even relates how he broke a drunk's leg with an illegal truncheon as a young constable before the Second World War (Ibid p28-29). Sir David McNee, in his memoirs, also records how legal procedures frustrate police work (McNee, 1983, p180-3), and has also stated that; 'Many police officers, early in their careers, learn the art of manipulating the law to their advantage, and, in the investigation of crime, begin to use methods which border on trickery and stealth.' (McNee, 1979, p78.)

Willingness to overlook legal procedures in the interests of policework is common throughout the force and is accepted by the rank-and-file. (Reiner, 1978, p77-81, 221-3.) Inevitably, the use of force is one of these areas where action may be dictated by personal or cultural values, rather than legal regulations. Westley, when asking policemen the reasons why they had used force found that 'Sixty-six percent of the men felt that the extreme form of police action - violence - was to be used for illegal but group ends, and only 8% of the men felt that violence was to be reserved for their legal ends. This would at once indicate a sub-ordination of law enforcement to the ends of the group and a willingness to break the law to achieve the ends of the group.' (Westley, 1970, p141.)

In practice then, the police are both creative law-makers where it suits them, as well as law enforcers. How has this routine violation of legal procedures come to be accepted? If it is well documented why has nothing been done about it?

A problem here has been that policing covers so many areas that they can not all be legislated for, and so widespread discretion is given. However, the low visibility of the exercise of discretion means that the police can set their own standards, even in those areas that **have** been legislated for, and in effect, over-rule the legislation. Although senior officers are aware that legal procedures are regularly being circumvented, it is not in their interests to change the system. Where rules are transgressed and police powers abused, (such as where excessive force is used), if this serves as a means to an end, (namely a conviction), then the police illegality will be subtly weighed against that of the offender, and accepted as justifiable.

Types of rules

The PSI offered a perceptive analysis of why police practice differs from theory in their classification of the three types of rules that govern police behaviour, into working rules, inhibitory rules and presentational rules. (PSI, Vol IV, 1983, p171.)

'Working rules' are said to be those that are internalised by constables to become guiding principles of their conduct. It is these that are important when looking at police coercion. These are the rules developed by the police culture, and are not legal standards. For example, a hypothetical working rule could be that it would be acceptable to use force on a habitual drunk who was proving obstructive because he or she would have no means of rebutting it or complaining about it. Conversely, it would not be sensible or necessary to behave coercively to a smartly-dressed person in a suburban neighbourhood, even if proving equally obstructive. The PSI notes that 'where the rules are internalised they are likely to have a far more consistent controlling influence.' (Ibid, p170.) With relation to police use of force, it would seem that levels of police coercion could be reduced if the misuse of force became

accepted internally as being wrong, and working rules militated against coercion. However, such attitudes could only be produced if the entire police group subcultural values were changed, and this would prove an immensely difficult task.

The second type of rules identified by the PSI are 'inhibitory rules'. These are not internalised but are actual regulations or laws designed to influence or discourage certain types of police behaviour. For example, with coercion, an inhibitory rule would be the disciplinary offences an officer could be charged with if he exceeded his coercive powers. The possibility of disciplinary or even criminal action should, in theory, make an officer consider his or her actions. The effectiveness of inhibitory rules will be linked and depend upon police discretion and other circumstances and they relate to how much the police can actually 'get away with'.

Finally, there are presentational rules; 'that exist to give an acceptable appearance to the way that police work is carried out ... Most of the presentational rules derive from the law and are part of a (successful) attempt by the wider society to deceive itself about the realities of policing.' (Ibid, p171.)

A good example of a presentational rule is section 117 of PACE concerning 'reasonable force'. Although it may be frequently ignored by policemen, senior officers can always refer to it to assure the public that their men are subject to statutory control, that there is a law against excessive force, and therefore that they will not have broken it. It is surprising how effective such presentational rules are, but their reinforcement of traditionally supportive attitudes towards police is made easier by the perpetuation of such maxims as 'the British police are the best in the world', and their acceptance by a largely unquestioning, uninformed and essentially conservative populace.

The police are content to benefit from their wide

discretionary powers and view attempts to impose more rules upon them with distaste. The policeman, according to Skolnick, '... sees himself as a craftsman, at his best, a master of his trade. As such, he feels he ought to be free to employ the techniques of his trade, and that the system ought to provide regulations contributing to his freedom to improvise, rather than constricting it.' (Skolnick, 1966, 1973, p196.)

The police's dislike of too many rules and laws is illustrated by the fears voiced by the police hierarchy about the possible effects of the Police and Criminal Evidence Act 1984. PACE has certainly not proved popular with the police in practice, (opinions of serving police officers interviewed) but it does not appear to be as easy to abuse as its civil libertarian detractors initially feared, and its increase of police paperwork has resulted, frustratingly, in more desk-bound duties for officers. It has not made a beneficial difference to policing, and if anything, is seen as a hindrance by officers (opinions of serving police officers interviewed). For example, a television report, (This Week, Thames TV, October 1987) looked at the alarming increase in the carrying and use of knives by young people in large cities, and how best to deal with it. The police feel that stop and search powers should be the answer but think that they are being handicapped here by PACE. Interestingly, the programme pointed to the dramatic drop in the number of stop and searches carried out since the implementation of PACE. The police blame this on the 'reasonable suspicion' criterion needed before searching. This was said by police to be a much higher standard of suspicion than was previously required, when policemen felt they could act on hunches. A provision that has carried particular police contempt is section 2 (9) (a) of PACE that does not give the police power to require that a hat be removed during a stop and search. Police uncertainty about PACE was reflected in a Home Office statistical bulletin (1986) that detailed how use of stop and

search powers dropped substantially in the first six months after the introduction of the Act. (There were also drops in the use of roadblocks and intimate body searches.) (The Guardian, 31.10.86.) (Whether or not strict or lax rules are desirable or useful in controlling police coercion will be developed in part four.)

As has been seen, police discretion and the widespread conflict between legal and cultural values results in group norms often taking precedence over legal regulations. The full significance of this can not be appreciated without an exploration of what police cultural values actually are, and how they relate to use of coercion.

B) **Characteristics and elements of police culture**

Police cultural values are shaped by the nature of policing and shared experiences of police work, and the core elements of it can be clearly identified. (See Reiner, 1985, chapter three for a lucid analysis of 'Cop Culture'.) Perhaps the most important element is the police perception that the public are hostile to them and their consequent feelings of social isolation. Policing can be a thankless task and the fact that the police naturally deal more often with citizens who dislike them (because of the nature of their contact with the police, as offenders or suspects) means that policemen's views on society can easily be soured, and the wider community associated with the failings of those comparatively few people who are in trouble with them. Other major features of police culture are male dominance and 'macho' attitudes, conservatism, the importance of alcohol, racial prejudice, a tendency to glamourise violence, the internal solidarity that results in secrecy and silence whenever police faults are examined, and the closing of ranks to external scrutiny.

Reiner says that 'the police sub-culture is by no means radically distinct or deviant in its values from either legal or popular morality.' (1985, p175.) This may well be true - the machismo and sexism said to abound in police stations is

in fact not unusual in a male dominated preserve, as anyone who has ever been present with a rugby or football team in a changing room can testify (or in fact any exclusively male sporting group.) However, this is not to excuse such attitudes, and indeed the machismo and sexism of a rugby team, although offensive, is not as potentially serious as that of the police, for if these attitudes surface in discretionary policing, even if unintentionally, then they can make law enforcement highly individualistic, arbitrary and potentially unjust. That police culture is not radically distinct from popular morality also offers no comfort when one considers the knee-jerk response of 'popular morality' to many issues, its intolerance of minorities, its prejudice and homophobia.

That policemen are drawn from the community they police and that therefore it can only be expected that a few of them will be racially prejudiced or violent, reflecting the wider make-up of society, is an argument that the police employ to explain the presence of such unsavoury attitudes within their organisation. Reiner notes that the police 'shared the values of the social group from which they were drawn - the lower middle and respectable working-classes which constitute the bulk of society. This is, of course, a double-edged finding, for while police recruits may not be **more** authoritarian than the general population, the 'normal' degree of authoritarianism is disturbing in an occupation which wields considerable power over minorities. As Stuart Hall has commented trenchantly, Chief Constables would not state so cavalierly the equally true proposition that the police force must contain its fair share of criminals. (Hall, 1979, p13.)' (Reiner, 1985, p101.)

Such explanations are also unsatisfactory because they are individually orientated, reinforcing the idea of a few 'rotten apples' being responsible for most police misconduct and implicitly absolving the police organisation and procedures from blame. Although, as will be seen, there is some evidence to indicate that a minority of officers do tend

to be more violent than others, this does not, and can not explain all uses of excessive force by police and is flawed in its ignoring the effects of police cultural values. It is simply not feasible to claim that these violent officers are violent personalities anyway, and would be whatever career they had chosen, for this fails to take into account police organisational and structural factors, and group values endorsing the use of force.

a) Public hostility and social isolation of police

The most important element that moulds police cultural thinking is the perceived or actual hostility that the police feel they are treated with by the public at large. It may seem paradoxical in a system that claims to police by consent, but the difference of opinion between how the police view themselves and how the public view them is of immense significance, resulting as it does in the police feeling themselves under attack and lacking support. The police clearly do not feel that they are policing by consent, with the result that they view themselves as being isolated from society and as a minority force striving for good. Reiner notes how policemen develop a sense of 'mission' about their job (1985, p88) and police culture reinforces the strong sense of 'us' against 'them'. This leads to the close-knit behaviour of policemen and their almost impenetrable internal solidarity. The primary purpose of this solidarity is beneficial to policemen, instilling a sense of brotherliness, co-operation and trust throughout the force, that will need to be relied upon in difficult and threatening situations. At its most stark, the solidarity of police officers is a mutually protective mechanism that may prove to be a life-saver or protection against physical injury where the police are in action. The reverse of this, however, sees this ability to 'close ranks' as an effective means of maintaining the secretive dictates of police culture from outsiders, and from screening officers who have abused their powers. The

strength of internal solidarity is affected by the relationships between police and public, and the level of hostility perceived to exist.

Unfortunately, there is a firmly entrenched polarity of opinions about the police force between the police themselves and some sections of the public. The latter term is used, because to say 'the public as a whole' (aside from being a judgement that no-one arguably has the authority to assert) would have to include the so-called 'silent majority' of the population who are assumed to support the police wholeheartedly, and so would clearly be inaccurate. The differences of opinion between the police and their critics find little flexibility on either side. Both sides stick to their opinions and are unwilling to concede that the other may be right in some respects. Thus the police can mentally classify people as 'for' or 'against' them, where there is no discernable middle ground. To translate this idea to the police use of force; it is extremely difficult to discuss the issue with policemen in a reasonable objective way without them suspecting that they are under attack, due to the nature of the topic. The police are naturally defensive and willing to imply criticism and over-react where none is intended. This is all part of the poor standing that the police feel they have in the public eye, yet this is strange given that they simultaneously claim to police by the consent of the silent majority. If this is so, why are the police so defensive and suspicious of their public image? 'In the light of the evidence of continuing and strong support for the police it might appear perverse that policemen generally underestimate the degree of support and sympathy they do in fact have and ... that they should continue to hold to pessimistic views about the degree of public support and the nature of change in society.' (Vick, 1981, p112.)

Police attitudes to public support are apparently ambivalent; they may sometimes feel they are a besieged minority whilst accepting that they act with the approval of

the silent majority of the population. One way in which this apparent paradox can be resolved is to look at it thus; 'while the public continue to be overwhelmingly supporters of the police they have a declining sense of direct personal responsibility for law and order, which is increasingly seen to be the job of the state.' (Ibid, p112.) The police may easily become cynical when they encounter public hostility or lack of co-operation, for they may find the wrath of citizens, reflected upon them personally for simply doing their job or for just being in a uniform. The demoralising effects of this must not be underestimated. As a policeman, bearing the brunt of the aggression, insults and dislike that certain sections of the community have for the police, is not easy. Although these public expressions of hostility may be directed at him or her as a symbol of authority or of the police organisation, it is still difficult for the officer to divorce these general expressions of dislike from feelings of personal vulnerability. Most officers will genuinely be concerned to discharge their duties for the public benefit, and to receive undeserved and wounding reactions from members of the public will obviously prove upsetting. Unwarranted personal criticism is hard to cope with, but the social isolation of officers can be heightened further where their families also suffer taunts and so forth. The teasing of a police officer's child by its fellows may seem trivial, but can cause great misery and exacerbate disillusionment with the job. The ungratefulness of the public for the benefits and achievements of policing may make officers feel that their job is not worth the personal turmoil and nuisance.

The American police too, typically perceive the citizenry to be hostile to them, according to police chiefs and various studies (Skolnick, 1966, p62) and also find themselves socially isolated (Ibid, p49-51). People are wary of friendships with police, who consequently often socialize with each other, strengthening still further, their cultural ties.

A real fear where the police feel themselves isolated and

opposed (particularly if this is a mistaken view and that in reality they enjoy passive support from the majority) is that their defensiveness and hypersensitivity to criticism could have adverse effects on the public, leading to a widening of the gulf between police and public, and increasing the problems perhaps unnecessarily. Whitaker (1979, p31) notes that police hypersensitivity to criticism makes necessary changes difficult to achieve, and can result in some policemen returning the hostility for the antagonism towards themselves they sense or imagine. The police force clearly need to come to terms with the public's opinions of them, and accept that they are dealing with those sections of the community that have most reason to dislike them. This needs to be viewed in perspective to prevent the possibility of a circularization of violence. Westley warned that 'Where public hostility grows, so will their (the police's) utilization of violence and secrecy ... with rising public violence and protest and its consequences of sharp criticism of the police, **at the same time that the police are pressured to control this public violence,** we should assume an increasing reliance on violence and secrecy by the police themselves.' '... if the goals of the police should vary from those of the citizens, it can become a very serious problem. **This is exactly what is likely to happen** when the public's attitudes towards the police and interaction with the police are hostile, so that they elicit hostile, violent and secrecy-orientated responses from the police.' (Westley, pages XV and XVI, his emphases.)

That the police's hypersensitivity to criticism is damaging is recognised by those within the police organisation. A tutor at the Police Staff College in Bramshill has written about the apprehension she feels at the tendency of the police to be almost paranoid about their image and comments, 'What seems to be happening is that the police are getting to a point, through various internal and external pressures, where they label any influence whatever over their

'constitutional' actions, as a subversive plot. They tend to view even the most mild inquisitiveness as anti-police; this is simplistic.' (Wilson, 1981, p128.)

In contrast, most writings by the police themselves are concerned 'to present the police favourably (see Greenhill, 1981, p97). There is undeniably then, a gulf between police views and the views of academics and certain sections of society which only serves to increase the police's isolation and accommodate the pessimistic police view that they can not rely on the public's support. This often unwarranted perception of public dislike is at the crux of police culture - and its importance must not be underestimated. It encourages the internal solidarity that causes so many problems where violent police deviancy occurs. An ex-police Chief Inspector, Malcolm Sparrow, who left the force when lured back into academia, commented in 'The Guardian', (20.1.88); 'Many policemen become conditioned by the culture that they work in. It has a real dampening effect on the police service, being an adaptive organism. Policemen quickly perceive they are working in a hostile environment with hardly anyone out there to be trusted and this largely accounts for the very high degree of personal loyalty to colleagues. That loyalty is both essential when dealing with dangerous situations but also damaging when it prevents exposure of things that need to be exposed.'

b) The effects of internal police solidarity

As noted earlier, internal police solidarity can be of great importance in practical policing, where one may need to be able to rely on the support of fellow officers for personal safety. This is nothing new, but in fact a long established facet of policework. Westley cites a 1931 report on the police by the US National Committee on Law Enforcement that found 'It is an unwritten law in police departments that police officers must never testify against their brother officer. Viewing it from the inside, it is soon found that as a general rule policemen believe that the average citizen

is opposed to them and that they must fight their battles together against the common enemy.' (1970, p5.)

That there is such solidarity between officers should not be a surprise. Again it is a characteristic that can be found in all areas of life where people are bonded together by common experience, and so it should not be regarded as an exclusively detrimental element of police culture. Banton noted that '... patrolmen may support their fellows over what they regard as minor infractions in order to demonstrate to them that they will be loyal in situations that make the greatest demands on their fidelity.' (Banton, 1964, cited in Skolnick, 1966, p54.) The PSI study too, found that 'The solidarity among police officers generally, and particularly among small groups who work together, is extremely strong. This shows in the very high priority given to going to the aid of any police officer who is under (physical) attack, or in danger; in the lengths to which officers will go to defend a member of the group who is threatened in some other way, (for example by allegations of misconduct made against him.)' (PSI, Vol IV, 1983, p70.)

Internal solidarity definitely fulfils a beneficial practical purpose in its fostering of attitudes of trust and mutual help amongst officers, and in this respect it is perhaps even desirable. This solidarity and trust does not result simply from wearing the uniform however, and any new arrivals in an established group will not instantly gain acceptance, but rather will have to earn it: 'It is important to recognise that police officers do not automatically assume that they can trust all other officers, on the contrary, they are constantly wary of their colleagues and afraid of misplacing their confidence. Consequently, there is always a need to test them out again and to re-establish feelings of mutual trust.' (PSI, Vol IV, p83-84.)

The advantages of internal solidarity to the police in terms of helping towards good working relationships are overshadowed by it's ill-effects where police misconduct has occurred, but

can not be detected thanks to the protection afforded to the offender by colleagues. The 'Operation Countryman' exercise in the late 1970's proved that internal solidarity could defeat the police hierarchy and institution when threatened. This was an investigation into corruption and illegal practices within the Metropolitan Police that was staffed by experienced senior officers from outside London. However, the effectiveness of the Met's cultural self-defence mechanisms meant that the operation, despite recommending some charges, could only scrape at the mortar of the police cultural edifice. Indeed the ability of the police to withhold information about miscreants in their ranks is something that police management and laws have singularly failed to control with vital implications for the police use of force. This means that those offenders who commit violent acts or use excessive force, can be fairly confident that they will not be reported by their colleagues, and indeed, that they will get away with it.

Westley found that even police officers who abhorred violence would not openly oppose it, or take steps to prevent it; '... not one of them was willing to protest openly such violence, and certainly not to report the men who were violent. They all believed that policemen had to use violence at times to protect themselves and that if they exposed the brutality it harmed the department.' (1970, pIX.)

This of course refers to situations when excessive force has been used internally and has not come to the public notice. However, it would seem that the same unofficial police policy persists even when an incident of excessive and unlawful police force becomes public knowledge. This is illustrated well, by the Holloway incident of 6 August 1983. This was the night when members of a Metropolitan Police District Support Unit assaulted five schoolboys aged between 13-16 without justification. One boy was kneed in the face and needed to have his nose straightened under anaesthetic, another struck in the stomach and kicked in the face, requiring stitches,

another held around the neck and had his face punched. The other two were bruised and cut after being kicked and struck with truncheons. ('Cover up that smeared all the Met's men' - The Guardian 17.7.87.) The officers responsible for this however, were not charged and punished for another two and a half years. An editorial in The Guardian observed; 'Three years is an intolerable hiatus between crime and punishment. Any large organisation will contain its 'rotten apples' to use Sir Robert Mark's famous expression; it will be judged not so much for their presence but for its ability to weed them out. Using that yardstick the Metropolitan Police emerges with little credit for the Holloway Road affair ... The Met can take little credit from the fact that these rotten apples have been identified and punished, and must accept that its image will be affected much more by what occurred off the Holloway Road and afterwards than by the daily activities of the thousands of honest cops in the force.' ('A long road to justice' 17.7.87.)

That it took so long to identify the culprits was due in no small part to internal police solidarity. The officers involved were said by prosecuting counsel at their trial to be 'hidden by a conspiracy of silence'. In fact they had agreed to cover-up the incident and to deny that they had been in the area (The Guardian 23.6.87). The officers agreed that 'we all have to keep together or we will end up being charged', and they lied to senior officers investigating the incident. (The Guardian 19.6.87.) Indeed this was enough to successfully frustrate the efforts of Scotland Yard's complaints bureau and apparently to thwart the Police Complaints Authority (PCA), who announced in February 1986 that after a year's investigation into the incident a prosecution was unlikely because of a cover-up. (The Guardian 17.7.87.) This conclusion caused such controversy that the 'Police Review' denounced those officers responsible as being 'bastards' and a fresh inquiry was set up with the promise that officers who had not taken part in the assaults, but could provide

information, would be recommended for immunity from prosecution.

The PCA took some credit for the eventual resolution of this case, claiming that the closing of their investigation due to a cover-up was calculated to have the effects that it did. However, it appears that the crucial factor was the promise of immunity from prosecution, not the PCA's condemnation. This is a terrible indictment of those men involved, for it seems that the case would have remained unresolved otherwise. Those officers who did eventually give the information about the assault were probably acting from motives of self-preservation; they had been involved in the cover-up but not the actual assault, and their judgement has been rewarded because no disciplinary action was taken against them, (The Guardian 18.7.87) and they are still serving in the police.

Although this is an extreme, and therefore perhaps rather unrepresentative case, it does illustrate neatly how difficult police solidarity can be to break down, even where, as in the Holloway case, the consequences of continued silence brought fellow officers into suspicion and contempt, and did considerable damage to the reputation of the Metropolitan Police. This touches upon another point that has implications for the police complaints system, namely that misconduct is covered up; not just from the public, but from senior officers and police management: 'The offences which colleagues shield are not necessarily major infractions to be protected from external eyes. Rank-and-file solidarity is often aimed at concealing minor violations ... from the attention of supervisory officers.' (Reiner, 1985, p93.)

Senior officers are aware that brutal behaviour occurs, that it is covered up, and difficult to uncover. Deputy Assistant Commissioner of the Metropolitan Police, Richard Wells, acknowledged this when he saw a film that portrayed a brutal officer, other officers falsifying notes, covering up for colleagues, and lying to their bosses. The film, 'Closing Ranks' was made with the help of policemen and their wives,

and Wells commented that it was realistic and would be useful in police training programmes to try and recognise brutal and corrupt officers and root them out before they can influence others. (The Guardian 17.11.87.) That the police will lie to protect their fellows was found by the PSI to be an accepted fact. One of their general conclusions on evidence was that 'We believe that police officers will normally tell lies to prevent another officer from being disciplined or prosecuted, and this is the belief of senior officers who handle complaints and discipline cases. Of course, there are important exceptions, where officers do give incriminating evidence about their fellows.' (Vol IV, 1983, p229.)

It would take great strength of character, however, to testify against an errant colleague, and an officer who did so would risk, and almost certainly end up, being ostracised by other policemen. The consequences of this could be personally disastrous for that individual within the organisation - working as a police officer without the support and trust of your colleagues, and adding peer pressure to the existing pressures of the job would make for a stressful and unhappy experience. Thus the consequences of informing on someone who has committed even a minor disciplinary offence could be disproportionately troublesome, and be too high a price to pay for the salving of one's conscience. It is probable that one of the reasons the policemen guilty of the Holloway assault took so long to be uncovered was because the penalty for their offence would undoubtedly be severe, entailing serious disciplinary action at least, and the likelihood of dismissal and criminal proceedings. Quite simply, no policeman wants the responsibility for another officer losing his job. If that officer has a wife and family, then they too would suffer if he was dismissed, and so the effects of 'telling' on someone who has committed a serious offence may still be seen as too harsh.

The presence of colleagues; a disincentive to the police use of violence?

One is entitled to ask, however, that even if fellow officers do not later inform on a deviant officer, why does their presence in the station or elsewhere, not act as a deterrent? Reiss observed in his useful early study on 'Police brutality'; 'A striking fact is that in more than one-half of all instances of undue coercion, at least one other policeman was present who did not participate in the use of force. This shows that, for the most part, the police do not restrain their fellow policemen. On the contrary, there were times when their very presence encouraged the use of force ... Though the official police code does not legitimate this practice, police culture does.' (Reiss, 1971, p158-159.) To ask why other police officers have not prevented the misuse of force, is in retrospect, a naive question laden with the assumption that those officers will disagree with it. If they do not think that the force being administered is excessive, or think it for a good purpose if excessive, then there will be no intervention because no wrong will have been committed according to cultural values, even if the law has been transgressed. Again, the conflict between law and police culture sees the latter dominate.

Quite often other officers will not disagree with the use of illegal force as long as it is not obviously excessive and unjustified. However, even where they oppose such police behaviour, not only are they likely to keep quiet about it, but they may actually lie to cover up the offender. The PSI researchers found that 'We were told many times that an officer who had done something wrong would always or almost always be backed up by other officers, even if they didn't like him.' (Vol IV, p71.)

One sergeant candidly revealed that he would never 'shop' one of his mates even if he had committed a serious assault. He said 'If one of the boys working for me got himself into

trouble, I would get all of us together and I would literally script him out of it. I would write all the parts out and if we followed them closely we couldn't be defeated. And believe me, I would do it.' (Ibid, p72.) The sergeant conceded that assaulting a prisoner was a serious offence and said that he would not want to have anything more to do with the offending officer, once he had cleared him from trouble. 'This sergeant obviously thought that internal justice administered informally by colleagues was far preferable to justice through the machinery of the complaints and disciplinary system of the force ... there was also the feeling that the machinery of force discipline was something that attacked the in-group from outside and which the group could not control in any way once it built up a momentum. Control from within the group was not only less damaging to the officer concerned, but also less threatening to the group as a whole.' (Ibid, p72.) However, where the use of force is concerned, this sergeant's thinking is surely misplaced. Quite what the 'internal justice' that he had in mind consists of is unclear, but would almost certainly not be as severe as the ostracisation of a 'good' officer who informed on a 'bad' one, particularly when police culture is not actually averse to the use of coercion in many circumstances. Likewise, the group can not be relied on to control the use of force when it endorses its illegal employment so often. Although resolution of misconduct in this way is not as damaging to the individual or the group as an official investigation, this is an inward looking perspective that ignores the harm to public confidence in the police that results from police misuse of force, and is therefore not a convincing argument. The public are not aware (in publicised cases of police violence) that the culprit is being dealt with internally, and it merely looks as if he or she has gone unpunished where internal solidarity prevents identification and official punishment.

The Police and Criminal Evidence Act 1984 sought to maintain the fair treatment of suspects in a police station by

appointing a custody officer who should be at least a sergeant save in exceptional circumstances. (Section 36, subsections (3) and (4).) It is the duty of the Custody Officer to ensure that all persons in police detention are treated in accordance with the Act and it's Codes of Practice, and that information required by the Act and Codes is recorded (Section 39(1)). The Custody Officer should not be part of the investigative team and this is regarded as another aspect leading to his impartiality. However, where excessive force is used in the station, will the custody officer comply with it and cover it up, according to the dictates of police cultural solidarity, or will he record that the suspect has been mistreated, and misconduct has occurred? Interestingly, the legislation has placed Custody Officers in a quandary that will see them having to make a conscious decision on whether to side with legality or cultural norms. Perhaps cleverly, the statute relies upon exploiting the Custody Officer's instincts of self-protection and preservation by making him or her personally responsible for the proper treatment of detainees. The Custody Officer will therefore also be culpable if another officer in the station physically abuses a prisoner. If the Custody Officer chooses the legal path and records incidents of misuse of force, he will be risking unpopularity, particularly if the force used is relatively trivial (this of course makes it no less morally justifiable) and the jeopardising of a good working relationship. Conversely, it will be easy to 'turn a blind eye' to more trivial uses of force and by doing so, to satisfy police cultural values. Whether or not the position of Custody Officer will reduce the effectiveness of internal solidarity as a protection for wayward officers remains to be seen; it does have the potential to do so, but it is equally capable of manipulation into the covering up and accommodation of misconduct.

One recent case where the custody officer did not prevent violent police misconduct, occurred on 5 June 1987 in Lancaster. (See the Guardian, 15.4.88.) A frequently violent

man, Owen Roberts, arrested after drinking heavily and causing trouble at a pub, was taken to Morecambe police station. He was dragged from the police van and attacked by two officers who were seen hitting him with their truncheons and kicking him, to 'teach him a lesson he would never forget'. Although the two officers denied using their truncheons, fibres from the dead man's clothes were found on them, and a pathologist had testified that death was caused after a haemorrhage following a blow by a cylindrical instrument to the back of the neck. Clearly, the custody officer failed completely in his duties here, and his presence was no disincentive to police violence. It would be interesting to know exactly what happened to the custody officer in this case; was he censured too, if so, how?, and if not, why not? The custody officer should be liable for omissions to act in this sort of case.

The Lancaster incident was also notable for the life sentences that the two constables, Shevlin and Montgomery, received for Roberts' 'cowardly and brutal murder.' (The Guardian 5.5.88.) These were the heaviest sentences on police officers in recent times. Even the family of the dead man expressed themselves satisfied that there had been no police whitewash and cover-up. A theme throughout this work is the compliance of the judiciary and tolerance of police misconduct. This remains unaltered, notwithstanding the verdict in this case. On the contrary, a clear pattern is confirmed, namely, that where the police deviance is clear-cut, obvious and witnessed, the judiciary will condemn it. The problems arise when there is insufficient evidence. Then the judges will find in the police's favour and thus reinforce their discretionary ability to use force with impunity.

Skolnick partly explained the police's 'unusually high degree of occupational solidarity' (1966, p52) in terms of a group response to the danger that they faced or potentially faced. (See Ibid, p53/4.) This solidarity is not confined to the rank-and-file policemen but is symptomatic of a wider attitude that pervades the police organisation as a whole, and

to some extent, the criminal justice system. This 'danger' is not only the real risk of physical harm that daily confronts officers on patrol, but can also be the danger that police methods will be exposed to the public, and that a lack of public confidence and much criticism will result if these are seen to be illegal. Although as seen earlier, internal police solidarity can be mobilised so as to screen the misconduct of lower ranks from their supervisors, quite often, the object of the misconduct will be implicitly approved of by the police hierarchy if it is consistent with overall policing aims and policies, and the police organisation then also becomes a party to the ethos of solidarity. This touches on a theme mentioned in the previous chapter, namely that illegal police behaviour is often tolerated throughout the criminal justice process because the system is inherently loaded in favour of the police and naturally reluctant to criticise them too severely. This basic and traditional trust in the police as stout upholders of the law is exploited by senior police ranks when they fail to take action over police deviancy, and rely on covering up to keep it from the public. Reiner talked of the gulf between 'management' cops and 'street cops', but concluded that this was sometimes of use to the police as a whole; 'The 'management' have to project an acceptable, legalistic, rational face for policing to the public. This may mean complicity with misconduct in some circumstances, deliberately hearing, seeing and saying nothing. But when reform pressures become intense, the 'management' may be forced into confrontation with the street level. To an extent, however, the gulf between 'street' and 'management' orientations is functional for the organisation itself. It allows presentational strategies to be adopted by management levels in real ignorance of what these might cover up, while at the same time the sacrifice of some individuals as 'bent' ratifies the effectiveness of the disciplinary process as a whole. (Shearing, 1981)' '(Reiner, 1985, p93.)

POLICE SOLIDARITY IN ACTION; TWO PRACTICAL EXAMPLES

i. The harassment of students in Manchester, 1985-86

The omission of corrective action by senior police is, of course, as serious as the deliberate taking of steps to cover up, where there has been an abuse of power. The failure to act against misconduct is very much a part of police solidarity. The iniquitous consequences that can result from this are sharply illustrated by the events that followed the visit of then Home Secretary Leon Brittan, to Manchester University on 1 March 1985.

Brittan's visit was characterised by the violent policing of a demonstration against him, and the later harassment of students, two in particular, who had taken part. The events arising from this incident are chillingly recounted by Walker (1986). Without wishing to dwell unduly on all the aspects of this affair, it is necessary to consider the case of one particular student, Steven Shaw. He had attended the demonstration (although was not a political activist or member of any party) but was not amongst those students arrested for public order offences. He was, however, involved in their defence campaign and was writing a thesis on 'Police Technology and Surveillance'. On 5 March 1985, his lodgings were burgled and his thesis was the only thing taken. He did not report this to the police, but when stopped by police the next day on a trumped-up speeding charge, was asked by a desk sergeant if he was 'the chap making allegations about his thesis?' This confirmed Shaw's suspicions of police involvement in the burglary. (Ibid, p102.) Shaw was repeatedly harassed and stopped by the police, as was another student, Sarah Hollis, in the following months, but matters came to an unpleasant head on 14 May 1985 when he was taken by two plain clothes officers to Bootle Street Police Station, held for five hours without charge, stripped and physically assaulted. In February 1986, Shaw, in Manchester only for a few days, and staying with a friend, was attacked by two plainclothes men

when he went out alone for tobacco. This attack included being punched in the chest and stomach, kicked in the back and the head, struck with a bottle, and being burnt facially with a lighted cigarette. (Ibid, p152.) A horror story by any standards, but what has this to do with the internal solidarity of police culture and official compliance with it?

Shaw recognised the two men involved in the attacks and harassment upon him as being the same two who had taken him to Bootle Street police station and interrogated him. Furthermore, he gave good descriptions of them (they were both fairly distinctive - the younger one with acne on the left side of his face, the older one balding with a round face.) Most tellingly of all, Shaw had noted that one of these men who had assaulted him had a small white scar on his inside elbow. (Walker, 1986, p126.) The Greater Manchester Police made a statement in 1986 that they would examine the arms of officers in Bootle Street station for this scar, but the Greater Manchester branch of the Police Federation issued a statement advising officers that they did not have to take part, and nothing further has happened on the matter. (Ibid, p200, footnote 72.)

This is just a brief summary of some of the important events and points connected with the Shaw case. No one who has considered the facts of the incident and the alllegations of the students could possibly conclude that they were concocted entirely without substance. Even if it is thought that the British police are incapable of such actions, surely a more thorough investigation into these allegations is desirable to clear their name. It seems incredible that, given the clear descriptions of the men involved, and the knowledge of their area of work, that they can not at least be found and questioned about Shaw's allegations. It is inconceivable that some senior officers in Manchester, and more particularly, at Bootle Street, seem unable or unwilling to identify these officers. (Any thoughts that these were random attacks by motiveless civilians are implausible given the obvious

knowledge of Shaw's movements and whereabouts.) However, taking into account public knowledge of this case it is clear that those guilty officers have been covered up by colleagues with the tacit connivance of senior officers.

There is a clear distinction between Shaw's case and the Holloway beatings. Those officers guilty in Holloway earned the contempt of the force for their pointless, brutal attack. This bore no relation to any police policies or directives. Contrast with Steven Shaw, a man writing a thesis on the police, who was in contact with the Manchester City Council Police Monitoring Unit and was part of the defence campaign mounted to help those students charged with public order offences following demonstration clashes with the police. This defence group were making cogent criticisms of police behaviour and tactics at the demonstration; the police were under attack. The silencing or intimidating of one involved in criticising the police would not be mourned or opposed in principle by either the police organisation or individual officers, (with their previously demonstrated hypersensitivity to criticism), particularly if they believed their actions in policing the demonstration were justifiable, and that harm might result to colleagues as a result of the students' allegations.

If it is accepted that the two men who pursued Shaw were police officers, their behaviour can not be comfortably explained by symplistically pigeon-holing them as 'rotten apples'. Their surveillance of Shaw, detailed knowledge of his movements, examination times and so forth, and the detailed knowledge about one of the other threatened students, Sarah Hollis, shown by her attackers (which even stretched to knowing which hospital ward she was due to be staying in in a few days' time) (see Walker, 1986, p139), indicates a more co-ordinated approach than can seriously be attributed to two individuals. Walker comments; 'We have no way of knowing whether an organisational base already existed to protect these officers. The fact that Steven Shaw's flat was burgled

and papers stolen within four days of the demonstration leads us to suspect that an organisation of some complexity already existed. This type of organisation which exists within, but is independent of the structural hierarchy of the broader police force, has been recognised for some time as a 'firm within a firm'. An organisation which has different goals and objectives from that of its parent body, but which the parent body 'allows to grow' because some of its broader objectives overlap.' (Ibid, p94.)

This unsettling episode reflects how powerful and pervasive police cultural values can be, and the extent to which individuals within the police can behave illegally, unhindered and implicitly supported by senior officers. In the Shaw case, the police hierarchy defended its men not by a thorough investigation of the allegations to try and establish their innocence (even though the Avon and Somerset and South Wales police were brought in by the Police Complaints Authority ostensibly to do this) but by attempting to first discredit, and finally to criminalise, the complainant. Shaw eventually left Britain because he feared for his safety. The Guardian commented 'In recent months senior members of Manchester police have been involved in what appears to be a smear campaign to undermine Mr Shaw's credibility. It has been suggested to The Guardian that the severe injuries he received in an assault last year, including cigarette burns on his face, could have been self-inflicted.' (The Guardian 8.10.86.)

Finally, although three policemen were charged with offences at the demonstration, eight other cases of assault on students remained unresolved because the inquiry failed to identify those policemen responsible and so could not charge them. (The Guardian 27.2.87.) Most galling of all however, was that the DPP had decided to prosecute Steven Shaw and another man for allegedly trying to pervert the course of justice. (Ibid.) This appears to be a short-sighted, perverse and mean-minded decision. Shaw, for obvious reasons, did not make

a formal complaint to the police, but this surely can not be a reason why his allegations were not thoroughly investigated since they subsequently became very well known. The Deputy Chief Constable of Avon and Somerset, who led the internal inquiry into the policing of the demonstration, said 'We have not received any complaints of this nature. ... But I can't imagine why any policeman would want to do these things. It will certainly have no effect on my inquiry.' (The Guardian 22.7.85.) Because he could not imagine why a policeman should do such things is, of course, no guarantee that they did not happen, but such opinions hardly show fellow policemen treating the inquiry with 'an open mind'.

The theme of institutional covering-up was continued when 'The Observer' reported that the key finding of the Police Complaints Authority's investigation into the policing of the 1985 Manchester University demonstration against Leon Brittan was 'censored by Whitehall'. (The Observer 1.3.87.) 'The finding - which would have seriously embarrassed both Mr Brittan and James Anderton, the controversial Chief Constable of the Manchester force - was that senior officers seriously mismanaged the peaceful demonstration which led to police violence and student injuries.' (Ibid.) This was apparently suppressed at the 'virtual insistence of the DPP's office, who claimed that 'the report's broad findings might prejudice the future proseuctions of the three police constables as evidence of high level mis-management might enter their trials.' (Ibid.)

Despite the PCA contesting and rejecting this view, it prevailed. Clearly suppression of harmful facts can be acceptable at all levels in policing, but the brooding influence of political power can be detected in the background here. The charges against students and policemen and the surrounding controversy arose after all from the policing of a political demonstration against a senior government figure. If policing measures for the protection of the Home Secretary were found to be excessive and brutal then this would reflect

directly, and poorly, on the government, and it must be remembered that Brittan had spurned the offer of entry to the University covertly through a side entrance, which would have avoided the necessity for such police behaviour and tactics.

ii. John Stalker's RUC investigation

The theme of organisational police solidarity and covering up at high levels again surfaces in what has been christened by the media as 'The Stalker Affair'. A brief examination of issues arising from it is instructive when discussing police solidarity, for it is this occupational trait of the police that lay behind the serious allegations of covering-up and police misconduct that were being investigated by Stalker. John Stalker was the Deputy Chief Constable of the Greater Manchester police, who had also been involved in the Steven Shaw incident; he rejected the findings of an independent inquiry into the matter by Manchester City Council, which was critical of the police. Ironically he too was soon to learn how imperturbable and unco-operative the police organisation can be when one is trying to establish information that might prove damaging to it. Stalker's lately acquired celebrity (having published a book detailing the events of his inquiry) has seen him cast by the press as the wronged, independent and fiercely honest policeman. However, the Shaw episode demonstrates that even those policemen of Stalker's earnest and genuine demeanour, can play willing parts in the united and unyielding front that the police show to the public when under threat or criticism. Stalker's part in both the Shaw and the RUC cases reveals an inconsistency in attitudes. When briefed by the police themselves to undertake an investigation, he did so tenaciously and diligently, showing concern at police deviations from legality and the deep-rooted covering up of offences. His apparent failure to recognise these same themes, so evident in the Shaw case, and his unwillingness to tackle them then, must retrospectively be viewed as ironic. The contrast between Stalker's behaviour in

both cases is striking; the strength of his actions in the RUC case being inversely matched by his omissions to thoroughly investigate the Shaw allegations.

Stalker had been investigating the deaths of six men killed in November and December 1982, who had all been shot by the Royal Ulster Constabulary in Northern Ireland, and he appeared to be nearing a conclusion critical of the RUC when he was suspended from duty and removed from the inquiry. The tactics used by the RUC and their manner of deployment are important but their finer details are not strictly relevant here where the issue under discussion is police solidarity and police ability to cover up misconduct. The RUC operations do however shed light on issues relating to the use of firearms and deadly force, that will be examined in the next chapter, and further details of their dubious legality can be found in John Stalker's book 'Stalker' or in detailed newspaper accounts of the affair. (For example, 'The day they eaves-dropped on a death' - The Guardian 7.10.86, 'Sudden death in the dark' - The Observer 12.10.86, 'Killings that put public gaze on covert security' - The Guardian 16.6.86.) Suffice it to say here that the police shootings were certainly contentious - there was a suspicion that they were motivated by feelings of revenge for the deaths of two policemen in Ulster, who had been blown up by an IRA landmine on 27 October 1982, and their procedural legality was questionable.

The political situation in Northern Ireland presents immense and complex policing problems, which can not be broadly compared to the policing of mainland Britain. There are arguably greater pressures on the RUC than on any other British force, and they are literally (as well as for propaganda purposes) seen as being in 'the front line of the struggle against terrorism'. However, this does not mean that any findings about the RUC's internal conduct can be attributed to their uniquely beleaguered position, and there-fore be treated as inapplicable to the rest of Britain's police. On the contrary, it is a particularly suitable

example to demonstrate the possible effects of police solidarity. This is primarily because the hostility that generates solidarity is constant, undoubted and threatening to the RUC from certain sections of the community. Also, the police conduct alleged to have been covered up was consistent with police anti-terrorism policies and its end result would not cause consternation amongst senior police, even if the means used to achieve it may have done so. To draw out the implications for police solidarity from the Stalker affair it is necessary to quote from some of John Stalker's findings and opinions.

Firstly, it must be established that Stalker was not in Northern Ireland to '... investigate whether what politicians coined the 'shoot-to-kill policy' ever existed within the RUC; he was asked to examine why RUC Special Branch officers told lies about three incidents in which five unarmed republican men and one boy with no record of any republican or criminal involvement were shot dead in just under four weeks during 1982.' ('Stalker inquiry's central question is unanswered' - The Independent 5.2.88.) This shows that Stalker's initial brief was in fact more concerned with the ability of RUC officers to close ranks and lie about events - an issue at the heart of police culture and internal solidarity. Stalker himself has readily admitted that he did not uncover any formally articulated shoot-to-kill policy. (The Guardian 6.2.88.) Stalker's finding referred only to official policy, in the sense that he never discovered any clear directives explicitly stating officers must 'shoot to kill'. This did not mean that those groups of officers involved in the shootings did not hold a collective shoot-to-kill policy in practice. Indeed, the Observer claimed to have discovered details of what they termed the 'undercover British 'death squad'' that killed the six Irishmen in 1982: 'We have been able to document how in each case vital eye-witnesses were spirited away, forensic evidence removed and false stories told to ordinary members of the RUC 'under the Official

Secrets Act'.' (The Observer 12.10.86 - 'Ulster death squad secrets exposed'.) This squad was the RUC Southern region Headquarters Mobile Support Unit (HQMSU) who were nominally under the control of the Chief Constable, Sir John Hermon, but in practice 'They were not answerable to ordinary RUC officers and indeed were frequently ordered to lie to them. The only authority they recognised was a small group of men at Gough barracks, Armagh, who in turn answered only to Special Branch Chiefs at RUC headquarters - the HQ of HQMSU.' (Ibid.)

The binding together of police officers in Northern Ireland, as on the mainland, has prevented evidence about misconduct being gathered in the past. In 1970, Samuel Devenny died during riots in Londonderry after being allegedly beaten by police, but, 'A Scotland Yard investigation ground to a halt, blaming an RUC 'wall of silence'. No police officers were charged.' (The Independent 'Wall of Silence over deaths' 5.2.88.) Furthermore, at the trial of Martin McAuley, who had been injured in the hayshed shooting that killed his companion Michael Tighe, the judge, Lord Justice Kelly, expressed reservations about the credibility and accuracy of the RUC officers' evidence, whose original cover story had been proved false; 'In his judgement, Lord Justice Kelly expressed new doubts about the police evidence, ... He roundly condemned the regrettable introduction of false stories by senior officers and eventually decided to exclude all police evidence from his consideration and adjudication of the case. It was all tainted with lies.' (Stalker, 1988, p65.) Constable John Robinson (who was acquitted of the murder of Seamus Grew, one of the six killed) had also told the court that he had been ordered by senior police officers to tell lies in order to protect the nature of the special operation that had been mounted. (Ibid.) (Daily Express 1.2.88.) Clearly the falsification of stories by police was commonplace in Northern Ireland, and the role of the RUC Special branch in this was paramount. The RUC were warned that Stalker's investigations would destroy their carefully constructed security system that

involved different agencies (MI5, MI6 and Army Intelligence) as well as the RUC's Special Branch. (The Independent 5.2.88 - 'The tangled web of agents'.) Evidently the supremacy of the Special Branch and their ability to manufacture cover stories, where necessary, were deemed to be under threat. Although the workings of the RUC Special Branch may seem far removed from the issue of police solidarity, their involvement shows that solidarity is not just a cultural factor of the police but can be used as an instrument of official policy in important matters, to obfuscate the truth.

The police cover up that Stalker encountered centred around his attempts to obtain a tape recording of the shooting of Tighe and McAuley in the hayshed. Although the judge was unaware of it at McAuley's trial, and neither were the police who shot him, MI5 had bugged the shed as a possible arms dump, and had recorded the incident. Stalker realised that this tape, or a transcript of it, would reveal whether the police procedures had been correctly followed or whether the killing of Tighe was totally unjustified. MI5 promised Stalker their co-operation as initially had Sir John Hermon. However, Hermon refused Stalker's request for the tape saying it contained material classified by the Special Branch and therefore not for him to know. Stalker commented 'The Chief Constable, who had almost a year earlier asked me to undertake this investigation on his behalf, had now signed a letter that prevented me from doing just that.' (Stalker, 1988, p73.)

Stalker talked of the hostility he had felt from men, some of whom he felt had deliberately set out to obstruct his enquiry. (Ibid.) It would appear that such obstruction was also being carried out by the Chief Constable. The cover up appeared to have approval throughout the ranks. Stalker's appointment to investigate the shootings had been assumed by the police to be a 'safe' one - he was an ambitious Deputy Chief Constable who, it was assumed, would not be too

critical of the RUC, let alone come to politically embarrassing conclusions. This was to prove a mistaken view. Throughout the affair, Stalker was in contact with the editor of 'The Manchester Evening News', Michael Unger, who records: 'Hermon has tapes of the incident and always refuses to release them, says Stalker. The Government doesn't want them released as two Cabinet ministers (Hurd and King) might feel obliged to take responsibility and resign if the tapes reveal a cover-up of murder and the operation of a shoot-to-kill policy. The Anglo-Irish accord would fail. ... Stalker tells me that he had been on the Northern Ireland inquiry for about six weeks when the RUC and others realised that 'they had got the wrong bobby. Not only was I not asking the 'right' questions but also I was following up with tough supplementary questions which they never thought I would ask.' ' (Michael Unger's Stalker Diary - The Guardian 28.1.88.) The political sensitivity of Stalker's investigations demonstrates that the closing of ranks and cover-up of misconduct has a greater chance of success if that conduct accords with government policy. Without dwelling unduly on the political implications of the affair, it was reported by 'The Observer' that senior government officials in Britain and Northern Ireland had asked Stalker to 'whitewash' the RUC in his inquiry; 'Sources close to Mr Stalker have now made what is perhaps the most explosive allegation in the affair; that senior Government officials put pressure on him to draw back in his inquiry from discoveries which would be damaging to the RUC ... Suspicions are growing among politicians at Westminster that the Ministers and officials who were persuaded to remove Mr Stalker from the RUC inquiry are anxious to keep the investigation under way until Parliament rises for the summer recess and they cannot be questioned about their behaviour.' ('High level order to silence Stalker' - The Observer 6.7.88.)

Although the covering-up of politically serious issues appears to have little relevance to the internal solidarity

of rank-and-file policemen who cover-up for colleagues committing trivial offences, they are in fact two very different sides of the same coin. Police are willing to cover for their colleagues from both senior officers and the public, both when they agree with their colleagues conduct and even when they do not. Senior officers and management are also willing to close ranks and 'stonewall', denying information about illegal conduct if that conduct was consistent with police aims and policies. Police solidarity is ingrained and endemic at all levels of the force; it is an accepted tactic where police behaviour has been of doubtful legality. Police hypersensitivity to criticism, combined with their paternalistic 'we know best how to deal with certain elements of society, and if we occasionally transcend legality, then it's for the greater good' attitude, makes them reluctant to reveal details of their operations. This is true of all police forces, but can be seen clearly in the Stalker investigations, due to the particular difficulties faced by the RUC.

That police deceptions are deliberately covered by **official** police solidarity was graphically related by Stalker when he thought he was nearing possession of the vital tape. At a meeting with MI5 and Sir John Hermon in London, to try and obtain it, MI5 again declared their willingness to give Stalker information. Hermon, however, said the tape had been destroyed although a transcript existed. Stalker continues; 'He then dropped another bombshell, by insisting that my team and I, before I proceeded further, sign a form designed and used by his Special Branch as a declaration of secrecy. I coldly refused. This form had been signed by all the officers who had misled the CID investigators and the courts, and had been put forward as the legal reason for so doing ... (Hermon) said that he could not, and would not, divulge any information about the tape. He took the view that he, as Chief Constable, could not provide it unless specifically directed to by a higher authority. ... He was openly stating

that he would not provide evidence in his possession, even of possible murder, unless he was told to by the Crown that it was in the public interest to do so. He was, in effect, withholding information from an investigation he had himself commissioned.' (Stalker, 1988, p86.) The conflict between law and police ideology is encapsulated here, with legality the definite loser. That policemen who had consistently lied to the Courts, did so on the orders of the Special Branch, and that these orders were formalized by some form of internal quasi-official secrets Act, is a grave and worrying revelation. Is the signing of this type of form a normal police tactic, one that is only employed in Northern Ireland, or one that is used by the Special Branch on the mainland too? In effect, such a form is an official representation of the cultural norms that bind officers together into silence and secrecy - it shows official recognition of the usefulness of police solidarity.

Stalker was removed from his inquiry amid investigations, that proved unfounded and fruitless, against his own conduct. He said 'I knew I had nothing to fear from any fair investigation into me, but I had learned enough during the previous years to know that devious and lying policemen do exist, and that they can function without hindrance given the right conditions.' (Stalker, 1988, p109.) This is complemented by a senior RUC officer's quote to'The Guardian', he said 'There is a difference between lying, when you believe that the lives of your mates could be involved, and perjury.' (26.1.88.) Again, internal solidarity and loyalty are revealed as being prime motivations, strong enough to frustrate legal procedure.

To summarise briefly on internal solidarity; the main points are that it exists at two levels, both amongst groups of police officers who work together, and structurally, to protect the police institution from harm. Illegal methods used by officers will be tolerated and covered if consistent with police aims and policies. Reiss realised this '... one

police administrator, indignant over reports of undue use of force in his department, seemed more concerned that the policemen had permitted themselves to be observed behaving improperly than he was about their improper behaviour.' (Reiss, 1971, p154.) The police hierarchy know that misconduct occurs but are content to maintain occupational solidarity by lying to the public, and thereby preserving the police's good image. After the preceding digressions to illustrate aspects of how police solidarity can effectively cover misconduct (which has strong implications for police use of coercion), it remains to look at the other influential aspects of police culture and personality before analysing the reasons why police actually use coercion, in the next chapter.

C) CHARACTERISTICS OF POLICE CULTURE

Male dominance and machismo, alcohol, prejudice

The police culture is characterised by male dominance and macho attitudes. These are often reinforced by, and linked to, an emphasis upon drinking. Ability to drink is not only a indicator of male prowess, but is also used to test colleagues' trustworthiness and loyalty, and 'to symbolise and reinforce the links between the members of the group.' (PSI, Vol IV, p83.) The PSI found that fighting and violence, sexual conquests and drinking feats often cropped up conversationally, combining together into a kind of cult of masculinity. (Ibid, p87.) By-products of this 'cult' include prejudices, widespread sexist attitudes to women in general, and to women colleagues, and the common espousal of racist views and stereotyping. However, it seems that the holding of such views by some policemen does not indicate that they will be employed whenever they deal with women or ethnic minorities, resulting in unfair treatment. Policing's cultural values appear to be largely suppressed in everyday dealings with the public, yet this is no cause for complacency. They are capable of being invoked and used in

low-visibility situations where the police have control, and the suspect has no means of redress, and their existence is thus potentially threatening and not to be dismissed as harmless banter in the police canteen.

Inextricably entwined with macho attitudes is a collective endorsement by the police of the use of violence and coercion. The PSI, despite finding that fighting and violence were infrequent occurrences to most officers, found simultaneously that the idea of violence was central to the police's conceptions of their work and that many officers saw it as a source of excitement and glamour.' (PSI, Vol IV, p87.) 'Where comments about violence were partly jocular or facetious, they still revealed an interest in the subject, and showed that one of the chief ways in which police officers can boost their egos is by claiming to have taken part in violent incidents.' (Ibid, p89.) '... Some CID officers see violence as a way of showing their credentials to villains, who, they think, respect a show of force. More generally, it shows how ideas about sex, drinking and violence are linked together in a cult of masculinity which is thought to provide the key to the criminal world.' (Ibid, p89/90.)

The PSI stressed that these were attitudes to violence rather than references to occasions when an excessive amount of force was actually used, and that cultural norms required talk of violence rather than violent deeds. However, such prevailing attitudes create the conditions for the tolerance of excessive coercion. Officers using violence are not going to be condemned by their fellows, but may be looked upon admiringly. One American commentator has described the violent policeman as a charismatic figure, noting that their fellow patrolmen do not regard them as deviant, but rather see them as only doing what has to be done; 'Consistent rule-violators can be said to possess 'charisma' not simply because they defy established authority or unpopular rules, but because they symbolize a central feature of the 'working

culture' of ordinary policemen that violence is basic to police work, and that their departmental superiors are wrong in their view that it is hardly ever appropriate even when it might be necessary, and that the burden of justifying its use must rest on the patrolman employing it.' (Katz, 1974, p84.) Katz talks of the 'consistent rule-violator'. This approach is again tending towards the 'rotten apple' explanation of violent police deviancy. Yet although there are policemen more prone to use violence than others, the fact that police culture broadly endorses violence means that every officer will be aware of the cultural norms, and these militate strongly towards both groups of officers behaving violently, and the accommdation of an individual officer's violence.

The PSI tells how CID officers may be admired if, at best, they have a knack of talking to people and gaining results that way, and at worst, how it is the successful bully who is admired. The CID are also said to have their own preoccupations, such as the cultivation of a particular image of manliness that has little to do with the achievement of results by practical policework. (PSI, Vol IV, p64.)

That force, if used selectively on those vulnerable to it, can achieve results, is a basic belief of police culture. Sometimes this may be forgotten and force exercised instead with no particular goal, but as an expression of police power and as a direct result of the culture that makes a virtue out of macho behaviour. One reported example recently, combining the cult of drink and violence, came in November 1987 when a young man was allegedly attacked and severely beaten by seven off-duty policemen who had all been drinking heavily. (The Guardian 11.11.87.) Where police values do rely on violence it is inevitable that a grey area will develop between occasions when illegal force is seen to be justifiable or to serve some purpose, and when it is used 'recreationally' that is, without achieving anything relevant to police work.

WOMEN OFFICERS AND POLICE CULTURE

Another inevitable by-product of police machismo and the male dominance of the service, are the condescending and sexist attitudes towards women. Women in the police force today are still a clear minority, and their representation in the higher ranks of the force is sparse. Even in what is (falsely) supposed to be an age of enlightened attitudes towards women, the police force's limited use of WPC's and its lack of willingness to experiment with more women in the ranks characterises it for the staid, patriarchal and conservative organisation that it is. The archaic belief that women are simply not as suitable for policing as men, due to their comparative lack of physical strength, still holds firm, fuelled not by documentary proof, but the 'evidence' of anecdotal opinion. It is clearly a unanimous view throughout the police however, and to destroy it would require an unprecedented outbreak of tolerance and impartiality from within the force.

Jones (1986, p150-162) found conflicting attitudes between policemen and women on this issue; the policewomen surveyed felt that they were all well able to deal with violent situations and may even have proved more useful in defusing certain situations. However, over half of the policemen in her survey, both 'modern' and 'traditional', were united in their opinions that women were not better at defusing violent situations, and they conversely felt that women officers might make situations worse with their perceived inability to cope. Jones makes three important points that should be borne in mind (p159, 160). Firstly, that the actual incidence of violence in policing is low, secondly, that the Sex Discrimination Act (Section 7 (2) a) does not allow the allocation of jobs to men solely on grounds of strength, and thirdly, that the possibility of violence is treated 'matter of factly' by WPC's; it is not a matter of undue concern to them.

The PSI in informal conversations with WPC's, found that 'Most of them say that policemen are prejudiced against them, that they greatly over-emphasise the importance of physical strength in the job so as to argue that women cannot do it adequately, that women are effectively excluded from some of the more interesting kinds of work and that the men will not accept them as full members of the working group or as colleagues on an equal basis.' Furthermore '... the survey of police officers shows that 62% of policemen think 'Police women should not do the same work as policemen, but should specialise, for example in duties concerning women and children.' (PSI, Vol IV, p93.)

The male emphasis on physical strength may prove itself to be misplaced, however, and male reactions to incidents where violence is involved or threatened, often increase the problem. One disillusioned ex-WPC says 'If you go to a violent incident, the men expect you to wait in the background. It might be a good idea for a policewoman to go in and talk instead but if the adrenalin is flowing because they've driven there with blue lights flashing and sirens blaring it's very difficult to change mental gear ... I noticed they'd always go in with fists flying but 80 per cent of people won't hit a policewoman even nowadays, and react by feeling stupid and saying 'What are we fighting about?' Women can cool a situation when the male approach will often make it worse.' (The Guardian 7.10.87.) This is borne out by the PSI. One WPC told them how she had successfully dealt with pub brawls herself on many occasions, and how the fighters would be so amazed to see a woman involved that it would actually quieten them down. (Vol IV, p95.) Another WPC, answering the claim that women are not physically strong enough to deal with violent or threatening people, said that 'She strongly objected to the way the men dealt with people; they were often rude and 'physical' without cause and thereby provoked the violent behaviour which, they said, only they as men could deal with.' (Ibid, p96.) A woman detective

sergeant thought the involvement of male officers, particularly if they were 'physical types', could inflame and provoke some people, and lead to violence, whereas this would not occur if a WPC was handling that person. (Ibid.) These opinions are mirrored by American experience. A female American officer said; 'I've worked patrol for seven years and I don't recall being injured, other than for a few bruises. Women get into less physical confrontations than men do - we aren't necessarily offended if we don't get the last word, and in many cases having a woman present will calm the situation down.' (Quoted in McClure, 1985, p108.)

The WPC quoted in the PSI above, attributed her often successful control of brawls to the amazed reaction at being confronted by a woman police officer. This implies that the 'novelty' factor is one reason why WPC's are effective. By logical extension of this idea; it would only be because there are so few WPC's that they are treated with respect, and therefore any big increases in the number of women officers would see this surprise nullified, respect eroded, WPC's treated like policemen, and their ability to defuse situations blunted. These are the implications of arguing that a WPC's success is due to the suspect's surprise and the scarcity of WPC's, it can become, in effect, a subtle argument that can be turned **against** allowing more women into the police. Therefore, although the novelty of a WPC attending a violent incident may contribute to her successful resolution of it, it is preferable to see her success in terms of her womanhood, her gender, the different approach that women have to violence, and the unwillingness of many men to hit a woman. (The deep-rooted reasons why this should be so are beyond this study, and probably beyond most psychologists too, but since it seems to be treated as an established fact, it will be accepted as such.) But what if the violent suspect is herself a woman. Is not male strength an advantage here, if communication skills have failed and a WPC is as likely to be assaulted as a male? One enterprising and

practical American policewoman believed she was at a definite advantage over her male colleagues when dealing with female violence; 'A man knows he can knock a woman out with one punch, so he usually tries to restrain them - and she usually tears them up, with the clawing and the biting and all this. I prefer being a woman, because I'll walk right up and punch them, see? (quoted in McClure, Ibid, p111.)

Increased numbers of women in the police would not automatically mean there would be a reduction in forceful policing. This assumes that policewomen are incapable of abusing their powers, or are less likely to, and this may not be true; they may still be susceptible to police culture. Indeed, WPC's are equally capable of vicious behaviour and, in one recent incident where a WPC and PC were alleged to have assaulted a civilian ex-policeman, the WPC was said to have behaved most violently. (The Observer 20.12.87.) However, it does seem likely that recruitment of women would go some way to reducing police violence, and the sexism and machismo of police culture. If the numbers of male and female officers were broadly equal, then the exclusivity of the male group would be broken, and the audience for sexist, macho comments in the police canteen dissipated. Sadly, the police organisation are not adventurous enough to implement such sweeping changes. It does appear that more WPC's would have a beneficial reduction effect on the number of incidents when police resort to coercion, and there certainly seems to be enough weight in the findings to that effect to warrant experimentation.

The male idea that police women are unsuitable to deal with violent and potentially violent situations, and are better employed in the social service roles of policing due to their lack of physical strength is in fact a patronising 'red herring' and inconsistent with accepted police wisdom. It is richly ironic that although the male police establishment are keen to stress the proportionately few times when they actually need to use force, they still nurture an ingrained

opposition and scepticism about women's ability to do the job, purely on grounds of strength.

Police Culture and Racism

Aside from prejudices against women, another aspect of police culture has been identified as its racism. The PSI found that although some officers expressed racist views, they would still behave properly and politely when dealing with ethnic minorities, that is, it would not adversely influence their ability to police impartially, and that there was a distinction between words and behaviour. Nevertheless, 'although it has less effect on policing behaviour than might be expected, the level of racial prejudice in the Force is cause for serious concern.' (PSI, Vol IV, p351.)

The idea that police racism might be the fault of a few 'rotten apples' has been scorned recently by criminologist, John Lea, who comments 'It is difficult to see how a minority of active racists could set the expectations and culture for the group as a whole if their activities and talk did not correspond to more basic pressures at work within the police as a group.' (Lea, 1986, p152.) He adds that 'The dependence of police work on criminal stereotypes provides the framework for the emergence of a particular type of racism which consists in the **exaggeration** of the actual involvement of black youth in street crime as a result of police practices.' (Ibid, p162.) (His emphasis.) (Such police practices include the disproportionate numbers of black youth who are stopped and searched because the police feel they are more likely to get a result.)

Much has been written about the police and racism. It is a large topic in itself that will not be re-examined in any depth here, rather it is hoped to establish that racism is endemic within the police force and that this can have disturbing implications when studying police use of coercion. One former probationary PC left the police after suffering repeated racial insults (The Guardian 17.6.87), but he failed

in his claim for constructive dismissal. (The Guardian 10.7.87.)

The Police and Criminal Evidence Act 1987 met with police consternation when it included in section 101, a controversial addition that had been proposed by Lord Scarman making police 'racially discriminatory behaviour' a disciplinary offence, punishable by dismissal. Lord Scarman had argued that less specific offences such as 'discreditable conduct' and 'abuse of authority' were not enough, for 'unfortunately that will not do the confidence-building job among black people which is my concern.' (H L Debates, Vol 455, Col 1219.) Scarman's proposal was finally accepted after meeting stern parliamentary opposition, and was significant for officially recognising that racism did exist within the police force. However, it was boycotted by the police in England and Wales during its first eight months of operation. A survey by 'The Observer' established that after that time no officer had yet been charged with or convicted of, the new offence of racially discriminatory behaviour; 'According to one provincial police source, complaints of police racism are being diverted to 'traditional' discipline clauses because 'we don't want to give the force a bad name.' (The Observer, 'Police Race Boycott', 29.12.85.) Whether this is still happening today is unknown, but it showed yet again how the law was subjugated to the demands of police culture. Parliament may have forced the provision onto the police, but it relied ultimately on them for its success, and thus they have been able to nullify its effects. This seems further proof that attempts to control police behaviour by externally imposed regulations are unlikely to succeed if they are not backed by the collective police will. Reform of polie attitudes will need an internal cultural impetus if it is to have any effect.

Police racism is of importance when looking at police use of coercion because the black community often bear the brunt of violent policing methods. (See, Institute of Race

Relations, 1987, pages 17-20, 23-25, 76-79.) Furthermore, 'Nearly a quarter of all complaints alleging brutality are made by blacks or Asians (who constitute about 6% of the population). On the other hand, ethnic minorities and the unemployed or economically marginal are less likely to have their complaints substantiated. Correspondingly with this, blacks are more likely to claim knowledge of police use of excessive force on the basis of personal experience.' (Reiner, 1985, p129.)

D) Is there a definable police personality?

Can the sustainment of the police occupational culture, with its endorsement of violence, be explained in terms of a 'police personality'? Does the force attract a particular type of authoritarian recruit who already holds opinions similar to existing officers, or are policemen's views moulded by their job, group pressures and expectations?

One facet of the police personality that has drawn widespread agreement is their conservatism. This has been found by many different studies. Skolnick found policemen to be notably conservative emotionally and politically, and that they favoured the status quo and were suspicious of change. (1966, p59.) (See also; Reiner, 1985, p97-99.) A tutor at the Police Staff College in Bramhill notes that 'the police do hold a conservative and pessimistic view of society.' (Vick, 1981, p120) and explains the police's suspicion of change, and love of the established order in terms of their function. By definition, they are called upon to deal with people who threaten parts of established society, and the suppression of these people reinforces police commitment to maintaining the status quo and inevitably tends to colour their opinions about change. Societal change will become associated with difficulties in policing and therefore be opposed. This lies at the heart of police conservatism. Vick argues that disorder is built into society's foundations and is therefore beyond the long term control of the police;

'... maybe an appreciation and an acceptance that the resolution of these problems does indeed lie beyond their control would lessen a growing demand within the police for more repressive means for maintaining social control and social order.' (Vick, Ibid, p120.) Police conservatism in this sense perhaps results from exaggerated expectations of what they can achieve. This would certainly seem to be one of the reasons that lie behind another facet of the police personality, namely cynicism. 'Frustration of the expectation of fairness is likely to lead in the long term to cynicism - the doubting of any goodness in human nature and understanding of life as a game in which the cunning and the strong win whilst the gullible and weak deserve to lose. Unhappily, cynicism would seem to be an institutionalised value with the police service.' (Brindley, 1985, p57.) Police cynicism is also widely recognised (see also; Reiner, 1985, p90) and is talked about disparagingly, as if this was a bad failing of police officers. However, such an approach is unhelpful. When talking of 'cynicism' as an element of police culture and personality, should we not substitute 'realism'? By taking a pessimistic view of events surrounding them, and of human nature, are the police being so unreasonable? It seems a logical reaction to the pressures and unpleasantness of much of police work, to develop a cynical approach. Perhaps it is society at large, with our vague conceptions of justice, and utilitarian faith in the greater good, who are naive. Furthermore, cynicism can fuel an emotional detachment from the people involved that is professionally functional. If an officer were too easily swayed by the emotional arguments of protagonists in incidents it could reduce his effectiveness as a supposedly impartial decision maker. Surprise at, or criticism of, police cynicism is then founded on an idealistic and unrealistic view of policework, and seeks to make a vice out of what can prove a policing virtue. Instead of looking at police views as cynical, perhaps this could be

contrasted critically with wider societal views that are falsely optimistic and unrealistic.

If a 'police personality' is capable of identification (and common elements of it certainly are), can this knowledge be used to ensure that officers prone to violence are weeded out, or potentially violent recruits denied entry to the force? Some forces today (such as the Metropolitan Police), employ psychologists who can provide valuable counselling services. The West Yorkshire Police recently announced their appointment of a psychologist to assess potential recruits in an effort to reinforce selection procedures designed to discover and reject unsuitable applicants. (The Guardian 9.12.87.) This is an innovative use of psychology in policing, but one that looks flawed. Adlam (1981) details the two types of theory forwarded to account for apparent police authoritarianism. The first concentrates on the role and demands of police work, and argues that the filling of a social role **induces** and/or **accentuates** certain psychological characteristics that could generate an authoritarian outlook. (p154.) The second theory is that authoritarian individuals are attracted to police work. (Ibid, p155.)

If the second theory is true, then using a psychologist at the recruitment stage would indeed prove useful in assembling a future police force less likely to use coercive methods. There is some support for this view. Colman and Gorman (1982) found that '... the police force attracts conservative and authoritarian personalities, that basic training has a temporarily liberalising effect, and that continued police service results in increasingly illiberal/intolerant attitudes towards coloured immigration.' (cited in Reiner, 1985, p102.) Their findings were criticised by Butler (1982) who 'stresses that the control groups had a higher average level of education, which could be at least part of the explanation for the more 'authoritarian' police recruit attitudes. Butler's own sample of recruits did **not** suggest the police attract individuals with radically distinct value

systems compared with a matched civilian control group.' (Reiner, Ibid, his emphasis.)

It seems more likely that the 'police personality' is moulded by the experience of policing. Banton found (1984) that the great majority of policemen he had talked to had long been attracted to the police. Some had nurtured this ambition in childhood or whilst at school. (Banton, 1987, in Radzinowicz and Wolfgang (eds) p112.) What this means in practice is that these people probably entertained childish and idealised views of the police, sustained as they grew older by the romantic fictionalised images of policing. It would be interesting to know if their idealistic view of the police remained the reason that they wanted to join, or whether their perceptions of the force changed as they matured. If recruits did hold this idealistic view before joining, would it be shattered or proved correct? Research indicates the former. One American patrolman found that the liberal attitudes he brought to policework were inappropriate; 'It's really strange, because I've had a very liberal education, and I came on with very liberal attitudes, but I've found they **just don't work.** You've got to take a very firm stance against these people, because once they've fronted you off, you've lost your effectiveness - you might as well pack up.' (Quoted in McClure, 1984, p103.) When a new recruit joins the police, he soon experiences the 'reality shock'; a realisation that things are not run as he had thought; 'The rookie begins with faith in the system. He tries to follow the book of rules and regulations ... He is chastised by his colleagues for being naive enough to follow the book. Gradually he learns to neglect the formal rules and norms and turns elsewhere for direction. Individual interpretation replaces the formal authoritative dictum of the official book, and the young policeman is an easy prey to cynicism.' (Niederhoffer, 1969, p52-3, cited in Bottomley, 1979, p95.) Police culture soon begins to become instilled in the recruit. Westley notes how 'secrecy and silence' are

amongst the first rules impressed on the rookie. (1970, p111.) Another feature of entry into the police is the need to prove oneself or survive informal initiation tests. These may be in the form of heavy drinking sessions, as described in the PSI, or they may be more sinister. Two Greater Manchester police officers recently resigned after allegations that young recruits were terrorised. This allegedly included the holding of a shotgun to the head of a WPC, and recently appointed constables being confronted by older officers armed with pickaxe handles and wearing ski masks; 'One senior officer is reported to have described the 'so-called initiation ceremonies' as having grown out of a degraded kind of macho behaviour by two officers who were no longer in the force.' (The Guardian 26.1.88.) This may be an extreme example, but it illustrates the principle that new officers are expected to prove themselves worthy by demonstrating their ability to assimilate and comply with police cultural values.

After the 'reality shock' of policing, there is likely to be an adaptation to newly acquired powers, manifested by a period of authoritarian, dominating behaviour. (According to officers interviewed.) This is recognised by American police and labelled as 'Turning John Wayne'. (McClure, 1984, p76.) One officer told McClure that this period is when the job begins to influence your behaviour to such an extent that you are behaving in an authoritarian way outside of working hours as well as when on duty. Also, during work, behaviour is characterised by abrupt, macho, swaggering behaviour. It is a stage, according to the officer, that all police go through when the realisation of their authority sinks in. (Ibid.)

American experience is valid here for there is said to be '... an essential congruence between the British and American findings.' (Adlam, 1985, p82.)

Niederhoffer found (1969, p160) that police authoritarianism does not come into the force with the recruits but is inculcated in them through strenuous socialization. Lee

added that authoritarianism is not a personality orientation that attracts recruits to the force, but a form of behaviour that the police organisation demands of its members. (1981, p50.)

The experience of being a police officer does, it appears, change one's personality. McClure spoke to an officer who found that his need to 'belong' and prove his worth to fellow officers, wrought personality changes that would have been unimaginable a year earlier. The officer said that there were reasons for this; '... police work ... is enormously attractive to any person who has held unexciting jobs in the past. ... I experienced a very profound adjustment period. For example, I think I'd always avoided the kind of racial prejudice so common in this and other countries, and yet within two years, I was using the same racial and ethnic slurs my peers were using. It was not just acceptable to do this, it was **expected** of you. ... I'd never had such awesome authority in my life, and for two years, there I was right in among them as one of the swaggering, boasting unprofessional cops.' (Quoted in McClure, 1984, p92/93.) This is borne out by Reiner, talking of the British police. He notes that 'Even if recruits were not especially prejudiced at the outset, the evidence on the impact of the experience of policing suggests they tend to become so.' (1985, p136.)

Policing does change the personality. Adlam found that the majority of officers in his study believed they had changed as a result of being policemen, and only a small number believed they had not been influenced by their police officer role, a sizeable minority confessed to a 'schizoid' nature, where the job was concerned. The changes were characterised by a widening of horizons and loss of naivete in the first few years, followed by greater independence, a hardening emotionally, assertiveness, and becoming more suspicious and cynical. (Adlam, 1981, p157.) Adlam found that the police do have something of a masculinity complex (Ibid, p161) but ultimately found the police personality to be a combination

of pre-existing attitudes in a recruit, with group values super-imposed; 'It does seem that, although there is great variation among individuals, a certain type **is** drawn to police work. Then, during their careers in the police service, certain features of the personality are developed. There is a broadening of experience, a hardening of attitudes and, perhaps, something of a separation from the community?' (Ibid, p156.) Psychological testing of recruits, although in theory is a possible way of weeding out potentially violent officers, would appear to be of little use for this purpose in reality, since tendencies to use force will be developed by an individual once he has been exposed to police culture, and thus whether he will behave coercively in the future can not be safely predicted at the recruitment stage.

It can be seen how great a part police culture plays in the police use of force. The pressure to bend the rules, the internal solidarity, and demeaning attitudes towards women and ethnic minorities, all contribute to a working atmosphere in which legality is secondary to the values of the police ideology. Skolnick noted how a 1960's English report into an incident of police violence strongly suggested that the structural and cultural conditions in the police force supported a violent response. (1966, p69.) Bordua was in agreement; '... isolation from the community without careful bureaucratic organisation, can result in police occupational cultures which can become private sub-communities heavily involved in illegally determining the distribution of law enforcement and the use of violence.' (1968, p177, quoted in Vick, 1981, p111.) As the foregoing examination of police culture (and related issues that are of relevance to the police use of coercion) shows, the conditions exist for, if not the encouragement of violence or force by the police, then certainly its toleration. Factors accommodating police coercion have been detailed, such as the dominance of police cultural values over legality. These all make unchecked police use of force possible; it now remains to analyse the

actual reasons **why** it is used.

CHAPTER FIVE

REASONS WHY THE POLICE USE COERCION/FORCE

The reasons why the police use force are many and varied, influenced as they are by environmental and cultural factors. The use of coercion will depend as much upon the situational circumstances as upon the personality of the officer involved. As was pointed out at the beginning of the previous chapter, most incidents attended by the police do not require the use of force and this must be remembered so as the following information is not misapplied and police use of coercion interpreted as routine. Some feel tht the police have been unfortunately and incorrectly seen as being increasingly violent when this is not the case. Vick,as a member of the Police Staff College, thinks that increasing liberal attitudes to violence have cast the police undeservedly in a poor light; 'The recognition of the necessity of force and coercion in order to maintain society has weakened. This is particularly so as the idea of the repugnance for violence in any form, including legitimate violence used to maintain law and order, has gained in strength' (Vick 1981, p.118). Have these liberal attitudes to violence resulted in increased criticism of the police when they behave violently, albeit legitimately? Could it be that changes in public attitudes and awareness of violence are instrumental in the reporting of police use of coercion, rather than them being reported because there have been inceases in the police use of force? Vick thinks that the liberal socialisation of the country has resulted in people expounding and holding liberal values which are hostile to the use of force, even where this is necessary. (Ibid). Even if this may be true of some (and it is strongly debatable) it is not applicable to this study which starts from the standpoint that use of force by police is both necessary and inevitable **to a certain extent.** The discussion arises over what that extent is, and the consequences that flow from it over whether that extent

can ever be effectively assessed.

Police and public perceptions of what constitutes violence will differ and this may not necessarily be the result of a 'liberalisation' of society, but a natural product of police-public encounters. Reiss comments; 'Citizens and the police do not always agree on what constitutes proper police practice....What citizens object to and call 'police brutality' is really the judgement that they have not been treated with the full rights and dignity owing citizens in a democratic society.... What citizens regard as police brutality many policemen consider necessary for law enforcement....for example, although many citizens see 'stop and question' or 'stop and frisk' procedures as harassment, police commanders usually regard them merely as 'aggressive prevention' to curb crime.' (Reiss, 1971, p.147,148,149). The use of force by a police officer in practice results from his subjective exercise of discretion. Although the statutes granting the police power to use force are couched in general terms demanding an objective standard, this is merely presentational, since the decision to employ coercion will inevitably besubjective. The vagueness of the statutes enable policemen to follow their instincts, untroubled by thoughts of disciplinary action for breaking the law. Because the legal standard is loosely drawn at 'reasonable force' without further guidance, trivial amounts of force can be used with impunity, even though illegal, since the likelihood of the victim realising the illegality and reporting it, is low. Because police have become accustomed to acting in this way, the fact that it may be strictly illegal having never been proved against them, will be forgotten, and they will genuinely believe they have acted correctly. Whatever, there is a definite gulf in opinions between police and public as regards force. The PSI survey asked about the use of

force in arrest. There was a congruity in their findings when in 14% of cases, people said the police had hit them, or used force in the process of arrest, and the police said there was a struggle in the course of arrest in 18% of cases. However there was a difference in perceptions about the use of this coercion; 'Most of the people who said, in the survey of Londoners, that the police had used force when arresting them thought that this had been unjustified (taking into account what they themselves were doing at the time). By constrast nearly all police officers thought that, where there had been a struggle in making an arrest, an appropriate amount of force (or too little had been used.' (Smith, 1983, Vol. III, p.92). The police clearly thought the force used was reasonable while the public often saw it as excessive. These appear to be irreconcilable perceptions. Who should be believed?

Not all criticism of police violence can be dismissed as a result of liberal attitudes reducing toleration of coercion. The police themselves actually recognise that there are those within their ranks who are prone to misconduct; '....the typical view is that there is a small but significant minority of police officers who show a pattern of repeated and frequent misconduct as regards rudeness and the excessive use of force. The general view is that there are more officers who are often rude than officers who use excessive force, but the number is thought to be appreciable in both cases.' (PSI, Vol.III, p.150). 'A fair summary of these findings is that there is widespread concern within the Metropolitan Police, about standards of police conduct. It is a common view that a substantial (but small) minority of officers persistently behave in a rude manner to the public and use excessive force'. (Ibid p.152).

Such a conclusion must not be taken as proof that it

is a few 'rotten apples' in the police who are responsible for most of the misconduct, for as seen earlier, this tends to absolve the rest of the police organisation from culpability. Reiner, talking about police corruption, (although his comments are equally applicable to cases of police abuse of coercion) notes that '.....police corruption stories are usually located within a 'one bad apple' framework, implying that the police **institution** remains wonderful.' (1985, p.141) (His emphasis). This is well demonstrated by an editorial in 'The Sun' newspaper commenting on the Holloway incident and entitled 'Fair Cops'; **'The behaviour of the police officers who beat up five youths in London's Holloway was shameful.** Rightly, their punishment was ten times heavier than ordinary citizens would have received. But let's not forget that they are jus five bad apples in a force of 120,000 hard working, honest coppers. **Thanks to the brave boys in blue, we can sleep safely in our beds at night.** (The Sun, 18.7.87, their emphasis). The rotten apple idea is flawed in that it attributes police deviancy to the individuals personality, thereby ignoring the influences of police cultural values and organisational practices; it is thus an unsatisfactory explanation to be trotted out each time there is an abuse of force. There are too many of these to all be the work of rotten apples, no matter how convenient a solution it presents. However, some officers are clearly more prone, and more willing to use coercive methods than others, and therefore there is some truth in the idea of a violent minority; there may be situational reasons (as well as personality ones) for this (for example, officers regularly patrolling inner-city and poorer areas will probably need to use force more often than their rural and suburban counterparts). Sweeping conclusions about 'rotten apples' should be avoided where possible whilst accepting the idea of a violent minority.

The two ideas although sounding similar, are quite distinct, one is plausible, the other functional and convenient for police propaganda purposes, but unsatisfactory as a wider explanation of police deviancy.

In policework there are many pressures. One of these is the pressure to achieve results. Although the police were criticised in the previous chapter for having muddled organisational goals, the individual officers perception of personal aims and achievements may be identified with the quantity of his arrests, cautions or suspects later found guilty in court. One way in which an officer can bring himself to the favourable attention of his superiors is by making many arrests, searches and so forth, and giving the appearance (or may be the reality) of diligence. Force may be used to achieve such results in these circumstances and thus the violent officer may be rewarded (by the official recognition of his work) for illegal behaviour. There is a risk that if one officer's name occurs too frequently, suspicion will fall upon him or her for being over-zealous, but in general, force may be used to achieve results, and to contribute towards the presentational appearance of good police work.

Force then, can be personally beneficial to the officer who uses it, and knowledge of this operates as an insistent pressure on the police, that must be borne in mind. This chapter also explores other important reasons that the police use illegal force. These may be functional for the criminal justice process, such as where force is used as a means to an end, for example, to effect an arrest or elicit a confession. Similarly, where the police use coercion punitively for the dispensation of summary justice it can be tenuously described as being in keeping with the aims of the criminal justice system, in that those adjudged to have offended are punished for their actions. However, it is no part of the police's function to judge

let alone to exact retribution. The other uses of coercion that are examined in this chapter do not even share this misguided alignment with genuine policing aims of the justice process. Coercion is used to gain and maintain respect and control; the police do not like having their authority challenged at any level, and will react with force when this happens. This relates to their internal solidarity - if one officer is challenged (verbally or physically) by implication, the authority of the whole police force is at stake and must be defended.

Contrary to the popular image of police work, much of it is very boring. Therefore the use of coercion can provide the relief of excitement and enjoyment. Some officers may also resort to force if they lack the skill to solve problems in any other way. This chapter briefly considers the problem of stress too since those officers suffering from it may not have the same levels of self-control as normal and may be prone to ill considered violent actions.

i. Force as a means towards an end

On many occasions the police will use coercion for some extra-legal purpose, whereas on others the force used will be illegal but it's purpose 'legitimate'. Thus, if the police use force to elicit a confession from a suspect of whose guilt they are convinced, which results in a conviction, then the ends are seen to justify the means. It is essential that such police methods are kept secret from the community however because '.....public acceptance of and trust in the police has been continually secured because, in the past they have been recognised as pursuing worthwhile ends in a morally acceptable manner.' (Richards 1985, p.21). The police probably enjoy the support of the community in their everyday functions such as arrest of those people who are causing problems or disturbance in some ways, or committing crime. Yet it must be a

source of great frustration for them that the public can be so fickle, for if there is any doubt as to whether the police are pursuing their ends in a morally acceptable manner, then the original offence (if relatively trivial) may be forgotten and public anger focussed instead upon policing methods. The working dilemma for police of when, and to what extent, do morally good ends warrant or justify ethically, politically or legally dangerous means for their achievement? has been labelled as 'The Dirty Harry problem' (Klockars, 1985, p55) after the streetwise fictional and film detective who was not averse to breaking the law to achieve his objectives. Klockars writes that ''Dirty Harry' problems can arise wherever restrictions are placed on police methods, and are particularly likely to do so when police themselves perceive that those restrictions are undesirable, unreasonable or unfair.' (Ibid, p63.) Furthermore, the policeman may sometimes fail to see that; 'the dirty means he sometimes uses to achieve his good ends stand in the same moral class of wrongs as those he is employed to fight.' (Ibid, p68.) The problem where force is used as a means to an end is that it is likely to succeed if that end is concurrent with police policies, as was demonstrated by the shootings that John Stalker investigated. The use of 'unfair' means by the police has long been recognised as a legitimate tactic by senior officers if it results in an arrest and charge, in all areas of policing. Police use of 'agent provocateurs' has laid them open to criticism in the past, and another example of this type of ploy was the recent setting of a thief trap in London; the police baited an unlocked van with empty cigarette boxes and video recorder containers in an attempt to lure thieves. When it was successful, the potential thieves were freed by the court after the police decoy tactics met with the disapproval of defence and prosecution lawyers, as well as magistrates. (The Guardian 21.1.88.)

The police use of violence against criminals is seen as justified because the criminal is regarded as deserving this

treatment as a result of his conduct and infringement of the law. Belief in the criminal's guilt is a pre-requisite for use of force by the police. (Westley, 1970, p130/131, p136.) This assumption of a judicial function by the police is obviously worrying. Even if the suspect is guilty, the police still have no power to beat him, and if he is innocent (and the police are assumed to be fallible in their judgements) then the use of force will not even serve any purpose to the police but will be counter-productive, and can damage society's faith in the police if it becomes public knowledge. Are the police right to invoke the public interest when using coercion? The coercive policeman 'is in a position where he feels that he is acting in the public interest and the ends justify the means. He is in a position where he is challenged to prove that the criminal is guilty where his own competence is at stake. Thus one policeman justifies police brutality in the following way; 'If we were damned sure that he was the guy who did it we wouldn't quibble over the justification for getting rough with him. ... You feel that the end justifies the means.' (Westley, 1970, p68.) This type of police approach was alleged to have been taken in the case of the six Irishmen arrested for the Birmingham pub bombings in 1974. After thirteen years imprisonment, the men's continued protestation of innocence and the unearthing of fresh evidence resulted in the case being referred to the Court of Appeal. Part of the major new evidence involved allegations that the police had severely beaten the men so as to force confessions from them. (The Guardian 5.11.87.) The seriousness of the offence and the resultant public outrage at the time would doubtless have led the police to believe that they had a public mandate to do this and that the ends justified the means. However, the allegations were eventually rejected by the Court of Appeal, although there remains conisderable doubt as to the correctness of this decision. (See, for example, The Observer 31.1.88, 'Injustice', 1.11.87, 'A lingering question of doubt', and

Chris Mullin's book 'Error of Judgement; the truth about the Birmingham bombings'.)

Westley noted that in many cases 'the police define the criminal as having abrogated many of his rights as a citizen, and they are therefore willing to use measures they would feel reluctant to use otherwise. The result is that the men, eager to obtain the prestige and having no compunctions about the criminal, feel that the end justifies the means. The group, and the men use, therefore, almost anything they think they can get away with to obtain a confession or to get the offender to lead them to the evidence.' (1970, p129.)

Although this study is not concerned specifically with confessions, this is the most obvious area of policing when the means of force justify the ends of conviction. Holdaway said that particular officers would be employed when difficult prisoners were questioned and there was a likelihood of force being used, (1983, p124) which again suggests certain officers are more violent than others. He also found that there were informal rules governing how much force should be used to elicit a confession - 'thumping a prisoner around' was not approved of, nor was hitting youngsters. (Ibid, p127.) The policemen that Holdaway worked with clearly felt they had done no wrong when force was used, as the following examples prove. One officer said 'There is a difference between giving someone a good slap and hitting just for the sake of it.' (Ibid p126.) The same man said; 'You might get four yobs knocked off and they won't say anything but you know they have done something. You have to pick out the one who has a low threshold to violence, and often as soon as you intimate to him that may use violence against him he sings. Then you go to the others and they start and you end up with the truth.' (Ibid.) The use of force to obtain confessions may prove harder now that the Police and Criminal Evidence Act has introduced the tape recording of police interviews, a move which although the police were initially opposed to and sceptical of, they have

now accepted favourably since it can be used to clear them of any malicious allegations of misconduct. Yet, the blame for police using coercion in confessions can not be laid solely with the police themselves, since the criminal justice system is structured to operating this way. Lustgarten notes that the English operate an adversarial, as opposed to inquisitorial system, and unlike some continental systems, the suspect in England is allowed to plead guilty; 'This gives the English police substantially greater incentive to seek to obtain a confession from the suspect; more generally and ominously, it would seem to be a constant pressure leading them to overstep their powers against those they 'know' are guilty.' (Lustgarten, 1986, p2.)

The use of force to elicit a confession will only succeed where the suspect is susceptible to it, as Holdaway's policeman, quoted earlier, recognised. It may be entirely inappropriate against some suspects; a Detective Constable remarked to the PSI that 'A good class villain knows full well that the moment you start hitting him, you've got a very weak case and that as long as he can take a beating, he's home and dry.' (PSI, Vol IV, p181.) The police themselves recognise that force to elicit information may sometimes be fruitless. This is of great importance, because if the police have a reputation for force or violence, people assume that it is used to elicit a confession and information. Although this is not agreed with at least it is understood why it is done. But coercion to induce confessions is certainly not the only, or even the most commonplace reason for use of force - there are many others. Strictly speaking, all police coercion is used as a means to an end, but the difference between forcing a confession, and the uses of force outlined below, lies in the outcome. A confession leading to a conviction serves one of the criminal justice system's aims, whereas the other uses of force facilitate personal police reasons that are divorced from legality.

ii. Punitive police coercion; summary justice

The police's wide discretionary powers often mean that their enforcement of the law shades into the making of laws; similarly it also enables them to adopt a (quite illegal) punitive function; '... the police station is often run by the officers who work in it as an informal court itself, where decisions to make proper charges can be waived in favour of a shout and a push before sending the victim back out with a warning.' (Benn/Warpole, 1986, p37.) The police may use the 'summary justice' for two basic reasons; firstly, as an expression of personal and organisational disgust at certain offences, and secondly, because by hitting or being violent to an offender, they feel that the social order disturbed by the offence has been restored and that justice has been done without the need to resort to the courts. This dislike of the cumbersome official workings of the criminal justice process is an important influence in helping the policeman to subconsciously decide whether or not to behave coercively. Suspicion of lawyers and legal procedure is also a feature; the police may feel that it is preferable to dispense some coercive 'instant justice' to a suspect they feel is guilty, rather than take him to court and risk him being freed due to the sophistry of his defence lawyer.

That the police are meant to be impartial enforcers of the law and investigators of crime rather than an agent of punishment can sometimes be obscured. The Chief Constable of Greater Manchester, a man seeminlgy synonymous with controversy, shared his thoughts on the matter recently; 'Corporal punishment should be administered so that they actually beg for mercy. They should be punished until they repent of their sins. I'd thrash some criminals myself, most surely. I could punish people quite easily.'
(James Anderton, quoted in The Guardian 14.12.87.) Although it is no part of a Chief Constable's function to air his personal views, which will inevitably betray prejudices and

opinions that will find as many in disagreement with as concurrent, these sentiments would probably have met with the approval of Manchester policemen, whose admiration and support for their Chief Constable remains unfailingly high. Whether a Chief Constable's official directives strictly influence his lower ranks' behaviour is debatable anyway, but such opinions can only renew a constable's belief that dispensation of punitive summary justice is right and that he will not be disciplined for it. Confusion of an outspoken individual's opinions with police policy is another potential consequence of Anderton's comments.

Although the police are not meant to be punitive they are deliberately and legitimately so in one respect; their use of the caution. This has increased sharply in recent times with one in four people charged with a serious offence cautioned by police rather than prosecuted in 1985, according to the Home Office. (The Guardian 9.9.86.) The official caution, although preferable to a court appearance, can be subsequently cited in court as evidence of previous misbehaviour, and is a fast emerging punitive option as an alternative to custody, particularly for juveniles. The police have been entrusted with administering the caution and are fulfilling an important punitive function by cautioning offenders and thereby keeping them out of the criminal justice system and prisons. In these circumstances it is easy to see why police coercion can be used punitively and tolerated. Coercion also has the effect of keeping the offender out of the criminal justice process, (although it is likely the coercive policeman acts not out of his wish to assist the overburdened system and public policy in this way, but rather because of his mistrust of the system,) and the distinction between two types of police punitive action, one official, the other not so, may seem pointless to an officer when both have the same result. Additionally, coercive summary justice avoids the frustration of paperwork.

To return to the first theme that police violence is used

punitively simply because it is felt that the offender deserves this. One constable said 'Speaking from a policeman's point of view it doesn't give a damn if we oppress lawbreakers, because they're oppressors in their own right.' (cited by Reiner, 1988, p88.) The PSI found that officers saw punishment as being part of their job, and consistent with its aims; 'Naturally, police officers are perfectly well aware that they are not, formally, supposed to be punishing people. They are equally well aware that, in effect, arrest is a kind of punishment, especially because of the disproportionately small gravity of the sentence of the courts in many cases. ... Most police officers see it as part of their own function to punish, at least in certain circumstances, and this is one of the underlying motivations of their behaviour.' (PSI, Vol IV, p75-76.) The official police punitive function has, aside from cautions, been broadened by the use of police cells to hold remand prisoners as an overspill from the crowded, full-up prison system. The use of police cells for these prisoners who are shuttled around the country to different stations wherever the police computer has identified vacancies, has created unwanted extra work for an already overburdened police service, and realisation of the extra duties prisoners entail may influence officers to dispense some coercive summary justice instead.

Punitive police coercion may be used for all types of offences, but it becomes more likely for some types of offence that are so abhorrent that they are viewed with unanimous disapproval. For example, 'a considerable number of police officers sincerely believe that some offenders (such as child molesters) ought to be beaten up at police stations.' (Smith, 1986, p87.) 'Summary justice' may be dispensed either in lieu of taking someone to court, or in addition to it. Westley found that his American police officers thought that violent treatment of sex offenders was justified as an expression of personal and public disapproval of the offender: Furthermore there was a high likelihood of

'getting away with it'; 'An additional factor making brutality safe is that the sex offender has no recourse and therefore tends to fear public exposure more than the beating.' (1970, p62.) The PSI recalled police talk of a sexual offender who had been beaten up, and one Detective Constable who said that it was foolish to beat up sexual offenders in police cells as they were bound to get beaten in prison anyway. (Vol IV, p181/182.) The officer thus only felt it wrong, or unwise, on practical grounds, not in principle. Police culture's treatment of sex offenders was highlighted when a police constable escorting an alleged sex offender to prison was alleged to have punched and kicked him, and then allowed three prisoners to do the same. (The Guardian 17.11.87.)

Reckless behaviour is also deemed worthy of police punishment even though there may not have been any victim - it is the possibility of harm that annoys the police. The PSI found officers in favour of 'giving a whacking' to people arrested after a dangerous car-chase because, as one said, it could have been your wife and children that were harmed.' (Vol IV, p188/189.) 'Whether or not suspects are actually beaten in these circumstances, it seems that a considerable number of officers think it acceptable that they should be and do not accept the minimum use of force as a working rule in this case.' (Ibid, p189.) This attitude is perhaps inconsistent with the behaviour of police drivers who respond to calls at high speed with little regard for safety, and indeed a number of citizens have been accidentally killed by the police driving in this manner.

The police feel equally strongly about offences where the victims are arbitrary as where they may be deliberately selected because they are particularly vulnerable and defenceless, due to old age, infirmity or childhood. They are ready to administer coercive summary justice if the offence is serious enough. This point can also be appropriately illustrated by the case of the six imprisoned for

the 1974 Birmingham pub bombings. As seen earlier, police brutality was alleged to have been used against them in order to elicit information as a means to an end, but it was also, perhaps primarily, used in a punitive capacity. The police believed they had the guilty men in their custody, and such was the atrocity that had been committed, that violence was alleged to have been used against them. In the original 1975 trial, Mr Justice (now Lord) Bridge dismissed the allegations of violence and conspiracy that had been made against the police, saying that if there had been a conspiracy it would have been on an unprecedented scale involving officers of all ranks, some of whom did not know each other. (The Guardian 29.1.88.) The naivete of this judgement and inherent trust in the police coupled with an ignorance of their working practices and values, are immediately apparent. Because something is 'unprecedented' this does not mean that it can not happen, (although it probably does to a reactionary judge), and even so, it is unlikely that police cover-ups of this proportion had never happened before; they probably have but have not garnered such attention. As seen earlier, the fact that all ranks are involved in a conspiracy and that they do not know each other counts for very little where the misconduct was consistent with police aims and policies. The internal solidarity of the police ensures a commitment to group values, irrespective of personal knowledge of the officers involved in misconduct perpetrated in pursuit of those values. This would certainly be true in the aftermath of a terrible crime.

The fresh evidence at the Birmingham bombing Appeal hearing came from one ex-PC and one ex-WPC who had been on duty at the time. Both confessed that they had been afraid to give their evidence of the brutality used against the suspects, for fear of retribution against them, yet one, Mr Thomas Clarke, readily admitted that 'he wanted them in hell' and had no complaints at the time. (The Guardian 5.11.87.) He described how the men had been 'hammered' and

deprived of sleep for two nights, but said emotions were running so high at the police station that 'I was surprised these men weren't lynched'. (The Guardian 6.11.87.) Mrs Joyce Lyons, the ex-WPC who changed her evidence to include details of police brutality and who was dubbed a witness 'unworthy of belief' by the Lord Chief Justice, said 'that in her five years in the West Midlands force there were certain officers who had a reputation for violence against people suspected of serious offences. 'You can't expect six men charged with that sort of offence not to be touched''. (The Guardian 30.1.88.) The gravity of the bombing offence led the police to behave punitively, and despite the illegality of this, it was probably in keeping with contemporary popular opinion. In the immediate aftermath of the bombings, and with the belief that the guilty men were before them, large sections of the public would probably have agreed with the coercive police behaviour, and those who did not could at least appreciate and understand why the police behaved violently. The police could with some justification believe that their punitive use of force was sanctioned by public opinion.

One other offence in particular, is likely to result in a violent police response, and this is serious assault on a police officer. Such an action enhances police feelings of solidarity and is viewed as a heinous crime that will not be tolerated. Assaults on police strike at the basis of their cultural solidarity - they all realise that it could have been them who was hit. Westley found that if the police were seriously threatened or a policeman was killed, then it was perfectly all right to 'go all out' on the person who did it. (1970, p131.) The police will always respond to calls with great speed if a colleague is in danger, and if there is a hint of physical danger to a police officer, it is likely that more officers will turn up to help, than would be necessary if this threat did not exist. Holdaway reports 'Hitting a person who has assaulted a colleague carries over-

tones of self-protection and punishment. These more instrumental features of the action fuse with the symbolism of restoring the virtual sanctity of the police, which is profaned by an assault.' (1983, p122/123.) 'The exchange of force, the redress of control, even when a suspect is unable to offer any further resistance, and the affirmation of police identity are crucial as instrumental and symbolic emphases are welded together at the end of a police fist.' (Ibid, p124.)

The police's need to maintain control of any encounter is also significant in their punitive use of coercion against those who threaten them. The police feel that if someone assaults a constable without being sufficiently punished, then he will have no compunction about doing so again, and the police's authority will have been undermined. As one officer told Baldwin and Kinsey (1982) '... whenever they start cutting up in this station - in any station - they've lost. If they take a swing at a cop it's fatal. That's the only time when it's a dead cert; and the idea is don't treat them gentle. The only reason is that if he does it and gets away with hitting a policeman, he goes up to court and gets fined £25 at £3 a week. That's no deterrent to stop him hitting a copper. The only deterrent is to hit him back fucking harder than he hit you and to let him know that it's not just one - there's two and a half thousand of us that'll keep on hitting him.' (p50.) This type of police reasoning is questionable - whether police violence will deter someone from defying them in the future is doubtful. Rather, it may prove counter-productive, it will sour that person's dislike and resentment of the police even further, and is no guarantee that he will not behave violently again. The above quotation also shows the police's implied dissatisfaction with the criminal justice system, which is the other major reason why they will use punitive coercion. This mistrust of the system's ability to reach a just decision extends as well to a cynical approach to some policing initiatives.

Community policing and the service orientated approach of police embrace what officers may see as the 'soft' side of policing, and there may be scepticism about the value of a conciliatory approach, as opposed to some instant justice.

Unit beat policing and the advent of technology have also affected police use of coercion, with the reliance on cars and radios reducing contact with the public and social skills. Younger officers do not meet as many people as they would have done several years before; they are not required to by the modern systems of policing, but this has left them relatively inexperienced and aggressive in their dealings with the public. Holdaway cites two older officers discussing this and concluding that unit beat policing and the ineffectiveness of the juvenile court system are root causes; 'I can tell you, I hear more young men around this station talking about summary justice than I've ever done.' 'Yes, I agree with you, but more and more young men here are hitting people, because they don't think it's worth doing them at court.' (1983, p89/90.)

The police's dislike of legal procedure and going to court may be for two reasons. Firstly, that it is a 'hassle' and that the time and energy expended on charging a suspect and presenting a case at court can be avoided by the simple expedient of punishing him or her by violent behaviour. Where the offence is relatively trivial, the police believe that their summary justice will be more effective than a small court fine. Note that even in such instances when the police believe that the court will reach a finding of guilty, their punitive actions save time and effort, and are seen as preferable. Secondly, the police may lack confidence in the judiciary returning what they see as the 'correct verdict', and feel that at least their actions have ensured that some justice has been done.

Skolnick noted the tension between judicial and police attitudes, between the courts as creators of rules and overseers of due process, and the police, who have to work within

this process and these rules; 'Thus, the police see the court's affirmation of principles of due process as in effect the creation of harsh 'working conditions' ... Their political superiors insist on 'production' while their judicial superiors impede their capacity to produce. ... the appellate judiciary inevitably comes to be seen as 'traitor' to its responsibility to keep the community free from criminality.' (1966, p228/229.) The adversarial nature of the system and the questioning by the defence lawyer may make the officer feel he is on trial. The cross-examination of the police can be particularly irritating for them if there is ever any inference of police misconduct, for then the focus may switch to police behaviour, which the police feel, detracts from the far more serious matter in hand, assessing the guilt of the suspect.

Arrest and presentation of a case for prosecution by the police, by definition indicates their belief in the guilt of that person (except in rare malicious prosecutions). Therefore, if the suspect is released by the courts and cleared, not only does he go unpunished when the police are convinced of his guilt, but his release reflects poorly on the police - they have lost a case and their judgement has been undermined, if not publicly rebuked. Westley recounts a case when the officers 'played it by the book' but failed to get a 'result'. They felt that 'In a sense they had been punished for not punishing the man themselves.' (1970, p78.) The policeman then, soon learns '... that the court is not a dependable institution of punishment, one that will uphold him in his judgements.' (Ibid, p80.) Skolnick cites a case of unlawful use of force in Sheffield in 1963, where senior officers had encouraged violence to be used and the detectives were under pressure to achieve results. The leading violent policeman told the inquiry that '... criminals are treated far too softly by the courts, that because criminals break rules, police may, and most do so to be a jump ahead, that force is justified as a last resort as

a method of detection when normal methods fail, and that a beating is the only answer to turn a hardened criminal from a life of crime.' (1966, p68.) Again, at the crux of punitive police coercion lies the conflict between police cultural values and legality, with culture emerging as dominant once more. Coercive police force becomes police violence when they punish someone they believe to be guilty, but this results from police confusion of 'factual guilt' with 'legal guilt', and their becoming discouraged when their arrests do not result in convictions. (Betz, 1985, p178.)

The police's ability to use coercion punitively also depends upon the victim of this force. If the police's judgement has been correct and the offender had committed an offence, he may remain silent about being beaten by the police in order to keep knowledge of his offence a secret. Reiss found that harassment of deviants played a prominent role in police uses of force, with force used against drunks being particularly common, and, less frequently, coercion used against homosexuals and drug-users; 'Since deviants generally remain silent victims to avoid public exposure of their deviance, they are particularly susceptible to the use of excessive force.' (Reiss, 1971, p159.) Westley found that the policeman frequently has to use force to quell fights in bars, fuelled by intoxication, and to subdue the drunk. (1970, p72.) However, 'the drunk, like the professional criminal, becomes a source of legitimation for brutality.' (Ibid, p73.) Suspects' lack of realisation that they have been treated illegally creates the opportunity for punitive police violence, if it is not too severe. People may not realise that a comparatively trivial thump or kick is illegal, and simultaneously may either not know how to complain, or else have no confidence in the success of a complaint anyhow. The poorly-educated lower 'class' are also susceptible to punitive summary justice for these reasons, but may accept it if guilty. Summary justice, although illegal, does not only save the police time and effort, it

also spares the suspect a court appearance and criminal record, and so will be preferable for him or her, where guilt has been established or admitted. Realisation of this fact is important for it goes some way to explaining how the police can use force punitively, regularly and without fear. This does not excuse police tactics however, which will probably be complained about vociferously if visited upon an innocent person with the confidence and knowledge to voice his displeasure.

It is somewhat ironic, and at odds with one of the themes of this thesis, that the police feel they need to use violence because they have no faith in the courts reaching the right decision, when it has been argued throughout that the courts and criminal justice process will overwhelmingly back the police where excessive force has been used, and indeed, that the system provides the conditions for the successful use of police force. However, closer inspection reveals a consistency; that the police sometimes have little faith in the courts refers largely to the magistrates courts, where most cases are heard. If cases fail here, it may be due to lack of police evidence, or indeed to the interference of legal arguments, but not routinely because the police used excessive force. The contention throughout has been that where excessive force is used by the police, the criminal justice system will tolerate and comply with it if it has a result consistent with criminal policy, and will only criticise it if it is 'unwarrantedly' excessive and damaging to police-public relationships. Curiously, the need to retain public confidence in the police is also the reason given when the judiciary refuses to acknowledge coercive and illegal police methods. The case of the six Birmingham pub bombers again illustrates the ultimate strength of judicial support for the police.

In 1980, Lord Denning, as Master of the Rolls, dismissed an attempt by the six men to take a civil action for assault against the police. He said in the Court of Appeal; 'If the

six men win, it will mean that the police were guilty of perjury, that they were guilty of violence and threats, that the (men's) confessions were involuntary and were improperly admitted in evidence and that the convictions were erroneous. That would mean the Home Secretary would either have to recommend they be pardoned or he would have to remit the case to the Court of Appeal. This is such an appalling vista that every sensible person in the land would say; It cannot be right that these actions should go any further.' (quoted in 'The Observer', 'A lingering question of doubt' 1.11.87.) This judgement is recognised as one of the most infamous and controversial of recent years. Denning was saying that the action must fail, simply because if it succeeded it would mean that the police had behaved illegally and used excessive force, and this, Denning felt, was simply not tenable. Remarkably, Lord Denning, now retired, has recently reiterated his faith in this idea and spurned an opportunity to correct his previous ill-considered pronouncement. Denning recently claimed that wrongfully convicted prisoners should stay in gaol rather than be freed and risk a loss of public confidence in the law, which was more important than deprivation of the liberty of one or two innocent individuals. (The Observer 21.2.88.)

Denning, although a judge with a high public profile, and bedfellow of controversy, is not alone in his defence of the police and inherent trust in them. Lord Justice Brown, one of the judges who heard the Birmingham case recently in the Court of Appeal said it was 'highly unlikely' that West Midlands police officers would have assaulted one of the six, as alleged, in front of officers from another force in another police station. (The Guardian 29.1.88.) The evidence of this chapter suggests that such a view is naive and unrealistic. As the PSI found '... for many police officers punishment and retribution are legitimately aspects of what they themselves do, and whatever the formal position, it is in practice difficult to separate police work from the

retributive objectives of the whole criminal justice system of which it is a part.' (Vol IV, p78.)

iii. Coercion to gain respect and keep control

That the police feel a need to maintain control of any given situation is part of their job; the whole premise of the 'thin blue line' springs from this philosophy; if that line is breached, if the police are disobeyed and ignored, the consequences for the community are potentially grave. This is official police thinking, and the need for them to maintain authority is seen as vital. Police authority is threatened by those who assault the police, and, as seen earlier, such behaviour will be met with a strong police response. The basis of police using coercion to keep control of a situation stems from the idea that if someone gets the better of the police once, it will pave the way for others to do the same, and their power and authority will be undermined. This coercion is ostensibly used as a deterrent, to show others that they can not take advantage of the police.

This is at the root of coercion to gain respect, and although the police have to be able to back their threats and powers with coercive action if needs be, it seems that the desire for respect and authority is often trivialised, and achieved by force in an authoritarian but unnecessary manner. The police think that respect should be shown for the uniform and can become irritated if they are 'talked back to' in a 'cheeky' way or insulted. Westley surveyed the men in the department he studied and asked when they thought the police were justified in roughing a man up? 'The evidence of 39% of the men giving disrespectful behaviour as a basis for the use of force supports the thesis that the maintenance of respect for the police is a major orientation of the police.' (1970, p121.) Holdaway records that threats of physical force are used as a means of control (1983, p97-98) as well as actual force. One officer explained how a suspect had addressed him as 'son' and so 'I had to hit him' to teach him 'the error of

his ways'; 'These prisoners are given a 'lesson' because they have been disrespectful; they have challenged police authority.' (Holdaway, 1983, p121.) The policemen who beat the man to death in Lancaster (see previous chapter) did so to teach him a lesson.

The PSI also found that the police were unduly concerned with the need to be dominant, not lose face and to keep control of any encounter; 'It is not true however, that the most effective method of keeping control is for the officer to be self-assertive or aggressively dominant, or that he needs to be preoccupied with the risk of losing face. (Vol IV, p66.) This desire for dominance again reflects the macho attitudes of police culture. A compromised conciliatory police approach would in many instances avoid the need for violence, but for the police peaceful resolution of an encounter is secondary to the overt maintenance of police control. The police should obviously be able to take insults and haranguing from the public without being provoked into forceful retaliatory action, and most doubtless can, however maintenance of respect is a needlessly trivial justification for responding coercively, but one that is rooted in police culture. Force to instil respect and teach a lesson is unfortunately likely to be the most common example of police coercion; the commission of an offence by the citizen is not a prerequisite but his attitude will help determine the result of his interaction with the police. This type of police force, although sanctioned by police culture is therefore not entirely a result of it, nor of the policeman's personality - the situational factors are important, such as the behaviour of the citizen, and the location. If he behaves defiantly the police will be able to affirm their authority coercively if there are no obstacles to them doing so, such as witnesses in the immediate vicinity.

Skolnick observed the police using force on a man because he had been disrespectful to them, (1966, p216, footnote 22)

and the courts have recognised desire for respect and authority as factors motivating the police to use force. In R V Jones (1978, 3 All ER 1098) (see chapter three) Peter Pain J, commenting on violent police treatment of the detainee said 'the police apparently decided that such defiance could not be tolerated.' In Flavius v Commissioner of the Metropolitan Police (1982, 132 NLJ 532) the complainant's leg had been broken by an officer after he had been put in a police van. The officer was said to have been irritated by what had happened at the Flavius' flat, and the noise he had been making, lost his temper and hit him on the leg. The officer thought that 'a sharp tap on the shins' might have 'a salutary effect' on the complainant.

Environmental factors are also likely to affect whether the police use force for this reason. If they are in a suburban area where police are largely treated with respect, they will be willing to overlook the occasional character who defies them, they would be less likely to do so in poorer inner city areas where police-community relations are not as co-operative and supportive; 'To the extent that (the police) are denied recognition, or are treated without respect by the public at large they will feel themselves obliged to coerce respect of a sort by the application of violence for personal reasons. In much the same way, an increase in the respect shown them should lead to a reduction in the incidence with which violence is illegally and improperly used.' (Katz, 1974, p80.)

Having stated earlier that the suspect's behaviour influences, and perhaps determines, whether police respond coercively or not, the temperament of the individual officer and his tolerance threshold is also significant. Different officers will have different conceptions of whether behaviour is sufficiently defiant to warrant a repressive reaction. As Reiss said '... it is still of interest to know what a policeman **sees** as defiance. Often he seems threatened by a simple refusal to acquiesce to his own authority. A police-

man beat a handcuffed offender because, when told to sit, the offender did not sit down.' (1971, p159.) The main symbol of disrespect for the police is the 'wise guy' (Westley, 1970, p123), the suspect who talks back, insults them and thinks he knows more than them. Surprisingly, Westley found that the presence of an audience may actually encourage force for 'The policeman who is insulted in front of an audience feels that his prestige is really dropping.' (Ibid, p127.) Clearly the maxim about 'sticks and stones' holds no sway with policemen.

Katz asked what institutional or organisational purposes were served by the continued use of violence by a few officers and its condonation and tolerance by their associates. He concluded 'violence by some renders the rest an unknown quantity; they may, or they may not, engage in violence, and this may deter the otherwise belligerent citizen from taking matters too far. This spares the great majority of policemen from having to make use of violent means, while affording them a measure of protection from the violence of others.' 'There is, then, a trade-off relationship between those who use violence and those who, indirectly benefit from their conduct; the majority, in effect, exploit the violent reputations of the few, in exchange for which they protect the violent against others - including their departmental superiors.' (Katz, 1974, p85.) A certain amount of violence then, seems to be not only inevitable or necessary but strategically advantageous. Police violence is thus not an irrational phenomenon, but one that serves group needs. The occasional and irregular use of violence by a few introduces an element of unpredictability into police dealings with the public and their superiors, and means they can not be taken for granted. (Ibid, p86.) Police violence to instil respect therefore, in theory, fulfils a wider function and is of benefit to other policemen. The police however seem oblivious to the fact that violence often begets violence. Westley described how officers expecting excuses,

argument and evasion when they stopped suspects would 'act tough' first in order to gain respect. (1970, p59.) This may be termed pre-emptive aggression, and is clearly used with the intention of inducing subordination in the suspect, but the wisdom of such an approach is open to question for it may have the opposite effect, and set the tone for the rest of the encounter as a violent and hostile one.

iv. Coercion as excitement

That police violence or use of force can be interesting, exciting and enjoyable is another reason why it may be used. Despite the glamorous image television, film and fictional portrayals of policing have furnished upon the job, much of it remains boring and routine, particularly now that paper-work has increased after the Police and Criminal Evidence Act. 'The importance of boredom and aimlessness is very much obscured by most popular treatments of police work, whether in fictional or documentary style.' (PSI, Vol IV, p52.) This is not the view of all policemen. One American officer who spoke to McClure said 'patrol is definitely the most exciting part of the job. Not that it's always exciting, but what interests me is the fact that every second has the **potential** of being exciting ...' (his emphasis, McClure, 1984, p102.) However this seems to be a minority view. The PSI found that the overall boredom of the job meant that car chases were entered into with great enthusiasm and over-exaggerated responses when they occurred, which was rarely. (PSI, Vol IV, p52-54.) The chance to use a bit of force and violence is also comparatively rare, and it too can brighten up the job. Holdaway describes (1983, p130-132) the hedonistic nature of the lower ranks where violence is concerned, and their enthusiasm when the prospect of a fight was announced over the police radio. He points out that physical force is not just used by the police in furtherance of the state's aims but is used to enhance features of policing, such as action and hedonism, that appeal to the

rank-and-file's, and police culture's perception of 'real police work'.

The PSI noted that the police found the possibility of violence attractive; 'The prospect of a violent disturbance or a riot is something that is certainly found interesting and exciting by many police officers, though if they are in small groups they may not look forward to it through finding it too frightening. However larger groups such as immediate response units certainly look forward to disturbances and, in fact, tend to find anything else boring by comparison.' (Vol IV, p55.)

The boredom of policing and relative excitement of violent behaviour was probably a factor in the police assault on the five youths in Holloway. When the men in District Support Units (DSU's) were called out, it would probably get the adrenalin going, and the men keyed-up and prepared for action. If, upon arriving at their destination, they were not needed, or the situation had been defused, it would leave them frustrated, with pent-up energy and emotions. This can all too easily lead to over-reaction when they do get a chance to exercise their authority. (According to serving police officers.) The DSU had been abused by Metropolitan police officers and its original intentions thwarted. The eight members of a DSU were meant to be dropped off by the transit to patrol in different areas, but to always be ready to rejoin the group if a call for support came from another area. However, lack of effective supervision enabled them to all drive around in the van and to effectively hunt in a pack. (The Guardian 18.7.87.) Their response could sometimes escalate the seriousness of problems they attended. For example, the editor of the 'Police Review', Brian Hilliard, said 'A single police officer called to a pub brawl would probably exercise discretion and patience and resolve the situation peacefully, if possible. But a drastically different outcome can result if a team of police officers go in together. (Quoted in The Guardian, Ibid.)

It seems that the possibility of excitement was the reason behind the Holloway assault. 'When earlier that evening (the police involved) had been taunted by youths at a nearby fair they resolved corporately to extract some revenge, and to alleviate the boredom of what had turned out that day to be a double shift for most of the officers aboard the van. The five youths they encountered near the Holloway Road became arbitrary targets of their frustration. (The Guardian 18.7.87.)

There is a danger with specialised units, such as DSU's and the old SPG, of increased use of force, since much of their work will be exciting by definition because they are called upon when incidents escalate in seriousness. Therefore, they may go out in the expectation of meeting, or needing to use violent behaviour, and are more willing to use force as a means of dealing with problems.

v. Lack of skills and stress

Policemen may resort to using coercion when they lack the skills or initiative to solve a problem in an alternative, peaceful and legal way. This is true of confessions, where force is used not only as a means to an end, but is used because the interviewer has not got the ability to achieve his objectives in other ways. The PSI said 'it is extremely important to recognise that a lack of skills may be the main reason for breaking rules ...' (PSI, Vol IV, p230.) Modern technology has contributed to the erosion of the emphasis on communication that used to underpin policing. A police telephonist told Holdaway 'Since the old personal radio (PR) came in I think that instead of talking their way out of trouble like the old coppers did and getting by that way, they just pull their truncheons out and shout for assistance on the PR, they don't talk their way out of it at all. They just ask for assistance and get their truncheons out.' (1983, p90.)

Younger policemen and probationers are more likely to use force as a substitute for police skills when their lack of

experience means that they may not yet have acquired them. To this end, there may be some truth in the idea, or excuse, that violent police actions are often the result of inexperienced young officers who overreact to problems. This is consistent with the earlier finding that officers go through an authoritarian phase, or 'turn John Wayne', when realisation of their power becomes apparent and they may be satisfied to use coercion to solve problems rather than attempt to use other methods.

John Wayne's name is also invoked to describe police unwillingness to admit they are suffering from stress. A television programme explored what is called 'Police Stress - The John Wayne Syndrome' (transmitted 9.3.87 by the BBC). Its premise was that stress-related pshycological illness is an occupational hazard of policing, that police officers face many great pressures, and often suffer from stress. However, the macho stereotypes of police culture make officers unwilling to recognise this and they may refuse to accept it. This does not prevent the build-up of tensions, however, which may be manifested in riot style situations and other incidents, by the police officer over-reacting, using excessive force, and generally coping badly. There would seem to be some truth in this; in an article asking for the Police Federation to take the lead on stress, an officer states; 'One of the biggest hurdles we have to get over is the 'macho' image; in all honesty how many of us feel it is important not to show fear or upset to our colleagues.' (Westwood, 1985, p52.) One of the officers who had been present at the Holloway incident, but who denied taking part in the assaults was accused in court of being 'quick on the truncheon draw' and someone who 'got his retaliation in first.' (The Guardian 24.6.87.) He was said to be 'volatile and aggressive' after being stabbed in 1983, since when he he had undergone a character change and was still seeing a psychiatrist about nightmares over the stabbing. (Ibid.) A police constable who hit a teenager in the face in the police

cells in Cirencester admitted the assault but claimed he had been suffering from stress at the time. (The Guardian 26.3.87.) Stress can cause violent police reactions and use of excessive force, but the number of occasions when this is so should be relatively few.

Police stress is partly caused by the potential danger of the job; 'Although police officers do not talk about it much, fear of violence and dislike of the stress associated with it are also important influences.' (PSI, Vol IV, p90), however, interestingly 'Research shows that most police officers feel the major source of stress in their lives comes not from their work 'on the streets' but from inside the police station.' (McKenzie, 1987, p16.) Indeed, officers have identified sources of stress arising from the way in which the organisation is run far more readily than stressors inherent in doing the job itself. An ACPO working party on stress pointed to management styles that were autocratic, uncaring, unconsultative and unduly critical. (Brindley, 1985, p58.) Perceived public hostility can also be a source of tension and stress for police officers. The importance of stress and its debilitating effects on police performance have only started to be appreciated recently, yet it is vital that officers suffering from it are identified and encouraged to seek counselling. Again, police culture's macho emphasis is an obstacle in the way of an enlightened approach to stress but this is hopefully a barrier that is slowly being taken down. Of all the reasons given for police using excessive force, stress is the only pathological one, that if identified, is entirely preventable.

One factor above all others arguably led to the perpetuation of the cosy imagery of the traditional British bobby that in turn fostered the myth of a 'golden age' of British policing; the unarmed state of the police. This era of the 1940's and 50's is now reflected on fondly by those who feel that the standards of both police and criminals have since slipped alarmingly. Talk of criminal standards is not as oxymoronic as it may seem, for although the police were presumably then no more popular than they are with today's lawbreakers, neither were they subjected to such serious threats to their well being as they are now. If the popular image of 1950's society (favoured by films such as 'The Blue Lamp') is to be believed, then the criminal code of conduct in that period did not extend to shooting policemen, an act viewed with the same abhorence by 'villains' as by the wider law-abiding community. Indeed, the concept of criminal conduct deteriorating and becoming more dangerous is at the crux of the topic of police and guns since the increase in the police's carrying of guns and use of them is justified by necessity in the face of increasing armed crime. This chapter seeks to explore the truth of this superficially simple explanation for the increasing police issue and deployment of firearms, and whether or not more armed police are likely to result in a safer, more peaceful society, whether the partial arming of the police will lead to more violence and prove counter-productive, or whether it is necessary as a safety measure to protect officers irrespective of its effect on crime rates. The law relating to police use of firearms is considered to see if it provides clear guidance to the armed officer, and where necessary, adequate accountability to the victims of police shootings, whether they be offenders or mistaken innocents. The chapter confines itself to firearms use in routine crime related matters rather than their use in controlling public order

situations.

The British police can be contrasted with police forces in the U.S. where officers are all armed and likely to come across armed offenders more often than their British counterparts, due to the lax U.S. gun laws and the widespread proliferation of privately owned guns. The thought of the British police openly carrying guns in the streets is anathema to traditional British conceptions of policing, and is as yet not a common sight, although armed officers can now be seen patrolling places such as Heathrow Airport in a deliberately high-profile manner designed to deter acts of terrorism. Is the arming of the police in British cities always a response to crime or is there an element of deterrence to its would-be perpetrators? Is arming the police a reaction to criminal trends or a taking of the initiative in the 'fight against crime'?

The quandry facing the arming of the police and to what extent this is desirable is encapsulated in the repercussions of the shootings at Hungerford, Berkshire in August, 1987. The police were the subject of both praise and criticism following this incident and questions were raised about the lack of a quick armed response. This desire to have armed officers readily available in case they are needed does not rest easily with the historical reluctance to arm the police, and highlights the widespread hypocrisy that often surrounds discussions of this issue. Although guns may be issued for the benefit of society at large, at what point does the potential infliction of harm by the state on individuals cease to be morally justifiable and become excessive and unwarranted force? For example, if firearms are used in public order situations to discharge rubber and plastic bullets(which are capable of causing serious injury or death), can guns still be defended when their use and possible victims are arbitrary as opposed to when they are deployed in order to apprehend someone against whom there is evidence of criminality and who is a danger to the public?

CHAPTER SIX

POLICE USE OF FIREARMS AND REASONABLE FORCE: PROTECTIVE OR OFFENSIVE?

The propriety of shooting armed and dangerous criminals is often questioned by those who feel that there may have been a less violent way to resolve the arrest, yet overall there is usually little sympathy for the victim killed or injured by the police in the course of carrying out a crime. Alternatively, when the police mistakenly kill or maim an innocent victim, they face considerable hostile criticism. When the guns of the protectors are turned on the protected albeit unintentionally, there is cause for concern, yet it is not likely that the more armed policemen and women there are, then the greater is the potential for accidental shootings? There is an inconsistency in public attitudes towards police gun use; , people welcome its perceived benefits but not its disadvantages, but they can not have both; the public wishes to 'have its cake and eat it', which places the police themselves in an awkward no-win situation.

Increasing police issue and use of guns can not be satisfactory if not accompanied by tangible decrease in crime, or more specifically, armed crime unless they are used to protect the lives of officers and are thus defensively issued when the offender is potentially dangerous or armed and poses a threat to life. Yet where in an incident the involvement of guns is initiated by the police, it is they who are setting the boundaries of reasonable force for the ensuing encounter and, as has been seen in earlier chapters, the distinction between force used in self-defence and that used to legitimately apprehend a wrongdoer is often blurred. The major worry and problem with guns is that the police exercise of self-defence and 'reasonable force' can amount to summary execution for the offender or a victim of mistaken identity. It is therefore essential that the issue of police gun use received careful and prudent consideration and public vigilance to try and ensure it is controlled; it is surely too important to leave it to the subjective self-regulation of the police.

a. The law governing police use of firearms

It is quite clear from present legislation that killings

by the police can be legal and 'reasonable' if they result from a shooting. Although conservative reactionaries may feel that someone shot in the course of carrying out an armed robbery invites and deserves such a death, this is not a view that accords with jurisprudential principles, and is surely too severe to be seriously entertained as a valid retributive function of the criminal justice system! To reduce and translate the major objections to police into popular terminology, the police have no right to act as 'judge and jury' and deprive someone of their life. However, words must be chosen carefully here, because although they have **no right** to kill, they can do so lawfully. Is it wise that the law surrounding police use of lethal force can presently be argued to be reasonable in the circumstances? or would it be preferable to have a different set of laws regulating gun use, perhaps based on conceptions of minimum force?

It has been observed in earlier chapters how little legal guidance there actually is concerning the parameters of police coercion, and this is doubly true of the ultimate coercive power, namely, guns. Remarkably, the Police and Criminal Evidence Act made no allusion to police use of firearms at all; this was surely an oversight since the Act was designed as a consolidation of police powers, of which the authority to use guns is an increasingly important one. The result is that the police's gun use is still largely unregulated externally and unaccountable to the public unless something goes badly wrong. The stated intention behind PACE 1984 was to balance the police's powers with procedural safeguards to protect against abuses of power. This principle of balancing powers with safeguards at statutory level did not extend to police gun use, which is again inconsistent when compared with force policy as a whole; it seems that firearms are regarded as a separate part of policing altogether when it comes to legislating for their use. There are, it is true, a wealth of internal

police standing orders and regulations governing the use of guns, but these are of little legal value although they can be used as the basis of a disciplinary police charge if disobeyed. At the moment, the police's use of guns is covered by section 3 of the Criminal Law Act and section 19 of The Firearms Act 1968. Section 117 of PACE relating to reasonable force does not have any bearing on the matter since it refers only to powers conferred by that Act.

Section 19 of the Firearms Act 1968 provides; 'A person commits an offence if without lawful authority or reasonable excuse (the proof whereof lies on him) he has with him in a public place a loaded shot gun....or any other firearm (whether loaded or not) together with ammunition suitable for use in that firearm.'

The armed police officer authorised by his superiors clearly has the requisite lawful authority necessary to carry a gun. At this stage, the individual responsibility is clearly identified with the collective police responsibility, yet this situation quickly changes if the officer should actually discharge his gun, in which case the officer alone is responsible for his actions. All officers trained in the use of firearms are aware of this throughout and it is stressed in the Home Office guidelines on the use of firearms under the caveat 'Individual Responsibility'; 'The responsibility for the USE of the firearm is an INDIVIDUAL decision which may have to be justified in legal proceedings. REMEMBER THE LAW. REMEMBER YOUR TRAINING.' (their emphasis). This official disclaimer of the armed officer may seem somewhat harsh, particularly as they are urged always to remember their training. If an officer shoots someone, whether intentionally or accidentally, yet has followed his or her training as far as possible, is it fair to that officer to lay the burden of blame solely with him or her if prosecution results? The guidelines enmesh the ideas of personal responsibility with official training, yet are saying in effect that any shootings that go wrong and result

in legal proceedings are the fault and failing of that officer concerned, rather than his training.

This curious situation has the possible presentational advantage for the police force of being able to blame an individual and by doing so, implicitly absolve the police institution from responsibility whenever something goes wrong. If this is the intention, then it can not be said to have worked. Indeed, police shootings of innocent people, notably those of Steven Waldorf, John Shorthouse and Cherry Groce have aroused such widespread concern that the police force per se are strongly criticised, and the public feelings and censure appear to be centred not on the individual officers themselves, but on police firearms policies. All three people were shot mistakenly; , Waldorf one afternoon in 1983, whilst sitting in his car caught in the London traffic. Both John Shorthouse, (a five year old boy) and Mrs. Cherry Groce were shot during police raids of their homes in 1985 in Birmingham and London respectively). John Shorthouse was killed, but Cherry Groce survived, albeit permanently disabled. In the latter two cases above, the plight of the officers involved, portrayed in court as hapless, tensed up men who had fired completely by accident, heightened the legal isolation of policemen who fire their guns. Their air of being unwitting scapegoats for the lack of a coherent firearms policy was reflected in their acquittal verdicts, and the considerable sympathy felt for the officers (as well as the victims).

The policy of prosecuting the individual officer rather than his police force for misuse of firearms appears to deviate from the tortious principle of vicarious liability whereby employers are liable for their employees wrongful acts committed whilst doing their job. Prior to the 1964 Police Act there was much discussion of whether the police could be said to be in a master and servant or employer/ employee relationship, and thus be subject to the principle of vicarious liability, or whether the constable was

constitutionally independent. The 1964 Act clarified the situation. Section 48 provided that the Chief Officer of police is liable for wrongful acts committed by police officers 'under his direction and control in the performance of their functions.' (S.48 (1)).

Obviously the Waldorf, Groce and Shorthouse cases were tried as criminal cases rather than civil claims for damages to which the vacarious liability rules apply, and were necessarily so, since the acts of the policemen were such serious physical assaults and merited this action. However what would happen if, in an accidential shooting a fatality did not result and the policeman was sued for compensatory damages rather than prosecuted for a criminal offence? How would the police reconcile their vicarious liability with the emphasis on individual responsiblity in firearms cases? Although compensation has been paid to the victims of past police shootings, the issue has not arisen directly because of the very public nature of the criminal trials which enable the present system to function effectively. What usually happens is that the police authority will make some payment to the wronged party in addition to the trial of one of its members. For example, the West Midlands Police Authority offered £7,500 to the mother of five year old John Shorthouse who was killed by a police gunman in 1985, and £2,500 to his younger brother. However, the police stressed that the payments were 'ex-gratia' and did not amount to a police admission of liability. (The Guardian 14.11.87).

The current police system for dealing with firearms accidents or deliberate shootings is certainly functional. The police themselves institute the criminal action against officer involved, and thereby forestall the immediate option of a civil action for damages. If the officer is cleared by the court as appears to be the case quite often, then any subsequent civil action will surely be affected by the acquittal, and the chances of a settlement on the plaintiff's terms reduced. These circumstances all lean towards accommodating the system of criminal trial accompanied by

ex-gratia payments which enable the police hierarchy to play down or deny their part in the responsibility for the shootings.

This weighting of the blame for the consequences of police shootings onto the individual officer concerned seems both unfair, in view of the stress given to following his training, and inconsistent with the principle of vicarious liability yet senior officers of the West Midlands force, when asked about this matter for the purpose of this thesis, declared themselves satisfied with the current system. They thought it reasonable that the officer should be held responsible for his actions since this situation is made clear to all officers throughout their training to become an authorised firearms officer, during which time they have the power to discontinue with their training if they change their minds and feel the duties and consequences to be too onerous. Essentially then, they argued that since the men know what to expect, the system of individual responsibility is satisfactory.

Furthermore, this official line forwarded by senior officers does not seem to find unanimous agreement with the rank-and-file authorised firearms officers (or AFO's); 'In the wake of the decision to charge Finch and Jardine (with the Waldorf shooting), many other police officers tore up the 'pink slips' which confirm that authorisation in protest.' (Benn and Worpole,. 1986, p.61). Supportive action of their unfortunate colleague reminiscent of the above was also evident during the trial of PC Brian Chester, for the shooting of John Shorthouse in Birmingham 185. 'The Observer' reported 'The West Midlands force has 225 authorised firearms officers among its 6,800 members. Several said before the Chester verdict that if he was found guilty they would give up their authorisation in support of him.' The Observer, 6.7.86). The legal situation of individual responsibility is clearly not acceptable or satisfactory to the men who are subject to it, and in the interests of fairness to firearms officers it should be changed to incorporate a broader

acknowledgement of responsibility or culpability that takes into consideration the unit within which the officer was working and the planning of the operation. If defects in training are partly to blame for some shootings (as they undoubtedly have been in the past) then it is surely anomalous that these shortcomings are spared judicial reproach and review when the officer product of them is not. This is an incongruity that needs to be rectified. The Army have the partial defence that they were acting under 'superior orders' available to them see Brownlie p.115). Would a similar development be welcomed by the police? It is certainly worthy of consideration where firearms are discharged, and could arguably be of use in other areas of policing where collective responsibility would be appropriate.

Specific case law on firearms use is scarce, yet the judgements pertaining generally to reasonable force, and mentioned above in chapter three are also relevant to the police use of guns, in determining whether the force used was, in all the circumstances, reasonable. In fact two of the cases cited as evidence of the reasonable force line taken by the courts do concern shootings, namely the Attorney-General for Northern Ireland's Reference (No.1 of 1975) and Farrell v The Secretary of State for Defence (1980). Both these cases refer to military shootings in Ulster, and, against the background of the crisis there, what is reasonable in Northern Ireland would not necessarily be so here. For example, Diplock, in the first of the two cases above, weighed up whether 'the prevention of the risk of harm to which others might be exposed if the suspect were allowed to escape justified exposing the suspect to the risk of harm that might result from the kind of force that the accused contemplated using?' (A-G's Reference No.1 of 1975, (1976, 2 All E.R. at p.947). In Northern Ireland, if the suspect was thought to be a terrorist, then the risk of harm to others from that

terrorist's future operations if allowed to escape, might justify shooting him even if he offered no immediate threat to life, yet could not be captured in any other way. On the mainland could the same be said of an armed robber? Probably not. Although Diplock's formulation in the circumstances of the above case was sound, it was dealing with situations that remain rare when policing the British mainland. Therefore actual explicit legal guidance to the police on firearms use is still lacking, and it can not be regarded as satisfactory and comprehensive that decisions made in military cases still exert such an influence on the Courts. It must be stressed that the decisions in these cases are not necessarily thought perverse, but rather the wisdom and desirability of military standards being applied to civil police forces who lack their own particular rulings, is being questioned.

That military rules and methods of engagement may be undesirable precedents for the police to follow is clear from the furore surrounding the shooting of three IRA terrorists on the rock of Gibraltar on March 6th 1988. News of the three deaths was at first greeted with approval and praise since the terrorists were planning to detonate a bomb against military personnel which would undoubtedly have had catastrophic effects had it succeeded. The security operation was initially attributed to the police. The Guardian reported that 'British police kill IRA gang in Gibraltar' (7.3.88) and that was accepted as necessary action to prevent the exploding of the bomb. The official version of events was accepted, and any questionning about the legality of the lethal force used was treated as impertinent and misplaced in view of the likely tragedy it had averted. However, it later transpired that the elite military SAS and not the police had killed the terrorists, and that the Government's official explanation of the events was flawed and incomplete.

It took the investigative journalistic efforts of Thames

Television's 'This Week' programme to uncover hitherto unconsidered and unknown evidence about the shootings, and prompt a reappraisal of official explanations. ('Death on the Rock', 'This Week', 24.4.88, Thames TV - a programme that simultaneously re-opened the slumbering debate between government and media over broadcasting freedom.) The substance of the fresh evidence in the programme is not important here, but the questions it raised most certainly are. If the new accounts of the shootings were truthful, they threw doubt upon whether the shooting of the terrorists was an exercise of force 'reasonable in the circumstances' under section 3 of the Criminal Law Act 1967, and suggested that they could have been arrested without such violence.

The Gibraltar shootings may have been an example of excessive and unlawful force exercised by the SAS, yet because of their involvement the likelihood of a thorough public examination into the incident was slim, even though they too are subject to section 3 of the Criminal Law Act. The inquest into the shootings exonerated the SAS, and by implication, the shootings have been held to be reasonable. This, combined with the 1975 Attorney-General's Reference and the Farrell case judgements, is beginning to build up a legal framework that legitimates state shootings on fairly broad grounds and is conducive to a political system intolerant of criticism of such shootings, and questions asked about them. Because the military services have been involved, and these cases have been counter-terrorist operations, there is much secrecy surrounding their details and a reluctance to release further information. For example, in the SAS Gibraltar killings, those soldiers involved were not identified and would not have been tried openly (if found to be at fault), whereas this would be expected if the marksmen had been police officers. What this suggests in practice is that, although technically subject to the same laws, the police and army are treated quite differently. This can be turned to the police advantage, and looked at closely, has worrying implications

for future police shootings. If these involve terrorists, then public acountability can be easily smothered by invocation of the 'national interest' or 'national security' arguments to suppress information, and since this has been successfully used in army cases would it not be consistent to use it in police cases? Even if police shootings do not relate to matters of what can be described as of 'national interest', the precedents of these military cases, through which the law on reasonable force has been illustrated and broadened will be difficult to ignore.

A legal climate is being developed in which it is becoming standard practice to accept official shootings of law-breakers and to react defensively to attempts to establish accountability on these occasions. It is already the case that if the police shoot an innocent, then strenuous attempts will be made to investigate how this occurred, whereas if a person is shot during the course of committing an offence, or is a known criminal, then this very fact is seen as all powerful and a justification of the shooting. This is a sensitive area of public opinion, and not a popular one in which to question police actions if they have just shot a known offender and acclaimed this as a success, however it must be accepted that evidence of criminality alone does **not** enable the police to use lethal force. This fact is in danger of being forgotten. The police themselves do hold an inquiry into every occasion they fire their weapons, and perhaps a public examination of this kind would be instructive. It must be realised that police shootings are not automatically legal and reasonable just because the injured party is a known offender. The fusion of military and police standards is in danger of obscuring this fact, to the detriment of the control and public accountability of police gun use.

Self-defence

The other major area of case law with direct implications for police gun use is that concerning the law of self-

defence. the success of a self-defence plea by the two officers in the Waldorf shooting was noted in chapter three along with doubts as to its applicability in that situation. It must be remembered that the police officers had opened fire on Waldorf at a time when he posed no threat to them, and continued to fire at him as he lay seriously injured in his car; 'Waldorf was lying half out of the car obviously completely incapacitated when the second detective 'closed to within six feet of the prostrate body and fired twice at the head. He then fired a third bullet into Waldorf's stomach. Finch, his gun empty, ran at Waldorf and hit him over the head several times with his pistol, fracturing Waldorf's skull.' In the subsequent trial of the two police officers involved - one being a charge of attempted murder - the jury found both officers not guilty, not even of intending to cause grevious bodily harm.... It is also extraordinary to note that in the trial of the officers the judge quite clearly pronounced the officers actions as completely within the ambit of 'self-defence', a definition which in many ways suddenly made Britain a much less safe place to live for anybody who happened to get on the wrong side of the police on the wrong occasion.' (Benn and Worpole, 1986, p.59). Self-defence may well be a legitimate claim for armed officers in many instances, particularly when facing armed suspects who have drawn their weapons, yet its successful argument in the Waldorf case appeared to be so inapplicable as to amount to a misdirection.

It would be unfortunate indeed if self-defence was to be regularly invoked as a police defence after gun incidents, yet the ruling of R v Williams (1984) (see chapter three) has made this a distinct possibility. As was noted in chapter three, the decision in **R v Williams** broadened the potential for the use of force in self-defence by assessing the reasonableness of the force used according to a subjective standard. Lord Lane held that the reasonableness

or unreasonableness of a defendant's belief was only relevant to the question of whether or not he held that belief at all. If the belief was judged to have been held, then its reasonableness or otherwise was immaterial. As pointed out in chapter three, Lord Lane's judgement would have legitimated the Waldorf shooting since it allowed the defendant to use an unreasonable mistake in his defence, as long as he was genuinely acting under it. (R v Williams 1984, p.281).

This particular issue, incorporating the police using guns and claiming their actions were self-defence under the formulation in **Williams** has recently come before the Courts in Beckford v R (1988, All E.R.). This case concerned a police shooting in Jamaica which was referred to the Privy Council on appeal. The facts of the case were the subject of disagreement and conflicting evidence; the police claimed that they answered a call for help from a woman who had reported that her brother was terrorising her with a gun, and that he had fired at the police as they pursued him, prompting them to fire back. The prosecution denied the phone call and said that the armed police had chased the unarmed man and had killed him when they caught up with him, despite his having his hands up and pleading submissively for them not to shoot.

The police officer, Beckford, had been convicted of murder in Jamaica despite the trial judge's direction that if he reasonably believed his life was in danger then he was entitled to an acquittal on the grounds of self-defence. Beckford appealed to the Jamaican Court of Appeal who declared that his belief that he was acting in self-defence had to be reasonably and not merely honestly held, and dismissed his appeal. This last direction is clearly not in line with Lord Lane's judgement in **Williams**, and enabled the judgement to be overturned. Lord Griffiths delivered the judgement of the Privy Council and re-asserted that after Williams, the test for self-defence

was that a person could use such force in the defence of himself or another as he honestly believed was reasonable in the circumstances, regardless of whether or not his mistake was objectively reasonable.

Lord Griffith's judgement also included some interesting comments, obiter dicta, intended to clarify the situation where force is used in self-defence. The idea of pre-emptive force is endorsed; '..... a man about to be attacked does not have to wait for his assailant to strike the first blow or fire the first shot; circumstances may justify a pre-emptive strike.' (Ibid). This principle is quite acceptable in cases of fighting and so forth, but its implications are more serious where firearms are concerned **if** it is combined with the 'honest but mistaken belief' rationale of **Williams.** Lord Giffiths amplified this defence as follows; 'If then a genuine belief, albeit without reasonable grounds, is a defence to rape because it negatives the necessary intention, so also must a genuine belief in facts which if true would justify self-defence, be a defence to a crime of personal violence because the belief negatives the intent to act unlawfully.' (Ibid). The subjective formulation here would appear to weigh heavily in the police's favour if applied to incidents such as the Waldorf shooting. Self-defence may of course, be a factually sustainable defence in many police shootings. Conversely however, there may be occasions when police shootings amount to criminal action yet the possibility of acquittal by pleading self-defence is a strong enough inducement to influence an officer defendant into using this defence dishonestly. A variation on this point was considered by the judges as follows: 'There may be a fear that the abandonment of the objective standard demanded by the existence of reasonable grounds for belief will result in the success of too many spurious claims of self-defence.....Their Lordships have heard no suggestion that this.....has resulted in a disquieting number of acquittals .....Where there are no reasonable grounds to hold a belief

it will surely only be in exceptional circumstances that a jury will conclude that such belief was or might have been held.' (Ibid Beckford v R).

The judges were talking in general terms about anybody pleading self-defence, in which case their view that Williams subjective standard will not necessarily result in a proliferation of false pleas is probably realistic. However. police shootings are surely the type of 'exceptional circumstances' referred to by Lord Griffiths, where it is likely self-defence will be accepted. The Lords seemed satisfied that 'a disquietening number of acquittals' would not result, yet the **amount** of questionable decisions arising should not be the most important criterion here; the fact that perverse decisions may be returned only rarely is not a vindication of the **Williams** standard. Without wishing to draw too generalised and exaggerated a conclusion about the subjective self-defence option, it does however, seem that this provides the police in firearms cases with a legal escape route from conviction. If it proves a reliable defence for the police it may become a routine plea; its chances of success enhanced by the propensity of juries to view police testimony favourably. Ideally there should be a legal distinction between personal coercion used in self-defence, and the potentially lethal force where firearms are involved. A stricter standard would perhaps be appropriate for gun use, given too that one may shoot and kill someone pre-emptively, this is certainly an area where the courts must be vigourously independent where self-defence is claimed in a shooting incident.

DEVELOPMENTS IN POLICE FIREARMS POLICIES PAST AND PRESENT

a . Past; Lack of coherence and accidents as instruments of policy

The police's past firearms policies have been muddled and incoherent, lacking any obvious pattern or accountability and developed in piecemeal fashion. This confused state of affairs appears to be changing for the better following the

publication of the Home Office Working Group on Police Use of Firearms report in February, 1987. The substance of this report, and the changes it can be expected to bring are analysed later, after an examination of the issues that made a change in firearms regulations and procedures so necessary.

Lack of information about police firearms

What becomes immediately apparent when looking at police firearms, is the lack of information publicly available about their type and numbers. There is here, if not a deliberate veil of secrecy, then at the least, a curt disinclination to make the facts public. This was a theme identified by Molyneux (1985, p.191) and recommended by him as being in need of reform. He commented firstly on the notable absence of national statistics about firearms, and that 'It would be virtually impossible to collate and quantify these figures on a national basis. The probable answer is that nobody knows how many firearms are held at any one time by the police forces in England and Wales. The figures simply do not exist.' (Molyneux, 1985, p.191). The scarcity of information about police use and numbers of guns and consequent lack of public knowledge on the matter, has resulted in the comfortable sustainment of the British police's image as an unarmed force. It would not be in the police's interest to be viewed otherwise, since their relationship with the community should be ideally based upon trust rather than fear. In fact, for the past twenty years or so the police have been arming themselves at a considerable rate. The Home Secretary in 1973 reported to the House of Commons that the number of occasions when guns were issued to the police had risen from 1,072 occasions in 1970 (803 of them in London), through 1,935 (1,344 in London) in 1971, to 2237 by 1972 (1,717 in London), although they were only used five times between 1970-73. (Bunyan, 1977,1983, p.,983.) This increase continued. The Guardian reported on the number of firearms issued throughout the early 1980's; '....in 1980, 5,968; in 1981, 4,983, in 1982,

6,035. But in 1983 the Home Office decided to record only the number of operations on which guns were drawn. That year there were 2,230 and in 1984 there were 1,838. There is, therefore, no real means of telling how many or how few police guns were on the streets in these and in current years.' (Gareth Parry, The Guardian 16.1.87).

This Home Office policy was probably intended to play down the police use of guns and create the impression that they had been reduced. In fact the statistics give little away, whether they be recording the number of issues or the number of occasions when guns were drawn. In order to evaluate the true functions and advantages of police firearm deployment, far more detailed information is required. This should record why the guns were issued; was it because there was definite evidence that the situation warranted it, or was it a cautious measure, that guns were used just in case the seriousness of the incident escalated? What was the effect of the police guns; did they prove a decisive factor in resolving the problem, were they a hindrance or did they prove unnecessary? The answers to such questions would go some way to discovering whether the police are issuing arms too frequently without good cause, or whether it is a reasonable response to the problems they face.

Figures on police gun use are not broken down to deal with particular types of incidents and therefore can encompass a wide range of police actions within them. For example, The Guardian reported in 1987 that a shooting incident between the police and two suspects on the M1 motorway had led to the revelation that Nottinghamshire Constabulary has had heavily armed policemen on its section of the motorway twenty four hours a day for the past eight years. (The Guardian 29.1.87). This in fact, was not a secret; Manwaring-White detailed in 1983 how policemen in Leeds, Bradford and Nottinghamshire carried guns aboard their patrol cars, whilst Leicestershire police had done so for the past ten years. (p.121). In the light of this, the

Home Office's expressed belief that Nottinghamshire is the only force to have such units (Guardian 29.1.87) appears absent-minded at least, and possibly dishonest. However, where guns are carried aboard patrol cars, (albeit locked up, and not available for use unless granted express authority by an assistant chief constable or someone more senior) how would their 'issue' be registered? Would it be recorded once, every day, or not at all? Such a situation highlights yet again, the shortcomings of statistics, but this incident raises other important points. It doubtless surprised many to learn that the motorway police in Nottingham are armed with a pump action shotgun and two revolvers. The officers involved in the incident were classified as 'normal patrol officers' attached to the traffic division and Nottinghamshire police are said to use three of their forty-two traffic patrol cars as possible response units. (The Guardian, ibid). It would be interesting to learn how many other officers on 'normal patrol duties' are backed up by this potential use of force and are, in reality, firearms officers?

Some may view it as frightening that a Chief Constable alone should have the executive power to deploy armed officers on a motorway, and this is a valid viewpoint, yet analysis of this particular episode helps to understand how this is possible in practice. Charles McLachlan, the hard line Chief Constable of Nottinghamshire set up the armed patrols after a car chase in the late 1970's resulted in the capture of a gunman. After the shooting in January 1987 he said; 'We've never, as far as I can find out in the whole of history of Nottinghamshire police, used a firearm in such a situation before. It's the first time shots have been fired in an incident as far as I can ascertain.' (The Guardian 29.1.87). One could argue quite reasonably here, that if the police have only used such guns once in eight years, then this does not justify the risk of possible mistakes and escalation in tensions that

may occur due to their presence, and that armed motorway police are an unnecessarily authoritarian measure damaging to public perceptions of the force. Also, given that the police normally justify firearms deployment on the basis of countering the threat of armed crime, it does seem that their use on the motorways is superfluous. Against this, the police could point to the single incident in eight years as proof of the restraint of their system, and its safety to the public. Furthermore, the secrecy surrounding the armed traffic patrols has certainly been functional; they were set up to provide an available response where needed at short notice to unpredictable incidents, and did exactly that. A case can be made for the police keeping details of the armed units secret - they performed their duties when needed without needing to call on a specialist armed group, yet for the most part have presumably not been used. However, if it was announced at their inception, that armed units would be patrolling the motorways this would probably have been greeted with criticism. Because of the operative police secrecy, the armed patrols have worked unpublicised, and no practical harm seems to have resulted yet. Is this a vindication of the Home Office's 'laissez-faire' policy with respect to police firearms use?

The number of firearms issued offer no clues as to how many officers are authorised to carry them, yet it seems clear that the police's claim to be an unarmed force is fallacious. the Galbraith Report into police firearms in 1971 observed that so many men were armed as a matter of routine to carry out their duties, that they had a special holster pocket sewn into their trousers in London. (Home Office, 1971). There was a steady increase in authorised firearms officers throughout the 1970's and early 1980's, yet this now appears to be waning slightly; 'In December, 1984, there were 11,873 or 10% of the total manpower; by the end of 1985 this had dropped to 10,224 which represented 8.6% of the total.' (The Guardian 16.1.87). This will

probably have been reduced still further following publication of the 1987 guidelines, and after the re-appraisal of the policies that followed the Groce and Shorthouse shootings. However, what prompted this notable shift in policy the other way to begin with?

Police firearms use; preventive or reactive?

At the crux of the issue of arming the police is the question of whether it has been essentially reactive or preventative? Have the police been issued with guns as a response to trends of growing criminal violence, or have they developed armed policies themselves in a bid to seize the initiative in the 'fight against crime'? The official line is effectively that the police hand has been forced by dramatic rises in armed crime and that arming the police is the best way to deal with such a threat. This view is subscribed to by liberal 'thinking' officers such as John Alderton, as well as by the hard-liners. Alderton sees that the need to raise the police's armed capacity has been 'forced upon a reluctant police but the change has been brought about by an increased use of firearms in crime of 305 per cent (1,308 to 5302) between 1969 and 1977. The increase of violence against persons with firearms over the same period has been of 228 per cent (768 to 2,523).' (Alderton 1979, p.72). This justification sees police use of firearms in terms of a definite response to external circumstances, yet this is not an entirely convincing explanation. The notion that the police were unarmed in the 'good old days' has no substance in fact. Manwaring-White records how policemen in the East End of London carried Lee Enfield rifles for the first time in January 1911 in response to an armed seige, whilst the Royal Irish Constabulary had shot at a crowd, killing two people in 1831. (1983.p.118) A study in the 'Policing London' bulletin stated that 'At no time during its 153 years has the Met been a totally unarmed force' (October 1982), and furthermore, by 1883, a lightweight revolver was available for use by 931 constables on night-duty in certain parts of

London. (Cited in Benn/Worpole, 1986 p.49). Just as there have been armed police for many years so too have there been armed criminals. Historian Raphael Samuel, writing in 1981, declared that 'shooting incidents were more common in the East End then (at the beginning of the century) than they are today'. (Cited, ibid).

Clearly this is an area where opinions will differ, yet it seems that the notable increase in police guns during the 1970's and early 80's can not be attributed solely to a massive growth in armed crime, and resulted instead, from a combination of response and policy initiatives.

The available statistics seem to indicate that the police are over-reacting to the perceived threat of armed crime. In 1981, guns were used in London by criminals on 2,164 occasions, whereas the Metropolitan police issued guns on 4,983 occasions. (Manwaring-White, 1983,p.120). Since the Home Office changed the method of recording these statistics, the 1985 data showed that the police in London issued firearms on 1,642 occasions and had rarely fired a shot, whilst criminals had used or fired guns on 2,356 occasions. (The Guardian 17.1.87). However the figures are misleading. They imply that all the police issues covered incidents when guns were used by criminals, when presented together, whereas this is unlikely to be the case. Just as the likelihood of the beat officer on patrol coming across a crime has now been recognised as virtually nil, then so too should such realism be applied to the armed officer. Admittedly, it is not quite the same, since armed police may act on information received and so have a reasonable expectation of having to deal with armed criminals on some occasions, yet the majority of armed crimes are surely not committed with armed police situated conveniently closely. Therefore, the police will be carrying guns preventively and protectively on many occasions, and not because an armed crime has, or is expected to take place. As the unarmed officer is unlikely to stumble across a

burglary, so are armed officers not always going to be dealing with firearms incidents.

American experience has been instructive in highlighting another statistical problem that can make it difficult to determine the circumstances in which police guns were drawn. Although in the USA some of the figures recording police shootings do list the kinds of crimes that provoked them, this may not always be accurate or fair to the police since the crime recorded may not correspond with the behaviour that drew an armed response from the police. For example, what starts as a traffic stop may escalate abruptly if the driver pulls a gun on the officer, yet this example of gun use would be classified in many studies as having occurred in connection with a vehicle stop. (Sherman, 1980.p.81). There is obviously a real need in Britain for more detailed information on the circumstances of police use of firearms, and whether this correlates with criminals using guns, so as to gauge their effectiveness and the truth of the police justification for issuing guns.

There is a danger with police firearms strategies, that trends in London may exert an influence nationwide where responses appropriate in the capital, would not be necessary. It is acknowledged that the everyday problems of policing London are more onerous than anywhere else in England and Wales. Armed crime occurs, and guns are issued to policemen, more frequently than elsewhere, and the Metropolitan police have a wide variety of weaponry available to them. Although the seriousness of armed crime should never be underestimated wherever it occurs, whether it be Birmingham, Manchester, London or more rural areas, it would be unfortunate if the policies of the Met were responsible for other forces following suit, despite having less of a problem with armed crime.

The fluctuating state of armed crime figures makes it difficult to assess whether the rest of Britain has a comparable situation to that of London. For example, recent statistics published by the Scottish police indicated a

a drop in the number of crimes involving firearms from 1,675 in 1985 to 1,524 in 1986, yet the number of incidents involving shotguns rose 23 percent from 129 in 1985 to 156 in 1986 (The Guardian 18.2.88). the drop in these crimes is not drastic enough to force a reconsideration of police measures against armed crime, yet the Scottish experience was not echoed in the North East nearby. The Chief Constable of Northumbria's annual report for 1986 revealed a 50 per cent increase in firearms offences in 1986 as opposed to a modest 2.2 per cent increase for all crimes. (The Guardian 15.4.87). Whether firearms offences are increasing or decreasing, they provide a warning against making statistical details the basis of police policies. For example, assuming the armed crime rate soars, this has been taken as justification to arm the police to deal with it, yet closer inspection of the figures may prove this to be unnecessary. The Criminal Statistics of England and Wales for 1981 (CMND 8376, Home Office) revealed that 75% of all serious crime involving guns involved air-guns, and 91% of firearms injuries resulted from air guns. Benn and Worpole comment 'The statistics reveal then, a rather different picture of the 'average' armed crime; it is one likely to involve a teenager with an air-gun either being charged with criminal damage (firing a pellet at a bus shelter) or using the air-gun in some form of small scale robbery. In light of this, it does seem that present policies of the Met regarding the buying of new weapons and their prolific patterns of issue are clear cases of over-response.' (1986, p.52). Benn and Worpole also quote from a Chief Superintendent of the Metropolitan police who had written a thesis on gun issues. He concluded that the rise in police gun use could not be explained by armed crime increases; 'It is no surprise that the Metropolitan police averages 76% of the national total of issues but they are now seen to be breaking away from what appears to be an established equilibrium in the rest of the country. This

rise does not coincide in any way with known armed crime...' (Cited ibid p.51).

Also included in firearms statistics may be imitation weapons. The police or citizen faced with such a gun will obviously not realise its true nature and every gun will be rightly treated as potentially lethal. However, if their use is quite common and included in the statistics, then this too means that the actual threats to life apparently presented by the figures, may not be true in fact. All the preceding issues, when merged, simply undermine the confusion surrounding the actual problem of armed crime and police responses to it.

Police firearms policies, a combination of reaction to patterns of armed crime, and deliberate initiatives taken by the police, constitute an over-elaborate and potentially dangerous trend in policing. By equipping the police with arms on a wide scale, does the possibility of violence and coercion increase? The lack of strict statutory guidelines has enabled the police's firearms policies to develop haphazardly in response to various incidents and trends. Those who oppose arming the police, do so, not only because it represents a regression from the traditional unarmed policing principles but more practically because it is seen as an unfortunate and errevocable step in the wrong direction, which may contribute to a spiralling increase in societal violence. If more police were to carry guns, would this influence more criminals into doing so, resulting in more armed police, and so forth? American research has found a significant positive correlation between homicides by police and gun density within the community. (Sherman and Langowrthy, 1979.) Such a finding acts more as a discouragement to ever relaxing Britains gun laws since private gun ownership in Britain remains relatively rare. Not so, of course, in the USA where the right of the people to keep and bear arms' is provided for in the second amendment to the Constitution. Police firearms policies alone are not the decisive influence in shooting across

American cities, but are a contributory factor. One American observer comments; '....it seems that a **community's culture of violence**, rather than the size of its population or police force, is the best available explanation for variations across cities in levels of police shootings. (Geller, 1986, p.211, his emphasis).

As yet, there is no evidence to suggest that arming the police has contributed significantly to any circularity of violence, and doubtless helped by the unarmed state of the community, police shooting incidents in England and Wales have been commendably few. 'In 1980 police weapons were fired on 10 occasions, resulting in one death. In 1981 there were no injuries or deaths in the four armed incidents. There were 10 incidents in 1982, with three injuries but no deaths. The three 1983 incidents resulted in three injured but no deaths. In 1984 there were six incidents involving five injuries but no deaths. But in 1985 - the year when fewer policemen were authorised to draw guns - there were seven incidents, resulting in one death and three injuries.' The Guardian, 16.1.87). In 1986 there was only one incident involving police firearms and no injuries whereas there were three men killed and two wounded in London before August 1987. (The Guardian, 10.7.87). These low figures have a double-edged effect, inspiring both praise of the police for restrained use of guns yet simultaneously questioning the necessity of so many gun issues. There can also be no room for complacency when the few shootings have included some terrible mistakes

.Firearms: Accidents, and Policies. Learning by mistakes?

It has been these well publicised mistakes that have helped to provide some details behind the statistics and exposed the lack of direction and the inadequate training in firearms policies. The police mistakes have gone largely unpunished by the Courts, who have implicitly backed up the police by returning acquittal verdicts whenever an officer stands trial. However, the police always review their procedures

after an unnecessary shooting incident, and adjust them where appropriate in an effort to ensure that any mistakes will not be repeated. Such ramshackle progress is based upon 'locking the stable door after the horse has bolted' and relying upon accidents as instruments of policy. The lack of planning that has been consistently revealed in the aftermath of mistaken police shootings suggests that the relatively rapid arming of the police in recent years has not been accompanied by the requisite responsibility.

In 1980, the West Midlands police shot and killed Gail Kinchen, a pregnant sixteen year old, who was being held at gunpoint by her former boyfriend. The same force was to make several other mistakes prior to the Shorthouse shooting in 1985. In 1982, armed police searching for armed robbers made a forced entry to a flat in Dudley occupied by three pensioners, and questioned them at gunpoint before being satisfied of their innocence. Furthermore, during a drugs raid in Handsworth on an innocent household, an armed officer tripped and fired his gun accidentally into the ceiling above a bed where two children were sleeping. (The Guardian, 26.8.85).

Five year old John Shorthouse was not so fortunate, and was killed when PC Brian Chester accidentally shot him during a search for his father, wanted for armed robbery, on August 25th, 1985. The next month in September, 1985, Mrs. Cherry Groce was shot and crippled by Inspector Douglas Lovelock during a dawn armed raid on her house, in which police were looking for her son Michael, again in connection with armed robbery. These two incidents, coming so close together, brought a renewed impetus to worries over police firearms use and revealed failings in both training and planning. To this end, there were similarities in the defence cases of both officers when they were eventually tried, both pointing to the inadequate preparation and information they were given beforehand and both claiming the shootings as unintentional reflex actions.

PC Chester had not been given information as to the layout of the Shorthouse home, and the possibility of children being present had not been mentioned. (The Guardian, 4.7.86). Similarly Inspector Lovelock's team had no plans of the Groce house and it had not crossed his mind that there would be women and children in the house. (The Guardian 6.1.87). Such poor preparation and planning for the raids again emphasises the harshness of blaming the individual officer for shootings. Also relevant in the Groce shooting was the fact that the previous day, Inspector Lovelock had worked for twelve hours including carrying out security duties at an IRA trial, an armed search for Michael Groce, and an armed stake-out of a flat, which, he professed, had left him 'absolutely exhausted'. (The Guardian 10.1.87). Some responsibility must lie with police management. That a man who had worked so hard should be deployed the next day in a dawn armed raid and be expected to be as mentally alert as ever is clearly unrealistic. PC Chester's state of mind too, could have been affected by the fact that he had only had four hours of sleep before the Shorthouse dawn raid. (The Guardian 2.7.86). This acts as a reminder that no matter how thorough the training officers receive, their performance may be affected by personal whim and circumstances that can not always be taken into account.

In both cases, the shootings were said to be proven as accidents because the officers had only fired one shot each, contrary to police training, which instructs that two shots be fired in rapid succession. Both officers claimed that their shootings were reflex actions, resulting from tensing whilst their fingers were on the trigger. A former member of the Essex Tactical Firearms Unit explained after the Shorthouse shooting 'Your natural reaction when you're shocked by something is to flinch, and when you flinch your hand turns into a fist. This is a natural reflex. If you've got a gun in your hand the index finger

naturally flinches. This has got to be trained out of people.' (The Guardian 26.8.85). Both Lovelock and Chester used a .38 Smith and Wesson revolver, which when uncocked, takes almost nine ounces of pressure to move the trigger enough to shoot. (The Guardian, 8.1.87, 2.7.86). There was naturally criticism of the men's training, and suggestions that an important part of this, namely, psychological preparation, had been neglected, in favour of more technical instructions on how to shoot. Michael Yardley, a psychologist and author of a report for the Police Federation on firearms, claimed that poor training was a major cause of accidents. He contrasted the ten days of basic firearms training with the two and a half to three months training given to a police pursuit driver before being considered competent. Yardley pointed out that the police are firstly taught to fire at 'turning targets' of potential assailants; 'Although this is later supplemented with 'shoot/no shoot' decision training, the fact remains that in the early and crucial stage of the already inadequate training programme, a policeman is taught to shoot without asking himself the vital question 'Should I?' That, he added, resulted in the development of dangerous conditioned responses in officers that are extremely difficult to eradicate.' (The Observer, 6.7.86).

The psychological aspects of firearms use are now treated more seriously by the police. Psychologists Ray Bull and Peter Horncastle, who work with the Metropolitan Police, have criticised those who explain firearms accidents as reflex actions, arguing that more important than such reactions is the state of an officers mind, and whether it is prepared, from moment to moment, to issue the order to the hand, to shoot. (The Guardian 15.1.86) Bull and Horncastle explain how the stress, apprehension and fear of the armed officer, can reduce his decision making capacity and his ability to consider alterntive strategies. 'Officers who are only occasionally issued with guns are

particularly likely to appreciate that, when confronted by a person in a real life situation, their first reaction will be to shoot. if an armed criminal is expected to be in a house which a police officer knowingly enters, that officer may well 'see' any moving human as the gunman.' (Ibid). They are also critical of the British attempts to replicate stress in firearms training, prior to requiring officers to enter the 'Hogan's Alley' simulator, describing them as 'naive in the extreme'. (Ibid). The American police have developed electronic simulators acknowledged to be more realistic and useful than their British counterparts, yet inevitably, expensive, and it remains to be seen whether the Government will invest in them.

Psychological help was recognised in the 1987 Home Office guidelines on firearms as being of use, but not exclusively so. The Working Group concluded; 'Although psychometric testing can have some value in assessing aptitude it should not, at present, be relied upon as sole means of assessing a person's suitability for firearms training.' (Home Office, 1987, conclusion 5). Such testing is designed to select more level-headed officers who will not be too 'trigger-happy'. The application of psychology has also been urged after shootings as well as in training for them. A Home Office study published in 1988 entitled 'Post Shooting Experiences in Firearms Officers' warns of the psychological consequences to an officer who may kill in the course of his duty, which can range from mild shock to post traumatic stress disorder, and recommends immediate psychological support after a shooting, with regular checks and councelling two to four weeks later. (The Guardian, 23.2.88). This study observed that there is no occupational health service to help officers even though the trauma experienced after a shooting can result in permanent psychological damage, and all officers they interviewed had experienced recurring flashbacks. It also concluded that one of the prices of having a largely unarmed

force was the unfortunate consequences for the armed officer. (Ibid). Again the firearms officer is left to cope largely alone and the police organisation is once more at fault. The range of weapons available to the police is extensive and of cause for concern. After gunman Michael Ryan senselessly killed 16 people in Hungerford, Berkshire on August 16th 1987 with a variety of weapons that included a Kalashnikov semi-automatic rifle, the government drafted the Firearms (Amendment) Bill which extended the prohibition on fully automatic weapons to self-loading or pump action shot guns and revolving magazine smooth-bore guns and their ammunition. (The Guardian, 19.12.87). This legislative change, as with developments in police gun policies, resulted not from considered planning but the aftermath of tragedy, yet represented official censure of automtic and semi-automatic weapons, and recognition that they could have no valid sporting or peaceable uses. Strange then, and alarming, that the British police have machine guns within their armouries.

In September 1981 it was revealed that the Greater Manchester Police had purchased two Heckler and Koch HK33 sub-machine guns capable of firing its 5.6mm ammunition at 750 rounds per minute. 'Eventually the Greater Manchester Police admitted they had brought the guns and said they had ordered semi-automatic carbines capable of only firing one shot at a time but when the guns arrived they were found to be fully automatic. The two carbines were sent to a Manchester firearms dealer for conversion, but they will now still fire 40 rounds a minute with a range of 400 metres.' (Manwaring-White, 1983, p.127).

There was further controversy in April 1984 when the Home Secretary Leon Brittan allowed the Metropolitan police to purchase the 9mm Heckler and Koch HK MP 5K sub-machine guns capable of firing 650 9mm rounds a minute. (BSSRS, 1985, p.66). These were for use to protect President Reagan on his visit to Britain. After the uproar over this

incident it became known that the Metropolitan police had actually been authorised to purchase sub-machine guns in 1976, by the Home Secretary of the day, Roy Jenkins, without the knowledge of the Cabinet or Prime Minister James Callaghan. (Benn/Worpole, 1986, p.51). Aside from the horrific consequences that would surely result if ever the police were to use these weapons, this highlights the lack of accountability and control over these weapons. Itcan not be in the interests of the policed community and their representatives, that they remain uniformed about such matters. Colin Greenwood, an authority on firearms, ex-police Superintendent, and editor of 'Gun Review' commented that 'the only reason for having sub-machine guns is that they can spray a whole area. We are going to have another situation where the Metropolitan police are more dangerous than the terrorists.' (Cited in BSSRS, 1985, p.66).

One would have thought that a police force committed to using only minimum or 'reasonable' force would not have entertained the thought of including such weapons of offence within their tactical options, yet they have done so. It must surely be a matter of the most pressing concern that the number and types of police machine guns should be identified and destroyed. Just as private citizens are rightly adjudged to have no legitimate sporting excuse for possession of automatic and semi-automatic weapons, then the police can not justify possession of such guns; they are simply not feasible for crowd control since they are totally indiscriminate, and there can be no situation in mainland Britain where their deployment, as opposed to the use of other arms, would be preferable. Can the police envisage situations when they would be prepared to use them?

The use of machine guns is also against the spirit, if not the letter of their own guidelines on the issue and use of firearms. Firearms are to be fired 'only as a last

resort' when conventional methods have been tried and failed, and when the police officer cannot achieve the lawful purpose of preventing loss, or further loss, of life by any other means (Home Office guidelines, 1987, annex F.). The guidelines also refer to minimum force, and possible presence of innocent parties. All these are inconsistent with the use of sub-machine guns. The ACPO manual of guidance on police use of firearms is the authorative source on tactical and operational matters of police gun use, but since it has remained unpublished and secret it is not known if it deals with machine guns at all, and if so, when it advocates their use.

It is not only the sub-machine guns that are a cause for concern. The Smith and Wesson .38 revolver, commonly used by the police, is a very powerful handgun. Manwaring-White quoted a firearms instructor who said that 'the new combination of the Smith and Wesson and the .38 special cartridge enables the police to shoot a man through a door, or from one side of a car to the other.' (1983, p.122). The police also use the Model 19 .357 Magnum Smith and Wesson which, in common with most revolvers, has no safety catch. (The Guardian 26.8.85).

Where the police have the opportunity to shoot and kill but refrain from doing so, it is described by Alderton as a 'triumph for morality over legality'. (1984,p.64). An example of such behaviour followed the Hungerford shootings in 1987. A police sergeant, David Warwick, had the killer Michael Ryan in his rifle sights once he had been trapped by police in a local school, yet with remarkable restraint in the circumstances, and adherence to training, he did not fire. Sergeant Warwick explained that 'there was no justification to shoot him' and that Ryan offered no threat to life at the time when he had him in his sights. (The Guardian 30.9.87). This was particularly commendable (and in keeping with British unarmed police ethics) since Ryan had killed a fellow police officer amongst his previous victims; an action that would inevitably have inflamed

the anger of other officers even further, and because if Ryan had been shot by police it would doubtless have been accepted as a perfectly legal and reasonable response.

Such consideration of whether to shoot or not serves as a fine model for British police marksmen, and is of a standard that the police must strive to maintain. The other extreme, of shooting where it can be justified in law, even if not strictly necessary in fact, needs to be guarded against. Alderton has drawn attention to the situation in the USA, where there has been much debate over capital punishment, yet more deadly have been the laws that allow the police to kill in the course of their duties, through justified homicide. More people have been killed by police in this way than are officially executed after trial, and this has been the way for some time now; it was true of the 1950's as well. For example, in 1976 nobody was executed in the USA although 233 were sentenced to death after trial. However an estimated 590 were killed by police officers 'justifiably without trial'. (Alderton, 1984, p.64).

Some of these shootings will be attributed to officer misconduct (Geller, 1985, p.215) yet many will be because twenty-nine states still permit the shooting of a fleeing felon, even if wanted for a relatively trivial crime. This is something that must be prevented in Britain - obviously there is no law that allows the shooting of a man to apprehend him in the manner of some U.S. states - but where a criminal is shot by police during the commission of an offence, the Courts must be quite clear that this was 'reasonable force' and must not be swayed by the offender's purpose. To legitimate gradually, such shootings at common law, would be to legitimate mistaken shootings.

STUN DEVICES

A question that is often asked of police marksmen whenever they shoot and kill someone is, why, if they are so well trained, can they not shoot to injure or maim? They are

trained not to do so because, if for example, an approaching armed criminal was shot in the leg or arm by police, he would still have the potential capacity to fire back at them or someone else. This was confirmed in dramatic fashion at the inquest in September, 1988 into the deaths of the IRA members in Gibraltar. One of the unidentified soldiers of the SAS team explained why he had fired many shots into one of the terrorists by saying that even a man shot through the heart was capable of detonating a bomb or returning fire. However, with recent developments in technology, could the innovation of stun devices provide a safer and more satisfactory alternative to the police? It has been reported recently that the police are checking a new handgun, the Sterling .38 revolver adapted to fire stun grenades, rubber bullets, tear gas or smoke. (The Sunday Mirror 29.11.87). Because this is a revolver it would be small, easily managable and unobstrusive. However, what form these stun grenades would take is unclear. Another option that the police might consider, is the use of electrical stunning devices. Such weapons were originally marketed for defensive purposes against rapists and so forth for private citizens, yet they present obvious dangers if used for criminal purposes.

The police have not used such devices, yet private citizens have. Until recently however, there was confusion as to the legality of such weapons and whether they were subject to standard firearms restrictions, or could be made freely available. The classification of electrical stunning devices came for consideration before the courts in the case of Flack v Baldry (1988 1WLR 214). Initially, the Queens Bench divisional court found that the stunning device used by the defendant was not covered by section 5 (1) b of the Firearms Act 1968. This section dealt with weapons designed for the 'discharge of any noxious thing', yet the stunning device appeared to have exposed a loophole in the law. The device used by the defendant was a hand held object which

temporarily incapacitates the victim when in contact with him, as a result of high voltage electrical charge that passes between two electrodes in the device. The Court agreed that the flow of electricity through the body was a 'noxious thing' but had problems with the meaning of discharge in section 5 (1)b. They interpreted this as being the normal meaning of emission from an object, not the technical meaning of an electrical discharge, because this electricity passed from one electrode in the device, through the body, and back to the other electrode. Therefore technically, there had been no discharge. Lord Justice Parker explained it thus; '....there is no 'discharge' within the meaning of the subsection when the stun device is operated. The discharges contemplated appear to me to consider the emission **from** the device of something when the device is operated. Here there is no such emission. There is the creation of a high voltage electric current between one part of the device and another.' (Ibid,p.220,c).

If this judgement had remained, it would have meant that stun devices would not be covered by the firearms legislation and therefore would not need authorisation before use, however the House of Lords over-turned the decision. Lord Ackner held that there was a discharge under section 5(1)b of the 1968 Act; 'If the so-called general, and non-technical, meaning of the word 'discharge' is applied, to my mind it is quite clear that when the device is placed up against a human body and operated, electricity is then transferred from the device and passes through the human body. Electricity has thus been emitted from the device and it is this emission which has caused the victim to be stunned.' (Flack v Baldry, 1988 1All ER 675g).

Electrical stunning devices have now been brought under legal control, but could they be of use to the police, as an alterntive to using firearms? The device in Flack v Baldry was not a stun gun, but a hand held weapon that had to be applied to the victim. Such an instrument would not help the police disarm an armed criminal since they would

need to be standing next to him to operate it. This would be useful for restraining violent offenders perhaps, and some U.S. forces have used similar devices for such purposes, yet its potential as substitute for firearms is limited. Are there any suitable electrical stun guns that the police could use against armed criminals, and if so would they wish to do so anyway? The police may be equally suspicious of a 'stunned' criminal still clutching a firearm, as they would be of someone shot in the leg and capable of returning fire. The possibilities of stunning are certainly worthy of exploration in the context of armed crime, although their routine use to subdue struggling suspects would be undesirable.

b. The 1987 Home Office Guidelines and new firearms policies.

That the past police firearms policies had been inefficient and lacking in cohesion was recognised by the 1987 guidelines laid down by the Home Office Working Group on the Police Use of Firearms (Home Office, February, 1987) that recommended many changes, some of which were undoubtedly precipitated by the accidental shootings. The new direction of firerms policies ushered in by the guidelines looks to be an improvement on the old, with reductions in the overall number of officers authorised to carry firearms yet a higher level of training for the specialist authorised officers.

Before the guidelines were announced, there was evidence that the police were concerned about their firearms policies and were determined to take action to prevent further accidents. In January 1987, Scotland Yard announced that it was disarming its CID officers and that future armed operations were to be carried out by specialist squads or the blue beret squad of marksmen. (The Guardian, 17.1.87). This followed the shooting of Cherry Groce. Another consequence of the bungled armed raids was the Working Group's recommendation that 'The part of the (ACPO) manual which deals with armed suspects in buildings or

other structures should be expanded and clarified to give an explanation of when armed entry to buildings should, or should not be undertaken' and that 'entry to buildings by armed officers, particularly where innocent parties may be present, demands great care in its planning and implementation.' (Home Office, 1987, annex D.8). That great care should be taken before raids was perhaps self-evident, yet the laying down in the ACPO manual of more details and clarification is a step to be welcomed in principle even though the refusal to publish the manual means that such extra information will not become known. Ideally, the sort of guidance in the manual giving details on when or not it is right to enter a building, should be set down in legislative form such as a code of practice. This is an example of where firearms legislation could be tightened up without hindering police operations, yet making them more accountable and liable if they were to transgress clear legal guidelines. The importance of controlling police shootings is not simply to prevent harm to an individual but to contain the wider consequences of the disruption to police-public relations. American researcher James Fyfe suggests that police shootings might actually be criminogenic insofar as they have been indentified by presidential commissions as the catalysts for a number of riots. (1981, p.379). This is similarly borne out by the riots that occurred after Mrs. Groce was shot accidentally in Brixton, and on a broader note, police action inflaming violence in the community was proven by the September 1985 disturbances at Broadwater Farm, Tottenham London, after the police raided Mrs. Cynthia Jarrett's home and she died of a heart attack.

The Working Group's recommendations that the subject of command and control should be more clearly and fully described in the manual, in relation to armed raids, and that tactical advisers must also be consulted (Home Office, 1987 recommendations 9 and 10), also demonstrated that

there was scope for improvement on the pre-existing procedures and that parts of the training manual had not been detailed enough before. The Working Group also made a couple of changes to the 'Guidelines for the Police on the issue and use of firearms'; previously these had read that an oral warning was to be given before firing unless it was 'impracticable to do so'. This was changed to an oral warning need be given 'if it is reasonable to do so'. Although this may seem a trivial change, it reflects police concern over the need to give a warning, which it is felt only encourages the criminal to open fire, rather than lay down his weapons.

Another interesting small detail in the guidelines concerns a section headed the 'use of minimum force'. In the old guidelines, this quoted section 3 of the Criminal Law Act 1967 and described it as effecting the principle that only the minimum force in the circumstances should be used. This interpretation was legally incorrect, and blurred the two terms 'minimum' and 'reasonable' force. The subjective formulation or interpretation of 'reasonable' means tht this is often far from 'minimum'. This has been recognised in the new guidelines by the correct description of section 3 as relating to 'reasonable force', yet shows that the police have in the past, used the yardstick of minimum force, and continue to do so. This adds weight to the claims that a change of the legislative standard from reasonable to minimum force would help clarify matters in firearms cases, if not in general policing, and would be perfectly acceptable to the police.

The Working Group's other recommendations were as expected; the setting up of specialist 24 hour firearms squads, the monitoring of developments in alternative non-lethal weapons, the possibility of setting standard minimum trigger pressures, and improved assessment and refresher courses for AFO's. However the summary of their conclusions (a summary because the body of the report remained

unpublished), was disappointing. They said that there was 'as yet insufficient reason' to recommend any changes in legislation within which armed officers operate, that the 'balance and structure' of guidance and instructions should be left unchanged, and that it would 'be inappropriate' to incorporate parts of the ACPO manual in the guidelines, or as part of a code of practice under PACE. (Home Office, 1987 Annex E, conclusions 1-3).

These first three conclusions basically re-affirm the status quo, and declare the Working Group satisfied with the current 'guidelines' approach. This still leaves police firearm use unregulated externally and not subject to judicial review if procedures are not followed. It is unfortunate that the ACPO manual and full findings of the Working Group have not been published since it would be interesting to see why they consider it 'inappropriate' to endow those more detailed procedural instructions with legislative force, and why they feel there are insufficient reasons for a legal change. The Working Group's report is a conglomerate of contrasts; it recognised the many previous deficiencies in police firearms training and procedure, and sought to rectify them, yet has chosen to allow the police the self-regulatory approach to achieve this. The many changes recommended by the Working Group are belied by its conclusions. These appear to place confidence in retaining the same loose framework that accommodated the mistakes that gave rise to their report in the first place.

The conclusions of the Group also think that refresher training is 'adequate', that the initial length of training is 'sufficient' and that the list of police weapons is 'adequate for present purposes'. (Annex E, conclusion 6-8). Most worrying however, is the tenth conclusion; 'The routine deployment of overtly armed police officers, while not a step to be taken lightly, is a matter which should remain within the operational discretion of Chief Officers.' This has many unpleasant and undemocratic

ramifications. Firstly, although the operational discretion of chief officers is principle that should not generally be tampered with, there is a case for modifying it when talking of the 'routine deployment of overtly armed officers'. This bland statement can have potentially frightening implications, depending upon its interpretation. If by 'routine', it is understood that the presence of some armed officers is a standard non-controversial procedure and duty, such as when providing protection for the visits of VIP's, the Royal Family and so forth, then there can be no objection to this. However, if, as is more likely, (judging by the context that it is 'not a step to be taken lightly'), the 'routine deployment of overtly armed officers' envisages the use of armed officers (and not a specialist unit) being assigned as a matter of course if the Chief Constable thinks that this is the way to deal with a particular problem or incident, then this is a conclusion that should be opposed.

If there are no statutory restrictions (as opposed to the internal advice of the ACPO manual and the Home Office guidelines) on firearms, then not only will the Chief Constable be able to issue firearms whenever he feels it appropriate, unhindered by any legal clauses that might say otherwise, but he will be able to direct they be used if he thinks it necessary. Chief Constables have no specific power detailed in law, to deploy armed officers, in that it is not spelt out directly in any statute; yet the authority to do so derives from the lack of any directions to the contrary, and the Chief Constable's discretionary power under section 5(1) of the Police Act 1964 that provides that each police force shall be 'under the direction and control' of its Chief Constable. The statement by the Home Office Working Group does of course, place implicit trust in the Chief Constables of British police forces, yet without meaning to criticise any of them personally, it seems that the principle of granting them this subjective power is unwise.

For example, supposing that the police had been 'routinely

and overtly armed' during the miners strike of 1984, or during the inner city riots of 1981 or 1985. There were occasions during these uprisings when the police and demonstrators/rioters clashed so fiercely that a Chief Constable may have concluded that the lives of his men were in danger, and allowed them to fire in 'self-defence'. The consequences of this would be appalling; such images are more redolent of policing South Africa's townships, yet it becomes a technical possibility under the sort of arrangement endorsed by the Home Office Working Group. The above examples are deliberately extreme, yet should not be interpreted as alarmist since the likelihood of this type of tactics is as yet practically non-existent. However, the underlying point of such scenarios remains important, namely that the deployment of firearms should not simply be matter for the Chief Constable's discretion, as are other areas of policing, since this would lead to the possibility of guns being used subjectively on occasions that would maybe not merit an armed response in other parts of the country, and would not be deemed serious enough for firearms involvement if there was a centrally agreed policy governing police gun use, encapsulated in statutory form.

A Chief Constable's police authority are not likely to be an effective restraint to prevent his deployment of guns, if the precedent of plastic bullets supplies is a relevant indication. The Court of Appeal decided recently that the Home Secretary has the power, under section 41 of the Police Act 1964, to issue plastic bullets or baton rounds, and CS gas to a Chief Constable without the consent of the local police authority. ('Right to issue baton rounds'; R v the Home Secretary, ex parte Northumbria Police Authority, Law Report, The Guardian, 20.11.87). Therefore a Chief Constable would in practice, be able to deploy armed officers, even if his police authority objected. It would perhaps be better to compromise the Chief Constable's operational discretion where firearms are concerned, and only allow their use if certain legislatively defined factors had

already been met; perhaps these could include the right of a police authority to veto 'routine' firearms use. This need not affect his operational independence on other less serious matters.

This issue must be kept in perspective however since the police use of firearms is currently sensible; they do not appear to be 'overtly armed' and 'routinely deployed' as far as can be gauged, although the exact number of police firearms is difficult to establish. The foregoing discussion is merely intended to question the wisdom of the Home Office Working Group's non-interventionist thinking on police firearms, and to suggest that the policy they favour is potentially flawed.

The recommendation of the Working Group that twenty-four hour specialist squads be set up, at first appears incongruous with the British unarmed tradition and a step towards the creation of an elitist third force; a concept feared and despised by civil libertarians. However, in firearms cases, this is in theory a development to be welcomed, guaranteeing a higher level of overall training and competence when the numbers of AFO's are being reduced. The Merseyside police recently doubled their voluntary elite armed unit from 15 to 32, with the unanimous backing of their Labour controlled police authority, whilst the number of AFO's was reduced from 450 to 180. (The Guardian 27.11.87). This policy of reducing the numbers of armed officers and concentrating on the specialisation of those remaining demonstrates that the police have been strongly affected by the firearms tragedies and that they have the will to reverse the growth of arms issued and to improve the efficiency of their armed officers. It is to be welcomed that the police have taken the matter and attempted to deal with it before firearms usage became too commonplace. Although there had been a sharp rise in police firearms issues, they had not become so widespread that it was too late for reform, and it is encouraging to see the police

now striving to regain their largely unarmed reputation.

The existence of specialist squads is not as harmful as the image it may conjure up, when one considers that the past accidents have largely been caused by unspecialised firearms officers. Furthermore, the Metropolitan police D11 'Blue Beret' department of firearms experts, whose existence pre-dates the recent guidelines, have never shot anyone since their formation seventeen years ago despite attending most major shooting incidents in the capital. (The Guardian 16.1.87). Steven Waldorf, talking to Benn and Worpole, and speaking from acute personal knowledge made the point that it is a good idea to bring in police gunmen who have not been personally involved in a case, since those who are well-informed about the suspect will be more prone to be swayed by their knowledge and possibly more likely to shoot. (Benn/Worpole, p.57).

Recent police operations have provided evidence of the new police policy of specialist teams, in action. On 6th February 1987, two members of an armed gang were shot by an armed officer in a police ambush at the Sir John Soane museum in London. No shots were fired at the police, and the officer fired three shots, hitting a man who had been brandishing a sawn off shotgun in the chest, and killing him. The police gave a warning of armed police when firing. (The Observer, 8.2.87). In July 1987, a member of the Metropolitan police tactical firearms squad killed two armed robbers and injured a third, when police foiled an attempted armed robbery at a South London abattoir; a warning of 'armed police' was given by loud hailer and the one officer fired six shots. The robbers were not thought to have fired any shots. It was said that 'The incident appears to confirm the emergence of a policy under which the police will be prepared as never before to counter armed crime with equivalent force.' (The Guardian 10.7.87). Perhaps such a policy was contained in the unpublished ACPO manual? Whatever, the shooting in the abattoir incident

at the ironically named 'Shooters Hill', revealed some extremely accurate police shooting, denoting considerable expertise.

In November, 1987, Metropolitan police shot one gunman and wounded another after a stake out and armed robbery in Woolwich. In this incident police returned fire after an inspector had been shot in the leg. (The Guardian, 24.22.87). In the same month in Somerset, a man armed with what later proved to be an unloaded pump action shotgun was shot three times by police, after ignoring warnings to stop and raising his gun as if to fire. (The Guardian, 23.11.87). The police response in this last case seems quite justified, although the Chief Constable of Avon and Somerset lacked tact in declaring that 'there was absolutely no option but to put this man down', with its overtones of humane, animalistic execution. (The Guardian 24.11.87). In the other cases however, the police action was clinical and uncompromising, particularly in the instances where the criminals did not fire at all. The Metropolitan police Deputy Commissioner Brian Worth defended the abbatoir shootings by saying; 'The loss of life is regrettable but it has to be accepted that in combating serious armed robbery, the police are prepared to use force, to defend defend themselves and the community.' (The Guardian 10.7.87). Although the police view any criticism of such operations against criminals in a poor light, it must be observed that the use of words here is questionable and slightly deceptive. The police were not using force strictly to defend themselves but to attack and apprehend the criminals. Defence of the community has been equated with the police taking the initiative, which is not entirely accurate, but is a good way for the police to frame their policies when seeking public support. Many people would doubtless approve of such police actions, and there would be nothing to question if Britain's laws specifically allowed such pre-emptive shootings. However, the fact remains that

Britain does not license shooting to apprehend and so it is only right that the Police Complaints Authority should hold inquiries into police shootings to examine what procedures are being followed, since it seems clear that shots are fired aggressively by the police as well as defensively.

There is a strong distinction between the nature of shootings at stake-outs and where there has been a tip-off, and those that may occur during house searches. It must be relatively straightforward to train specialist officers on how to react in a stake-out or police ambush, yet this is very different to dealing with armed house searches where anything can happen. In training for this it is obviously harder to cater for all eventualities, and the involvement of specialist squads may not necessarily guarantee a mistake free future. There is little public sympathy though for the criminals who are killed or injured by police marksmen; they are treated as if they deserve to die. But what would the legal situation be if it was contended that the police had acted unlawfully and had used unreasonable and unnecessary force? Surprisingly there are two civil cases of such a type, claiming damages from police shootings, currently being prepared. In June 1984, two unarmed Post Office raiders, Carey and Ficken, were shot and injured by policemen who thought they were armed, and are suing the police for assault and battery and negligence. The other case concerns two men who had attempted to rob a Securicor van in March 1985. One was shot when attempting to escape and is suing the police for his injuries. (Porteous, 1987, p.248).

The litigants in these cases against the police are thought to have little chance of success. Christopher Porteous, a Metropolitan police solicitor considers (Ibid.p.248) that the police are adequately covered by the defence that they used reasonable force, or alternatively, by the tortious defences of; 'ex turpi causa non oritur

actio' (a base cause can not found an action), 'violenti non fit injuria' (a person can not complain about an injury, to the risk of which he expressly or impliedly consented), or contributory negligence. Porteous cites the case of Marshall v Osmond (1983, 2 ALL E.R 225), that examined a policeman's duty of care to someone committing a crime, and found that the duty of care owed was not the same as that to innocent and law-abiding citizens. (Ibid, p.249-250). This case related to a stolen car being struck by a pursuing police car, but the principle would probably extend to firearms too.

The police system of twenty four hour armed squads available as a second tier response to local armed AFO's was in operation when Michael Ryan rampaged through Hungerford in August 1987, but the relatively remote location and the unprecedented nature of the events meant that the police system was unable to deal with it. There has been criticism of the police for the handling of the incident, and their alleged failure to contain Ryan may be used as a reason to call for arming more policemen. Such demands should be rejected since they are not justified by events, nor would they be consistent with the Home Office's current policy on police guns. The police do genuinely seem to be entering an era when fewer men are trained to use guns, but those who are will be prepared to use them. This attempted reversal of the trend in armed policing is a move in the right direction if Britain is to try and maintain its unarmed tradition, and public support. This should only be part of the policy however, whilst the police are going to be shooting where they deem it necessary, there should be an overhaul of the inadequate laws governing firearms. Because of its potential seriousness, police firearms use should be subject to clear, individual legal controls, rather than being lumped in as part of the vague 'reasonable force' provisions.

The need for further legislation

Although one may argue that the vague statutory formula of 'reasonable force' is as equally valid to firearms use as to other forms of coercion because it enables all situations to be accommodated within it, it would surely be preferable to draft new legislation that deals specifically with police gun use. There are sound reasons for doing so; firstly, as has been recognised by writers on the police and the public, the unarmed nature of the British police is regarded as perhaps their greatest virtue and the feature most worthy of preservation wherever possible. Therefore on a purely symbolic level it would be wise to isolate police gun use and treat it as a palpably separate part of policing rather than to accept it as an intrinsic part of the police's reasonable coercive powers, which is what has happened at the moment. This separate statutory treatment of cases of police gun use would help to invest firearms cases with a sense of being something unusual and alien to mainstream policing, simultaneously reinforcing the fact that ordinary policing does not involve guns and does not need to be subject to such strict rules as where lives are at stake. One might think that a symbolic reason is not an adequate basis for legislative change, but that is not the case with this issue when one considers how powerful and influential the image of unarmed police has become in this country. It is a major source of public sympathy for policemen, enhancing as it does their vunerability and underlining their human frailty in the face of violent opponents who can not be dispersed or threatened easily without the weaponry that is available to their American and European counterparts. The image of the unarmed officer is a courageous one demanding respect. Whether this image corresponds with reality, or is inaccurately fogged by sentimentality is not important, as long as one accepts its existence is widely held, and consequently that it is a source of great support for the police.

Conversely, publicity over police use of firearms (even where used lawfully against criminals) has an adverse effect on the public image of policing, with Britain's police force being characterised as increasingly reliant on violent methods and moving away from their revered unarmed traditions.

It could be argued against this legislative proposal that the creation of separate laws for police gun use would highlight their routine existence, be seen as proof of an increasingly violent force, and therefore damage public confidence in them. However, criticism of any measure that sought to increase control over firearms in policing could more likely be deflected by the police to serve their own propaganda purposes. They could assert that tighter gun regulations prove their determination to behave responsibly on the occasions when they do deviate from their accustomed unarmed state. The prevention of unnecessary issuing and use of guns would also maintain and strengthen the police's commitment to operating unarmed wherever possible. The public could be reassured that the arming of the police was not an inevitable step on the path to Americanisation and increasing violence, but an occurrence treated with great caution and reserve, and thus their confidence could be retained.

More important than the symbolic functions of laws governing police gun use would of course be the practical purposes that such legislation would serve. The starting point for the view that fresh law is desirable springs from the understanding that whenever the police are issued with arms in any operation, then if they have cause to use them, they will be shooting to kill. Quite simply, the police are trained to aim at the upper body of the target, aware that an accurate hit will almost inevitably result in death, or at the very least, serious injury. It is surprising, given these facts, (which are readily recognised by the police themselves) that the events

investigated by John Stalker became subtitled as the 'shoot-to-kill' inquiry and that so much weight was attached to this description. Obviously the allegations that a group of policemen were going out with no intention of apprehending their suspects lawfully, but instead with plans to shoot them, are of an extremely serious nature and deserve thorough official scrutiny. However, the media labelling of the episodes somewhat sensationally, with the snappy sobriquet of 'shoot-to-kill', betrays an ignorance about the reality of what can be expected **whenever** the police use guns to deal with any given situation, and showed a misdirection of justified anger towards what is an 'open secret'. In other words, much disgust and indignation was expressed at the idea of the police operating an unofficial 'shoot-to-kill' policy (as opposed to concentrating on the other scandals of institutional covering up unveiled by Stalker), when this is precisely what has been the case in Britain for some time. Public opinion does not seem to have grasped the fact that police marksmen are trained to shoot to kill, not to disarm or temporarily disable a suspect, and that the major difference with the Stalker cases were that those shootings were not officially endorsed.

It is myth that the police use guns to contain and do not subscribe to military principles when using their firearms. In fact, there is no difference between the standards that govern the army and the police if they actually have cause to fire. The Chief Constable of Hampshire, Mr. John Duke has said as much; 'The gun is not made for protection, nor made to injure or frighten. It is made to kill, and the police officers being trained to use it when necessary in Hampshire are being trained with this in mind.' (Quoted in Manwaring-White, 1983, p.117). One of the policemen who shot Steven Waldorf was also of the same opinion, and only his ineptitude saved Waldorf's life; 'At his trial DC Finch quite openly

said that 'I intended to totally incapacitate him. The only way to do that with a gun is to kill him.'' (Benn/ Worpole, 1986, p.60). Furthermore after the killing of the man in Somerset in November, 1986, the Deputy Chief Constable of Avon and Somerset police said; 'Perhaps people have an image in their mind by watching television or Westerns that when you fire a firearm you can fire at a particular part of the anatomy....One doesn't want to be cruel about this, but the reality is that if the legal circumstances are such that allow an officer to fire his weapon then he is going to achieve his objective. A wounded man will still have the capacity to wound innocent people or wound or kill the officer himself.' (Quoted in The Guardian, 24.11.87).

It seems inconsistent then to cover police shootings with convenient legal platitudes such as 'reasonable force in the circumstances'. The authorities are aware of the likely result of police discharging their weapons before it happens and itcan not be satisfactory to retrospectively 'pidgeon-hole' all instances of such as 'reasonable', particularly where death results. This is not an attempt to say that the police should let an armed criminal escape rather than open fire on him, but rather, is an expression of disquiet at a system that allows its agents to kill in the name of 'reasonableness', and then not be held accountable afterwards because there is no stricter standard that could have been applied. There is a grim philological irony in the fact that the death of someone can be justified as a 'reasonable' response to his offence, in a country that has long since officially forsaken the death penalty. This is not to deny that there are occasions when to protect someone's life from imminent danger, shooting of the offender may be the only option; but not all police shootings take place for such urgent reasons.

Whenever the police are involved in controversial

incidents of any kind, but particularly shootings, those who dare to criticise them are accused of doing so with the benefit of hindsight, and are thus portrayed as being harsh and unfair towards the police. This type of reaction almost inevitably follows every contentious episode involving the police. However, why is it that hindsight and retrospective knowledge can not be converted into foresight and used positively to help the police deal with future firearms incidents? For example, the experiences gradually amassed by the police in their use of guns must surely have taught them that there is a correct way and an incorrect, to handle dangerous situations. Why can the elements of the favoured, established procedure not be distilled into statutory form so that there will be clear enforceable guidelines governing shootings? Rules can be developed on matters such as when it is reasonable to give a warning shout of 'armed police' and when it is acceptable to dispense with this, and so forth. Perhaps rulings on it only being 'reasonable' to fire if actually confronted with someone preparing to shoot at you might be welcome, or perhaps the police would feel too inhibited by this. Whatever, the police do now have experience of armed operations and are in a position to provide more details on how these can be most strictly run so as to maximise public safety without compromising their ability to detain criminals. At the moment such specific rules as do govern police use of guns do not have legal weight even if they exist internally.

In other less visible areas of policing it has been argued that more rules and regulations, whether internal or statutory, will make little difference to behaviour; however firearms use is an exception to this pessemistic outlook. The issue and use of guns is already strictly controlled by the police even if little is known of it publicly and is an area that would be responsive to legal changes; rules can not simply be ignored by officers

here, who are the focus of attention by their superiors in what is of necessity a tightly controlled working area. The intention of new, defined regulations on firearms would not be to prevent the police using guns or to catch them out and haul them up before the Courts but to clarify the situation so that officers would be aware of the legal protection or otherwise that they could expect when carrying out future armed operations.

American experience indicates that strategies to control shooting can be effective; 'In sum, the empirial research suggests with remarkable unanimity that restrictive policies seem to have worked well where they have been tried. Their adoption is usually followed by marked decreases in shootings by police, increases in the proportion of the shootings that are responses to serious criminal activity, greater or unchanged officer safety, and no resultant adverse impact on crime levels or arrest aggressiveness.' (Geller, 1985, p.221). Such restrictive control policies also seem to have had an effect on shootings **of** police as well as on shootings **by** police. (Fyfe, 1979, cited by Geller, ibid,p.220). Admittedly the number of police shootings in the USA greatly exceeds those in Britain, and British policies are currently restrictive compared to American, yet it suggests that controls, whatever the shooting level, can be imposed without any significant increase in armed crime.

The desirability of a clearer legal standard against which to evaluate police shootings is emphasised by the Lovelock, Waldorf and Chester shootings. Ward notes that in the latter case 'Few people seem to have noticed that PC Chester's acquittal was really more damning of the West Midland's police than a conviction would have been, since it meant that their procedures were such that an officer following them could, **without** being grossly negligent or reckless, kill an innocent child.' (1986,p.72) (His emphasis). In all three, grave wrongs were done by police,

(albeit accidentally in two of them) to innocent citizens, yet the Courts cleared the officers each time, which, as noted before, implicitly absolves the police organisation of much blame. Whilst one would not wish to see genuinely unfortunate officers scapegoated and imprisoned, there should be a legal option before the courts enabling them to find a police force liable, and to adequately compensate the victim. Individual officers need not be punished alone if vacarious liability principles were adapted. In a recent review of the minimum use of force by the army and police in Northern Ireland, Viscount Colville said that there was no alternative under existing law, between murder and acquittal in cases involving members of the security forces, and that such acquittals shook public confidence in the police. (The Guardian 11.2.88). Viscount Colville wrote that 'If a soldier shoots and kills someone in circumstances where he says that he thought the other person was about to pull a gun gun on him, but he was mistaken, he can only be convicted of murder if his defence is not believed, which many think too harsh, or completely acquitted on grounds of self-defence, which the victim's family and community tend to think outrageous.' (Ibid). This is applicable to police shootings in England and Wales too, and an alternative verdict of manslaughter may be appropriate. Even if the Courts could find a guilty verdict, fine the police heavily and perhaps conditionally discharge the officer involved, this would be preferable to what has happened in the past.

In conclusion, the police use and issue of firearms is a shady area about which relatively little is known and public accountability is low. This is partly possible because of the vague legislative framework, which should be changed to accommodate gun use quite clearly, and improve external controls. Recent events have made the police aware of the value of their unarmed reputation and the dangers of issuing

too many guns to officers who have had comparatively little training, and their attempts to tighten up police gun use are to be supported. However, the secrecy surrounding the purchase and issue of weaponry needs to be breached, and control of such matters wrested away from the exclusive grasp of the police themselves.

PART THREE

POLICING PUBLIC ORDER AND COERCION

CHAPTER SEVEN
PUBLIC ORDER POLICING: ISSUES AND LAWS

a. Introduction

The police's control of incidents involving public disorder is a subject that has assumed great importance in recent times. The manner is which a state polices widespread disturbnce is an indicator of the prevailing political climate and a thermometer that can be used to gauge the health of a democracy, and how the rights of its citizens are being respected. The last ten to fifteen years in particular have seen rapid developments and change in the way in which the police respond to public order troubles. The equipment and uniform of the 1980's riot policeman would have been futuristically alien in the 1960's. Have instances of public disorder been increasing in number and the intensity of violence? Have the changes in policies been forced upon the police as protective measures for the benefit of their officers, or have the police themselves contributed towards the more confrontational policies of the 1980's? These are questions that will be addressed in this chapter. There will be a look at the powers available to the police to see whether they are sufficient to enable them to keep control in difficult times, or whether in fact they have unnecessary powers unduly restrictive of civil liberties. The same tension identified in earlier chapters, between the law and police practices, legal theory and police cultural ideology is also present in a public order context, and with this in mind, the problems of controlling the police in public order incidents will be examined since the influence of police cultural norms in such circumstances and the consequences of them superceding legal restraints, are arguably more damaging than when an individual officer deviates from the path of legality.

Public Order Policing; the political element

A major problem in trying to analyse trends in the policing of public disorder is that this is an area laden with political values and assumptions, which may obstruct

neutral and dispassionate discussion of the problems at hand. The debate over whether law is political or not has become tiresome and ultimately pointless as successive pieces of legislation have emerged reflecting the ideology of the ruling party and thus visibly undermining those who would seek to put 'the law' on a pedestal of non-partisanship. However this hackneyed and fatigued old argument has to be confronted again when talking about public order, because it is an inherently political area. Those who persist in claiming that the police, as agents of the law, enforce it impartially in all circumstances, can not, credibly maintain such a perspective with regard to public order. The basic function of the police in supressing public disorders is to protect the political masters of the day, and this ultimately applies whether this disorder is of a criminogenic appearance, as in the case of riots, or whether it is of a broadly political nature, as with demonstrations and industrial actions that lead to disorder. The Public Order Act of 1936 was a product of political expediency designed to give the government of the day legal powers enabling the police to cope with the large counter-demonstrations that were arising in response to the marches of Sir Oswald Mosley's fascist supporters. It was not greeted with unanimous approval; Williams records the disillusionment of many left-wingers with section 3 of the Act concerning powers relating to processions; 'They had been prepared to accept new laws about political uniforms being worn in public, and they had been prepared to accept, within limits, a prescription of quasi-military organisations. But they saw no justification at all for using Fascist activities as an excuse for a wholesale extension of statutory provisions relating to public order.' (Williams, 1967, p.57).

Thus a longstanding misconception about the 1936 Act should be corrected. It may be thought of as a measure

against the fascists themselves, whereas in reality, the burgeoning labour movement was as much of a target, if not the primary one, of the Act. The fascist marches merely provided the opportunity to do something about the growing power of the demonstration and procession as forms of what had been legitimate protest.

The 1936 Public Order Act is introduced into the argument on the political nature of public order legislation and policing because it serves as a useful contrast to the 1986 Public Order Act, passed by the Conservative government fifty years after the turbulent 1930's made legislation in this field necessary. The 1980's have seen plenty of disturbances ranging from the inner-city riots of 1981 and 1985, disorders associated with industrial disputes such as the 1984/85 Miners Strike and troubles at the 'News International' plant in Wapping, East London 1986/87 to the continuing problems of hooliganism associated with football crowds and with alcohol. There have been plenty of instances of disorder to occupy the police but unlike 1936, there has not been any specific threat, real or imagined, to that most vunerable of materials, the 'fabric of society'. Thus whilst the reasons for passing the 1936 Act were quite openly political, it's 1986 counterpart and successor has found itself being justified and defended on quite different grounds, namely those of a perceived growth in public disorder and crime. The government has attempted to blur the margin between what is regarded as political and what is seen as criminal. By presenting public order proposals as responses to criminality, the legitimacy of the police powers is intended to be accepted and the principle of policing by consent maintained. However, when a government secures much popular support, and bases many policies on a so-called 'Law and Order' platform, as the current Conservative administration has done, then it become difficult to dress up party policy in the neutral clothes of law enforcement. Cloaking public order issues with the

deceptive veil of 'law and order' can not hide the sharp divisions of party political opinion that remains underneath, and which, when they emerge, betray the fact that what is under discussion is not some dry legal problem, but a 'live' issue that is very much able to be moulded by the government of the day according to their political persuasion.

There is a need to be aware therefore, of what type of conduct will be regarded as political, and what as criminal. The trend in the 1980's has been towards criminalisation of many forms of protest, but most notably of picketing during industrial disputes. There are for example, controls in the Public Order Act 1986 designed specifically with pickets in mind, (Section 14) enabling the police to impose conditions on 'public assemblies'. Wherever there are twenty or more people gathered to picket, this becomes a public assembly. Admittedly, current common law guidelines see six as the proper number for pickets and, one could argue that if there are twenty or more then they are acting illegally anyway and therefore can not complain if they are subject to legal powers. This would however, miss the point here, which is that picketing, an activity previously regarded as political, becomes a criminal act if the police decide to enforce the 1986 Act. If demonstrators pickets and so forth, can then, be depicted as criminal, or engaged in criminal activity, this will immediately abrogate or negate any 'right' that they may claim to be exercising, and lay them open to whatever actions the police are empowered, and see fit, to take. Criminalisation of protestors can and will influence what action the police take, and how much force they are prepared to use. For example, if a picket of more than twenty people refuses to conform to conditions laid down by police, then the police, apprehending disorder, and trying to disperse the crowd, might use riot control equipment, and be prepared to use more force than would be sanctioned against a group whose rights of assembly they respected. The important points to remember here are that not only are public order

laws inherently political, but so are the actions of the police when enforcing much public order legislation. The responsibility for the politicising of protest does not rest solely with government for it is the police, with their wide range of powers and discretion, who can decide when to invoke their public order powers, and it remains an operational police decision on when to use riot equipment and so forth. The British police and governments have traditionally been wary of admitting that they are acting in the interests of the security of the state, and so have consciously tried to avoid the label of political policing, preferring to relate their actions to crime, yet this has not been the case on the continent, where there is no attempt to deceive about the function of certain police activities, as will be seen in chapter nine.

Different types of Disorder

When looking at the use of force that the police employ, distinction between public order incidents and individual incidents is very important. The reasons why officers acting alone or with one or two colleagues use coercion are radically different to those that influence the police as a group into using force in public disorder situations. A distinction must also be made between types of public disorder and the appropriate responses in each case. This must primarily be to distinguish riots from demonstrations or industrial disputes that degenerate into disorder. The policies used to contain or repress the troubles in differing outbreaks will not always be the same, or should not be the same. What may be thought expedient in order to control rioters may not be appropriate in the case of a demonstration that has turned violent, and it is important that the police response is a measured one, and one that will not have the effect of inflaming the trouble and violence further.

Controlling the police

This chapter and the next will be looking at public order

problems in a slightly new perspective, namely concentrating on how to control the police's behaviour. This must not be interpreted as saying that the police's actions are almost always unduly forceful. The difficulties that the police face in this field and the unenviable nature of their task is readily acknowledged. It is also recognised that there will be many occasions when the use of coercion by the police is both necessary and desirable, and their actions legitimate; a sense of realism must be maintained, and one must accept the frequent need for the police to solve problems using force when other methods have failed. However, whilst this must always be borne in mind, there is another 'side to the coin', namely, that there will be occasions when it is perfectly reasonable to challenge the use of coercion by the police, and to ask whether its use is consistent with principles of minimum reasonable force. At the moment, police tactics in public disorder episodes tend to escape widespread scrutiny and challenge even if they appear to have been excessively forceful. The laws governing police misuse of force in this area are the same as those for the individual constable acting by himself, and there are no clearly delineated legal limits against which the police conduct can be measured. Perhaps for this reason, it is difficult to challenge police behaviour when controlling disturbances; the police methods, even if legally dubious, may be overlooked if they help contribute to what is seen as the overriding good, namely the restoration of public order and social tranquility. The police's behaviour is not often the subject of examination, or at least police misbehaviour, if and when it occurs, is rarely admitted in a public order context by senior officers and therefore not reviewed critically by the police themselves. Because this is a politically and emotionally sensitive area, criticism of the police for acting coercively will almost certainly be repudiated and denied, and their critics characterised as being anti-

police or politically extreme. One does not have to be either to express concern at certain police methods, and it must be accepted that criticisms made of public order policing in this chapter spring not from any politically orientated or anti-police motives. Instead, observations are made from a socio-legal viewpoint, questioning whether the police follow legal standards and internal training guidelines in dealing with disorder, and whether they can be controlled or held accountable for their actions if this is in doubt. The long term effects of equipping the police with the latest anti-riot technology must also be assessed; will this lead to less disorder and violence in the future, or will it lead to more? In terms of the control of the police, the role of the Chief Constable is of great significance. His almost unchecked discretion and ability to ignore the advice of his local authority are interesting concepts in a society that purports to be one of the most democratic in the world. At what stage do the demands of local democracy and accountability become subservient to the doctrine of police operational independence? Is this justification enough for autocratic behaviour in what is such an important area? These issues will be explored in more detail in later chapters.

This chapter looks at the differences between individual and collective force. It notes with concern that there is no legal distinction between the two and suggests that this ought to be rectified. The reasons why police use violence in public order situations are explored. Inevitably, many of the factors operative on an individual officer's use of violence will apply, equally to officers policing public disorder, but there will be additional circumstances specific to group situations that need to be taken into account.

The examination of the law relating to public order and coercion in this chapter, centres on the Public Order Act

1986. Although this does not officially sanction police coercion, force is likely to be used in upholding it. The background to the 1986 Act is looked at, and its necessity questioned in the light of the unconvincing arguments advanced in its favour. The provisions of the Act are then examined. The new offences created by the Act are considered, as are the powers given to the police to limit processions and demonstrations, which in practice amount to an additional power of dispersal. The new powers and wider applicability of the Act are likely to criminalise previously legal behaviour and to tip the balance of law enforcement firmly in the police's direction, at the expense of the rights of demonstrators, pickets and so forth. With this in mind, the chapter concludes with a look at the concept of balancing group and individual rights in public order policing.

b. Reasonable Force; Individual and collective

i. Lack of legal distinction between different types of force

The first point that has to be made here is a somewhat obvious one, namely, that the circumstances in which an individual may use force and the reasons for doing so, may bear little relation to the reasons that coercion is used collectively by a group, and this applies equally to police officers as to ordinary citizens or members of a crowd. However, the laws covering the use of force in both situations are the same. This is an unsatisfactory situation. It has been argued earlier that the vague provisions of the Criminal Law Act and Police and Criminal Evidence Act are merely adequate to cover the wide range of potential incidents, but that there could be more detailed regulations. The justification for a widely drawn law is that all eventualities can be accommodated within it, however this should not be used as an excuse to avoid drafting more specific rules to cover certain regularly occurring situations. In the case of the individual officer using coercion, although this may be for a wide variety of reasons, the form that it will take could readily be

categorised. For example, legal uses of force would probably be confined to pushing or the exertion of physical pressure to effect an arrest; illegal uses of coercion might include punching or kicking a suspect, but whatever the force used and no matter whether it was legal or not, it would most likely be of a routine identifiable nature. The same can not be said of force used in public order situations. Here, the police may be equipped to disperse demonstrators or rioters, with weapons (such as longer truncheons, possibly plastic baton rounds, and shields) and using horses and dogs, and the opportunities for unchecked collective and individual coercion are many. In other words, the range of potentially violent responses available to the police (whether legal or not) is much greater in policing public disorder than in the everyday policing of the streets by individual officers. Its effects are likely to be more serious too; admittedly there are cases of people being beaten in police stations after arrest and sustaining serious injury, but these are relatively rare, and the normal result of injudicious force in an arrest situation is probably a few bruises and cuts. However, the potential injuries in public disturbances will be of a consistently more serious nature; a legitimately waved truncheon is capable of more harm than an illegitimately used fist. Basically then, it is surprising that there are no laws relating to how much force the police are able to use when responding to public disturbance, despite the fact that they may be using equipment specifically designed to inflict pain and inspire fear in the crowd. It is strange that the law makes no distinction between different areas of policing and the commensurate levels of force that are appropriate in them.

This lack of legal guidance is worrying since the detection of police misuse of force and the sanctioning of those officers responsible is far less likely when it occurs in situations of mass policing such as those that

attend public disturbances. For instance, during the Miners Strike of 1984, and despite the frequent violent outbreaks and allegations on both sides of illegal violence, no policemen were charged; 'Over 9,000 miners were arrested and 7,917 charged with over 10,000 offences. Three hundred were imprisoned (some for many years), and over 700 were sacked by the NCB. Not a single policeman was prosecuted for a picket line offence.' (BSSRS, 1985, p.82). Even the most hardened cynic and supporter of the police would be surprised by such a statistic. The implications of this are that the police's conduct was entirely legal and proper. The truth is probably somewhat different; even if allowances are made for the difficulties of policing large crowds, to imply that all the policemen behaved acceptably and with reasonable force would surely be to defy human fallability. That the police can successfully avoid censure for illegal acts in crowd control incidents is true for the most part, but there are exceptions, an example being the charging of a dozen officers by the DPP over allegations of brutality during the Wapping newspaper production dispute in 1987. (The Observer 31.7.88).

ii. Why do the police use excessive force in public order situations?

Again, it is not being said here that the police always use such force, or indeed that they use force in every public disturbance; quite often trouble can be avoided or minimised without resort to force. However, where coercion is employed, why does it sometimes clearly exceed reasonable limits? Lack of effective accountability is clearly an influential factor. Although number of different reasons can be identified to explain why the individual officer might resort to force (as seen in earlier chapters), the matter in a public order situation is, in a sense, a lot simpler from the police point of view, and the chances of being caught and disciplined are even slimmer than in everyday

policing situations. This is not because of any considerations of low-visibility policing; indeed the policing of current public order incidents may not only be witnessed by the many who are present, be they demonstrators, rioters or strikers, but in this modern era are likely to be filmed and widely reported by the media as well. The situation is made simpler and more clear-cut for the police because they perceive themselves, and are portrayed and seen as being aligned with the forces of good, and for the sake of societal stability. The officers all share the same objectives in crowd control situations, and the means of achieving them may be overlooked by supervisors when the crowds they are facing may not be willing to behave peacefully. It is also easier for the police to take the initiative in the use of coercion in such situations even where they have not been provoked by the crowd, 'mob', or public.

Primary forceful action by the police can be classed as pre-emptive, yet even if it is provocative, unnecessary and wrong, the demonstrators need not have actually done anything particularly harmful to be classed as legitimate targets. Disobeying police instructions on the direction of processions or other group actions not violent in themselves may be met by a heavy police response. The very presence of demonstrators etc, may be enough to justify repressive behaviour in the polices view, for ordinary interpretations of 'reasonable suspicion' of involvement in an offence may be disregarded by a wider line of reasoning that sees all those present as a threat. That the police can behave in this way, and randomly arrest people as a preventive measure, even though the individual suspect's conduct may not warrant it, is clear from the collapse of the trials of many miners indicted for offences arising from the policing of the disturbance at Orgreave in 1984, and the freeing of many members of the 'hippy convoy' also arrested in 1984/85, yet who were found to have committed no offences

when brought to court.

The dynamics of group behaviour and the acknowledgement that people act differently when with others is encapsulated in the phrase 'safety in numbers', with its implicit recognition that companionship and encouragement lend security and false courage to actions that would perhaps not be contemplated by individuals if alone. Translated to mass meetings, demonstrations and so forth, this means that people are prepared to behave, and do behave in ways that they would not otherwise do, reassured by the shield of anonymity. This is a theme that has been taken up by Waddington and Leopold (1985) who feel that the effect that being in a crowd has on the individual can be used to explain the use of violence by demonstrators and pickets who would ordinarily behave peacefully. Waddington and Leopold address the argument, frequently raised, that agitators or extremists are in large measure responsible for disorders and for inciting pliable crowds to violence. They ask who do 'otherwise law-abiding and respectable people engage in violent public protest and commit thereby serious criminal offences?' (Ibid p.3). They concede that to blame some mysterious body of 'extremists' is unsatisfactory and incomplete, albeit convenient, and that the truth is that 'Motivated by a sense of profound injustice, protestors feel released to some extent from normal inhibitions against taking violent action.' (Ibid). Furthermore, they talk of the process labelled 'deindividuation' by social psychologists; 'That is, the person in the crowd does not see himself throwing a missile at another individual, a police officer, but sees himself as one of 'Us', throwing a missile at 'Them'. In this way, he shifts responsibility from himself and places it on the crowd. When this is added to the sense of grievance and injustice at the frustration of collective aims, then people in crowds can have an awesome potential for violence.' (Ibid.p.18).

Such a viewpoint may be valid to a certain extent, but where Waddington and Leopold are at fault is in the one-sided nature of their analysis. Mere participation in a demonstration or membership of a crowd does not lead to violence. They have not addressed the possibility that police tactics may often escalate tensions and be the cause of violent outbreaks. Similarly, it must be realised that this process of 'deindividuation' is one that affects police officers too. Forceful police action at public gatherings will be aimed not at people who are seen as individuals, but at those who are seen collectively as part of a threat to the police's authority.

The reasons identified in earlier chapters for the individual constable using force are also applicable in public order situations. The major difference now is that the police coercion will be sanctioned and implicitly approved of by the state. The same factors that influence constables in everyday policing to act coercively are also relevant in public disorders. They include; force used to keep control of a situation and not to 'lose face'. This is particularly true of policing industrial disputes after the 'defeat' inflicted on police by the mass picket of Saltley coking depot in Birmingham, 1972. It is interesting to note that the Conservative Party were so concerned at the industrial power of the miners, that they produced a report, written by Nicholas Ridley whilst still in opposition in 1978, recommending ways in which the miners effectiveness could be weakened. (See BSSRS, ibid p.82-3). These included tactics that were all to be used during the 1984 strike, such as building up coal stocks in power stations, legislating against the supply of pickets money, using road haulage firms and non-union labour to transport coal, and most significantly, of fashioning a large mobile police squad equipped and able to handle mass picketing.

Violence in public order situations could also be used

by the police because they lack the skills or will to resolve problems in other ways and because it helps them to meet organisational goals. The major factor that determines why individual officers violence is treated differently to that force used by a group of police policing public disturbances is legitimacy. Because public order policing (particularly policing of industrial disputes and demonstrations) is overtly political and protects the government of the day, then acts of police violence perpetuated for that protection will not be heavily criticised if, indeed, they are criticised at all, by police hierarchy or government. Additionally, where excessive force occurs in public order policing, it will not be because some 'rotten apple' has decided to use his truncheon a bit too freely, but will be because the police commanders have ordered such a policy. Once the decision to send in the riot police has been taken, or to deploy police in special formations, it becomes extremely difficult to draw the line between what is acceptable and minimum force, and what is excessive. It becomes impossible to prevent officers behaving illegally in the field when the mandate to use such force in the first place has come from their superiors and therefore carries a stamp of legitimacy. During the trial in 1985 of several miners on riot charges arising from events at Orgreave the previous year, amongst the reams of evidence presented to the court was the following quote from a police constable who had admitted hitting one of the defendants with a truncheon; 'It wasn't a case of me going off half-cocked, they (senior officers) were getting stuck in and encouraging the lads. I think their attitude affected the lads on that day.' (Cited in Jackson & Wardle, 1986 p.87).

In instances of using police coercion in public disorders then, the aims of the police can be achieved using force and the upper ranks will be compliant with this. In 'normal' everyday policing situations, the

use of illegal force, even though it might help to meet police aims, will be contrary to the standing rules of the police as well as the law, and can not be so easily defended; the excuse of using force to safeguard officers will not stick here. Furthermore, the de-personalised circumstances in public commotions facilitate the use of police coercion. Not only is it in line with police objectives of controlling or dispersing demonstrators, and not only are the chances of being disciplined for such behaviour negligible, but the purpose behind such coercion varies in policing public order. The use of excessive force by an officer to arrest an individual in the streets (or after arrest) for whatever reason, may prove unwise if that officer intends to press charges against that person. This will inevitably result in a fairly lengthy process in which his identity may be revealed and the possibility of his conduct being disclosed during legal proceedings has to be considered. This is not so for the officer in riot gear who uses illegal and excessive force; in his case, he is firstly very difficult to identify, but more importantly, the violence that he may mete out will serve its purpose instantaneously, that of dispersing or intimidating demonstrators or opponents. Police violence in a public order context serves short term tactical ends; it is not essential for arrests, and the officers who indulge in it may do so knowing that it is likely to be their only contact with their victims, and that therefore the chances of being censured for it later are slim. Of course, in many public disturbances, the police may use force to effect arrests as well as to break up gatherings, yet even if there are complaints made against the arresting officer for violent behaviour, these can usually be deflected by charging the demonstrator with assaulting a police officer. Thus in the cold light of the legal day should the case get to court, what was in reality 'pre-

emptive and unnecessary police force can be disguised and presented instead as defensive action.

c. Legal situation governing the use of coercion in the policing public order

Despite the widely varying circumstances that may arise in situations of public disorder, there are no specific powers or regulations given to the police relating to how much force they may use. Again, the vague standards of the Criminal Law Act 1967, section 3, and the Police and Criminal Evidence Act 1984, section 117, must be used as guiding principles. Section 3 of the 1967 Act allows 'such force as is reasonable in the circumstances in the prevention of crime', and so can be invoked as authority for forceful police action in public disturbances where a crime is being committed (such as assault, criminal damage etc). It may not be used if the police seek to prevent a breach of the peace by using coercion, since breach of the peace is not a criminal offence by itself although it may be a constituent part of one. (See Thornton, p.75-76, 1987). It is likely that the power to use reasonable force in the exercise of any power granted to a constable in the Police and Criminal Evidence Act would have a slightly wider application. This is because section 25 of the 1984 Act allows the constable a general arrest power for **any** offence if one of the general arrest conditions in the section are satisfied. There would be no problem in using this power in public disturbances, since one of these conditions is that the constable believes that the arrest is necessary to prevent the person causing physical harm to himself or anyone else, to prevent injury to the person, to prevent the person causing loss or damage to property, committing an offence against public decency or obstructing the highway. (section 25 (3) d). The circumstances provided for in this section are very wide, and likely to cover public disorders if the police wanted them to.

Zander comments 'Section 25 is one of the most important provisions in the Act since it gives the police a new general power of arrest for any offence whatever far beyond what the Royal Commission recommended.....The thinking behind the section is that the police should be able to make an arrest for an offence normally not arrestable where it is likely to prove difficult to serve a summons or where it is necessary to prevent or stop a particular social evil.' (1985,p.40-41).

The two 'standard' statutory provisions on police use of force could then be applied to public disorders if necessary, but this is not to say that the police rely upon them. In fact the police do not need to rely upon any specific powers to use force in policing public disturbance; their use of coercive tactics where deemed necessary by senior officers are usually assumed to be legal since they may be acting to prevent criminal offences or as a response to what the police see as criminal behaviour by a crowd. The use of coercion in public order policing is one where the law has feared to tread and the discretion of the police command remains paramount. Indeed, although both the statutory sections cited above could technically be used during public disorders to legitimate police use of force, they are more commonly applied to the acts of the individual constable and not really envisaged for public order usage. This demonstrates the dearth of legal controls over the police use of force in a public order context. As will be seen there have been new laws passed recently that have increased the scope of the police's ability to direct public gatherings and marches, and there has been an equipping of the police with aids to 'control' crowds that are by their very nature, expressions of great force; yet there have not been any public directions on how much force the police should use, to what extent the situation should have deteriorated before using force,

or the 'rules of engagement' of weapons such as the water-cannon, or as is more likely, plastic bullets and C.S. gas. The other legal powers concerning the police and public order must be briefly examined even though they may not give a direct mention to how they are to be enforced, since it is likely that police coercion will be necessary to uphold them. The Public Order Act 1986, like its earlier stablemate the Police and Criminal Evidence Act 1984, was the subject of much debate and divided opinion. Again many thought the powers given to the police by this statute to be unnecessary and detrimental to civil liberties, whilst others thought it a welcome measure to be used against a perceived increase in public order offences. The 1986 Act, and some of the issues surrounding it will be analysed in the next section, and it raises the matter of whether the new powers contined within it, stem from political motives, or the need to deal with criminal behaviour.

i. Background to the Public Order Act 1986. Was it really necessary?

In introducing the second reading of the Public Order Bill (now Act) in the House of Commons in January, 1986, the Home Secretary, after observing that public order was the 'fundamental social good', went on to say; 'The threat to public order comes in different shapes at different times. That means that the measures needed to safeguard public order and protect the public must be re-examined from time to time. It is half a century since Parliament set itself to that task, and society and its habits have changed radically. It is not unreasonable that the Public Order Act 1936 should be followed by a Public Order Act 1986.' (Hansard, 13 January, 1986, col.794). Remarkably, this was as close to articulating any major reasons for such an important piece of legislation as Home Secretary Douglas Hurd was to get. It may not have been 'unreasonable' to follow a 1936 Act with a similar one in 1986, but there

are surely more convincing and credible reasons that could have been produced by way of explanation for this Act rather than the quaint observation that here was a chance for some neat historical symmetry? This may seem frivolous, but a point of some significance lies underneath; namely the lack of clear and consistent line of reasoning to justify the necessity of such an Act. The police had plenty of powers to deal with disorders and there did not appear to be any particular social phenomenon that was threatening society as never before that might justify new measures. Legally, one could have advanced an argument in favour of codifying all the police powers relating to public order, following the work of the Police and Criminal Evidence Act which had codified many of the police's other powers, yet this was not done either. In fact, even the fragile argument about the legislation being out of date began to look at odds with police practices following their successful use of an 1875 law, the Conspiracy and Protection of Property Act, during the Miners Strike. So why was the 1986 Act passed? Was it because of fears of rising lawlessness? This certainly seems to have played a part, but how valid is such a fear?

As seen in previous chapters, the last twenty years have not been unusually or particularly violent compared with any other point in British history and the so-called 'Golden Age of Policing' in the late 1940's and 1950's was the exception rather than the rule. Yet still politicians and policemen hanker for a return to what they see as former principles of the good old days, namely respect for the police, and a criminal justice system based upon punitive sanctions and vengeance rather than justice. Much blame for deteriorating standards of private behaviour and public conduct is attached to the attitudes and ideas spawned by the 'permissive society' in the 1960's. But such argument is based upon generalisation and sloganeering; does it

have a basis in fact?

Undoubtedly, some of the government's supporters saw the Public Order Act 1986 as a response to recent problems despite the Home Secretary's assertion that 'the Bill was cobbled together in hasty reaction to last autumn's (1985's) riots.' (Hansard, ibid, brackets added). Conservative back-bencher Mr. Kenneth Hind, (M.P. for Lancashire, West), said that 'It would have been wrong for the Government to refuse to act on the events of the past twelve months and not to produce a Bill to deal with public order....No one who witnessed the riots at Tottenham and Brixton, the events at the Orgreave coking plant or the activities of the pickets outside pits could say that a Bill of this nature is not necessary.' (Hansard, 13 January 1986 col.841). He further added that the Bill was necessary to deal with the 'evils of our time.' In fact, the government had instituted a review of public order law in 1979 when William Whitelaw was the Home Secretary, and this of course was before the riots of the early 1980's although the disorder associated with industrial troubles such as the miners strike of 1972, the Grunwick dispute in West London in 1977, and that occasioned by the opposition to National Front marches in Southall 1979 doubtless influenced the decision. The intention to overhaul public order legislation existed before the sundry disturbances of the 1980's, although they added impetus and weight to the government's cause; a combination of recent events and a more longstanding desire to change the law were behind the Act.

Using the events of the 1980's, such as the miner's strike violence, police clashes with the travellers convoy in Wiltshire, and the inner city riots to try and assert that there is a growing problem with violence in our society that needs to be dealt with by giving the police new powers, is historically unconvincing. As seen in chapter one, there were plenty of incidents in the

eighteenth and nineteenth, as well as the twentieth centuries, when there were serious and violent outbreaks of disorder that had to be dealt with by the authorities. This thesis has avoided making judgements and statements about whether one age has been more violent than another, and will not subscribe to the weight of popular opinion that sees society as becoming inevitably and increasingly violent. This is not to say that these things are not true and are not happening, but rather is in recognition of the difficulty of ascertaining such momentous trends with a reliable degree of accuracy, and the danger that such opinions disguised as facts, may be used inappropriately as the basis for repressive political action.

Throughout history there have been disturbances comparable to those witnessed during the 1980's, Williams noting that 'there have been countless serious disturbances in this country during the past three centuries' (1967, p11). However, disorder in Britain occurred during the fourteenth and fifteenth centuries on a wide scale as well. (See Kettle and Hodges, 1982, p11, and their introduction 'A riotous history.') Kettle and Hodges detail several incidents that demonstrate how a wide range of violent outbreaks have always been a feature of British society and that the Gordon Riots of 1780 saw concentrated civil disorder that has not been matched since. These accounts counsel against making rash statements to the effect that Britain is becoming more violent than in the past and are testimony to the shortness of some political memories. Indeed, it was only relatively recently, in the 1960's, that the problem of large scale fighting between mods and rockers was the subject of much concern, yet this 'threat' was not met by legislation. It seems that there is a historical tendency to violence and hooliganism in certain sections of the British population, which manifests itself in different ways in different ages; today for example, there is much concern with the violence that accompanies some football matches and is misleadingly

termed 'football violence' and with what is perceived as a worrying growth in violence in rural areas. The Public Order Act 1986 contained a wide range of provisions which seemed designed to deal with two distinct styles of problem. There were the sections aimed at what might be termed 'hooliganism' and rowdy behaviour, which included the part of the Act containing measures for use at football matches (sections 30-37), and the wide disorderly conduct offence (section 5) where an offence is committed if a person is guilty of an offence if he causes harassment, alarm or distress to someone. There were also the laws governing processions and static demonstrations or assemblies, which are of a more political character. There is thus a fusion of criminal offences and those that may arise from being present at a demonstration and the dealing with such a wide range of different circumstances makes the criminalisation of behaviour previously associated with protest easier to accomplish.

The 'disorderly conduct' section 5 offence is widely drawn so as to catch hooligan behaviour and has attracted considerable criticism. Although Douglas Hurd maintained that it was a 'law against hooliganism, not against high spirits' (Hansard, 13 January 1986, col 796) opponents claimed that it would 'apply criminal sanctions to what should not be criminal offences.' (Alex Carlile MP Ibid, col 853), and 'The Guardian' commented 'It may not be a new sus law, exactly, but this is set to become the standard low-grade, abusable picking-up power for inner-city police.' (7.12.85). This offence can be used against those who perpetrate the sort of violence that occurs frequently at weekends (though not exclusively) and is fuelled by alcohol. Indeed, as touched upon above, there is much concern currently about the high levels of violence in rural areas. Although this was not a feature of the review of public order that preceded the 1986 Act, and is something that has come to the public attention since, it is the sort of conduct that the Act is

seeking to be applicable to and it is interesting to briefly consider this here as it has several characteristics relevant to the theme in hand.

The Association of Chief Police Officers commissioned a report into rural violence to explore what they saw as a growing area of disorder and concern. They found that there were more than 250 incidents classified as mass public disorders that took place in country towns and villages in 1987, some approaching the scale of minor riots that required police reinforcements. All these disturbances were well away from inner cities, the traditional site of such problems, and half took place on Friday or Saturday night, with alcohol a factor in 90% of incidents. (The Guardian 10.6.88.) Such is governmental worry about this trend that the Home Office issued guidelines to magistrates urging them to deal with alcohol related rural violence as soon as possible, on the next sitting day after the offence even though this might delay other cases. (The Guardian 13.8.88.) This type of violence seems to have the beginnings of a moral panic about it, and whereas the idea of violence occurring in the country areas seems comparatively unusual it is nothing new. The fact of rural violence is not novel although the modern circumstances are. In the 1830's for example, there was much trouble in country towns. Williams (1967, p13) recounts how there were disturbances in towns such as Kidderminster, Newbury, Salisbury and Rotherfield, and that a contemporary report spoke of a 'spirit of outrage and mobocracy' that was 'unfortunately diffusing itself widely amid the hitherto peaceable and respectable peasantry of Hampshire'. Admittedly, these riots were strongly linked to the poor economic conditions of the day whereas the recent troubles are puzzling criminologists because they are committed largely by relatively affluent people with jobs and decent incomes. The problem of alcohol related disturbances, as with rural disturbances, is not new. Williams notes how the old offence of affray was useful in the 1950's and 1960's in

dealing with disorders connected with public houses and drink. (Ibid, p245.) After a fight at a public house in Dagenham, Essex, in 1964 the judge passed heavy sentences of between fifteen and thirty months imprisonment with the intention that these would 'make it highly improbably that things like this happen again.' (Ibid.) These words stand as further proof that stricter sentences do not have the deterrent effect that is attributed to them by popular myth, and that drink related disorder is an inevitably recurring societal problem that is unlikely to be solved by quicker legal processing. The high publicity profile of the 'rural riots' and offences of disorder that are a by-product of Britain's 'alcohol culture', should not be exaggerated, although the problem must be acknowledged. It is useful to use the example of such disorder to ask whether they are predominantly caused by 'hooliganism or high spirits'? Where is the line drawn? Such conduct, although not contemplated when the government was drafting the Public Order Act 1986, have provided retrospective justifications for the most controversial offences of violent disorder, affray and causing harass, alarm or distress. The government can claim that the Act was necessary and is useful, and the implementation of the clauses relating to disorder as criminal offences tend to associate the Act with criminal conduct and reinforce the subtle criminalisation of the sections concerning the behaviour of demonstrating crowds and processions.

Those supporters of the government might claim that the rural violence proves that Britain is becoming an increasingly violent society and that the need for the Public Order Act is proved, yet to return to the theme of this section, it seems that one can not say with confidence that the country is a great deal more violent today than in the past, and so a Public Order Act could not be justified on that ground alone. But what of the legal angle, had old powers fallen into desuetude, making fresh law necessary? It

seems not; the Government admitted as much in their White Paper 'Review of Public Order Law'. (1985, HMSO, CMND 9510).

There are inconsistencies at the beginning of the White Paper, for despite assurances that 'once disorder has broken out, the problem confronting the police is not a shortage of legal powers but is essentially one of enforcement' (Ibid, para 1:10), and that the police do not want the 'simplistic changes that have been canvassed' (para 1:13), the paper asserts that the aim throughout has been to 'identify powers which will be of practical value to the police'. (para 1:13). Again it is as well to be clear about which powers are under discussion here, and to maintain this hypothetical dividing line between the regulations under the Act that are designed to deal with criminal activity and those that are concerned with legitimate protest. The new offence of violent disorder and the 'disorderly conduct' offence allow the police to press charges in areas where previously the offenders may have eluded the definition of any offence (for disorderly conduct) or where the serious charge of riot would not stick (for violent disorder), and where the police now have extra options. In policing the public disorders that were given as examples of the need for a new Act prior to the 1986 statute the police did not seem to be hampered by their existing powers. During the miners strike, the complexity of the police operation relied upon the invocation of many laws, including the controversial use of apprehending a breach of the peace some 150 miles away from where miners were actually stopped in Kent at the Dartford Tunnel, and the resurrection of the antiquated Conspiracy and Protection of Property Act 1875 s.7 which makes an offence of 'watching and besetting' another's house. Their use of roadblocks, particularly in Nottinghamshire (pre-Police and Criminal Evidence Act) did not give the impression of a police who were having difficulty in implementing their powers. However, the meaning behind the statement that the police have the legal powers but the problem is 'one of enforcement' (repeated by the Home

Secretary in the House of Commons (Hansard, Ibid, col 794), has a slightly more sinister ring to it when examined in detail. What exactly is meant by the problem being how to enforce their powers? Perhaps a clue is given to this by the statement of Conservative backbench MP David Ashby, during the second reading of the Bill through Parliament. He said; 'The problem that arose out of the miners' picketing was the great difficulty in bringing people, who had clearly committed offences, successfully to trial due to evidential difficulties.' (Ibid, col 800.) A different reading of the events of the strike would perhaps suggest that the 'evidential difficulties' were largely that evidence was being invented and misapplied by the police. They simply had no evidence because offences had not been committed on many occasions, and the mass arrests frequently arose out of the police's conscious conflictual policies. The arrest of many people without intending to charge them with any offence is a longstanding tactic that enables the police to achieve their short-term objective of gaining control of disorders; it does not automatically mean that they have committed an offence, and the police's release of such people later on without charging them, does not result from evidential difficulty, but choice. A problem of enforcement can in effect be seen as a problem in making the charges 'stick'. By creating the new offence of violent disorder and giving new powers to limit the numbers at demonstrations it is likely that the police will be able to successfully prosecute people for 'offences' arising from similar situations to those at Orgreave in 1984 and the battle with the travellers convoy in 1985, that previously they were acquitted for since they had done little wrong apart from actually being there.

The idea of enforcement had another side to it; Douglas Hurd drew attention to the difference between the police powers to act when 'trouble is imminent or has already begun' and their lack of preventive powers. He conceded that 'the police already have substantial powers under the common

law to remove people who are threatening a breach of the peace' (Hansard, 13 January 1988, col 800) but thought that the police needed powers to help them make 'ground rules' that would prevent trouble happening at all. So enforcement was being equated with the provision of preventive powers. However, this is again only a partial explanation for the 1986 Act since many of the new powers it created, namely the new offences of riot, violent disorder, affray, fear or provocation of violence, and harassment, alarm or distress were designed as reactive rather than preventive. The power to impose conditions on marches and static demonstrations, or to ban or re-route them are preventive measures, but again it can be seen that the justification of prevention only holds true for part of the Act's powers and is an unconvincing reason for passing the Act as a whole. Many of the government's supporters cited, in support of the new controls over processions, the troubles at National Front marches and their counter-demonstrations in the late 1970's, most notoriously, at Southall in 1979 when the demonstrating Blair Peach was killed by an officer of the Special Patrol Group. Warren Hawksley MP argued that 'Those who oppose the legislation, especially its proposals on marches, are the same people who expect the police to respond under the present legislation when the National Front proposes to march through a sensitive area.' (Hansard, Ibid, col 830.) However, such an argument is seriously flawed; the police had plenty of powers to prevent that type of disorder that accompanies National Front marches. Surely they could have apprehended a breach of the peace if the National Front intended to march through a predominantly Asian or black residential area, and so stop the march on these grounds? Failing this, there was authority in the 1936 Public Order Act (section 3) for the police to prescribe the route to be taken by a march or to apply for a banning order. Again, even those preventive powers under the 1986 Act were neither new or necessary.

Finally, amongst the many reasons advanced in Parliament for the Act was that suggested by Mark Carlisle MP (Ibid, col 816). He noted the fourfold increase in marches and demonstrations in London during the last twenty years, and their doubling in the last ten and the effect that this has on the police, in terms of their time and morale. He then asked whether the balance was right or whether it should be reconsidered to relieve the police of their problems. However, the notion that the Act should be passed to help the police overcome their weariness and raise morale is misguided. Arguing about police morale is irrelevant here, when an Act is supposedly passed to cope with violent public disorders to elevate police morale above the right to demonstrate and assemble is incompatible with pretensions of democracy.

In sum, the background to the Public Order Act 1986 reveals a muddled and incoherent response to an ill-defined problem. Using arguments about increasing violence and previously inadequate police powers to justify the Act do not stand up to scrutiny. Furthermore, the Act's combination of criminal offences with the law relating to demonstrations and marches tends only to criminalise the conduct of those who take part in the latter. The events of the 1980's have enabled the government to attach a legitimacy to their legislation, that feeds upon mass media exaggeration and distortion of the alleged threat to society posed by the various types of public disorder. The net result of this is an extension of police power into new areas that are detrimental to civil liberties and industrial protests in this country.

ii) The Public Order Act 1986

In keeping with the ethos that was supposed to have prevailed throughout the Police and Criminal Evidence Act 1984, the Public Order Act 1986 was meant to be a balanced piece of legislation, respecting both the need for the police to be

able to control public disorders effectively and the rights of citizens to demonstrate and assemble to protest against particular grievances. However, where as in the Police and Criminal Evidence Act the safeguards of citizens' rights often involved the police giving reasons in writing to explain their actions to the individual citizen if necessary, in the Public Order Act the powers that are given are not matched with any commensurate measures of accountability. There is a right to challenge the police's decision to impose conditions on an assembly or procession, or a banning order, by judicial review yet this is unlikely to succeed in practice as the reasonableness of the banning order will probably be interpreted in the police's favour. (See Card 1987, p89.) There is however no judicial review available to question police tactics and levels of force used in public order policing and there is nothing else in the 1986 Act that pertains to the control of the police themselves, as opposed to demonstrators.

The Public Order Act 1986 does not bestow any specific power on the police to use force but as seen earlier, their other statutory powers enable them to use coercion in very broad circumstances and there is no doubt that they can legitimately use force in the pursuit of the many powers under this Act. In addition, there is a long-standing common law power authorising the police to use reasonable force to suppress a riot. (R. v Fursey, 1833, 3 St Tr NS 543.) For these reasons, the new powers under the Act will be briefly examined as it is well to be aware of what now constitutes a public order offence, and consequently when the police may legitimately use force against people.

a) The new powers

Professor L H Leigh described the Public Order legislation in its Bill stage as '.. repressive, unduly complicated, obscure and internally contradictory. It is, indeed, a rare example of a Bill which left the Commons worse than

when it was introduced.' (The Guardian 27.7.86.) Professor Leigh was not alone in being concerned about the wide construction that the new powers had. Although some aspects of the Bill were changed by the time that the Act passed onto the statute book (for example the maximum term of imprisonment for riot was reduced to ten years from the initial proposal of life), Leigh's misgivings will not have been assuaged by the final result.

The new offences created are new definitions of riot and affray, and the new crimes of causing fear or provocation of violence (threatening behaviour) and disorderly conduct, which is the causing of harassment, alarm or distress. For a full and detailed account of exactly what the new laws contain, see Card (1987) and Thornton (1987). A few comments are perhaps appropriate here as well. The new offence of riot is committed where twelve or more people use or threaten unlawful violence for a common purpose if it would cause a person of reasonable firmness present at the scene to fear for his personal safety. (Section 1(1)). This offence, and violent disorder too, may not always require any actual violence to have taken place since guilt can be found for a threat of violence. This becomes even clearer after looking at the Act's definition of 'violence' in section 8 (a) and (b); Violence, except in the case of affray, means that it '... includes violent conduct towards property as well as violent conduct towards persons' and includes conduct that does not actually result in injury or damage, such as where a thrown missile falls short. Both Card (p14) and Thornton (p10), draw attention to the implications of the word 'towards' in this definition. Thornton comments 'The use of the word 'towards' makes it clear that neither injury to the person nor damage to property need occur. Violence obviously includes conduct which causes actual injury or damage, but the definition places the emphasis on the nature of the violent conduct rather than its consequences.' (Ibid, p10.) This

definition, combined with the description of the offence of riot, make it clear that one could be charged with this offence without having used any violence and for simply being there, since the definition only requires that one person be using or threatening violence, it does not have to be simultaneously used by the twelve persons present. There is the possibility of those who have not used violence being prosecuted for riot although section one does say that each of the persons using unlawful violence for the common purpose will be guilty of riot.

The 1986 Act does also require a mental element to be satisfied for all the new offences; this is that the person 'intends' to use or threaten violence, or intend that his words or behaviour be threatening or insulting, **or** is **aware** that his conduct may be violent or abusive, threatening, insulting, etc. The use of the word 'aware' imports a relatively new concept into public order law. Its meaning is not the dictionary definition of aware that would see an awareness of violence as being a realisation that certain behaviour might result in violence, but is rather a similar concept to that of 'recklessness' in the criminal law. Thus being 'aware' that one's conduct might be violent will be interpreted as being reckless as to whether such behaviour results in violence or not. This is wider than the non-legal understanding of the word 'aware'. Thornton notes that 'The end result, nevertheless, is a mental element for riot which is wider than the principal common law offence against public order in the criminal law of the Republic of South Africa which consists in 'the unlawful and **intentional** commission by a number of people acting in concert of acts of sufficiently serious dimensions which are intended forcibly to disturb the public peace or security or to invade the rights of others.' (Ibid, p15.)

b) Wider applicability of the 1986 Act

What the new Act has introduced is a sort of sliding scale

of offences that are applicable to public order situations, starting with riot for the most serious occurrences and proceeding downwards through violent disorder, affray, fear or provocation of violence, and causing harassment, alarm or distress, for less serious offences. **Violent disorder** (section 2) is committed where three persons use or threaten unlawful violence and their conduct, taken together, is such as would cause a person of reasonable firmness to fear for his or her personal safety. **Affray** (section 3) is where a person uses or threatens unlawful violence towards another such as would cause a person of reasonable firmness present at the scene to fear for his personal safety, or where the conduct of two or more people taken together has the same effect. The offence of affray is intended to cover such instances as street fights and pub brawls. The threat of unlawful violence can be verbal for both riot and violent disorder, yet for the less serious offence of affray the threat can not be of words alone and must be violent. Thus although this is the lesser of the three offences, the standard is stricter. **Fear or provocation of violence** and **harassment, alarm or distress,** (sections 4 and 5 respectively) are similar in that an offence can be committed if the use of threatening, abusive or insulting words or behaviour, or the display of any sign, writing and so forth which is threatening, abusive or insulting causes a person to fear that immediate or unlawful violence will be used against him, for the first offence, or provokes the person to immediate unlawful violence, or merely makes it likely by such behaviour that a person be caused alarm, harassment or distress.

For the offences of riot, violent disorder and affray, although the concept of a 'person of reasonable firmness' is prominent, this is a hypothetical device and no such person need actually have been present at the commission of the offence. For the offence of harassment, alarm or distress (disorderly conduct) there must be a person present who is

'likely' to suffer harassment, alarm or distress. However, as the wording indicates,.this person need not actually give evidence in person to the court that they had suffered in this way. It will be enough for a police officer to testify that alarm, harassment or distress was caused or likely to have been caused to a particular person. This provision caused particular concern since it is so widely drawn. Thornton compares it to section 5 of the Public Order Act 1936 which was the previously lowest-level public order offence, and comments that the new measure is 'More widely drawn and embraces behaviour which formerly would generally not have been punishable as a crime. In particular it covers behaviour which falls short of violence or the threat of fear or violence.' (1987, p.40).

The Public Order Act then has a wide range of new offences that are capable of catching almost all kinds of disruptive behaviour. If these offences had been in force at the time of the miners' strike then the police would almost probably have secured convictions for those people who were acquitted at the trial arising from the events at the Orgreave coking plant on June 18 1984. Here, all the defendants were acquitted of the riot charges that the police had laid against them, largely after the introduction of a film that the police had shot themselves proved that their case was riddled with inconsistencies and fabricated evidence. (See Jackson and Wardle, 1986). The defendants at Orgreave faced possible life imprisonment sentences if found guilty of riot, yet the severity of the charge and the paucity of the police evidence ensured that a gross miscarriage of justice was averted. However, would the result have been the same if the lesser charges had been available? The offence of violent disorder carries a maximum five year prison sentence, and guilt can be established for the use or threat of unlawful violence such as would cause a person of reasonable firmness present at the scene to fear for his personal safety. Yet since such a hypothetical person

need not be present, this will in practice probably be decided by a police officer. There need to be three or more persons for violent disorder; clearly this could have been charged at Orgreave if the police had possessed the power and had been so included. A conviction for violent disorder is far more likely to be attained than one for riot, particularly if it relies in part upon the testimony of a police officer that a person of reasonable firmness would fear for his safety, yet this is worrying since the definition of the offence is loose enough to be applied in many situations where it would perhaps not be appropriate.

By being able to use the offence of violent disorder the police have been offered extra options in situations such as Orgreave, where riot is too serious a charge, and unlikely to succeed, yet where the police may still want to prosecute. The idea of balancing the rights of demonstrators seems to have been forgotten since the new powers will accommodate the police's wishes and tactics and will legitimate previous police tactics of dubious legality. For example, the tactic of mass arrests (as used at Orgreave and against the hippy convoy) to serve short term crowd control ends and the laying of more serious charges after due consideration later on, will be made easier by the possibility of charging for violent disorder. This charge can, and in all probability will, be used against people for merely being present at an event during which there is conflict between the police and demonstrators. Since section 2 (2) of the 1986 Act notes that the three or more people committing violent disorder need not use or threaten violence simultaneously there is a very real chance that innocent people will be charged with this offence under the discredited principle of 'guilty by association', although this will not be openly admitted by the police. Uglow notes that; 'With crowds, the police are free to use their subjective judgement. The fear of 'disorder' is easily

alleged and impossible to disprove. Furthermore there are no entrenched collective rights to meet, picket or protest. Linked to the width and vagueness of police powers, the crowd is, not surprisingly, regarded if not as illegal, then as on the borders of illegality. Marches and meetings, and anyone engaging in them, are seen as having the potential for violence, either to people or to property, and thus deserve police suspicion and attention.' (Uglow, 1988 p.79). After the acquittals of so many miners and members of the hippy convoy, the police were left in an embarassing situation, and so by implication, were the government since it meant that in retrospect, that many of the tales of picket line violence by striking miners and violent and destructive behaviour by hippies were at best exaggerated, and at worst made-up. The public did not seem to pick up on the fact, but such acquittals undermined the government's and the police's official line that had been fed to them, and meant that there **was** an alternative explanation of events and one which must of necessity cast doubts on the propriety of the police's conduct. In effect the police were left 'with egg on their faces'. The Public Order Act makes it unlikely that this will happen again on the same scale, but for all the wrong reasons. In future, if there are troubles similar to those at Orgreave, even though the behaviour of demonstrators may not be illegal and/or violent, the police will be able to successfully charge them with offences. The police will be seen to have acted properly if they are rewarded with convictions in the courts, even though this is more likely thanks to the compliant drafting of the Public Order Act. The Act quite clearly aids the police and is designed entirely from their perspective; although one would perhaps expect this of such a statute, it is nevertheless disappointing that the proclaimed concept of balance between demonstrators rights and police powers has been so neglected. Rather than the mass acquittals referred to above stimulating questions about the police's

actions and their legality, the legislative response in the 1986 Act has been to ignore this and to concentrate instead upon making sure that next time the police have a case that will stick, and that convictions will result from behaviour that should not really come within the ambit of the criminal law.

Violent behaviour by demonstrators can now be punished then if fitted to one of the new offences. However, there are dangers in taking this at face value. The wording of of the offences in the statute seems to infer that the violence will be of the demonstrators own choice and making and does not consider that it may be in response to coercive police actions, or that hostile but not yet violent behaviour by a crowd can be easily converted to the latter by police strategies. What will happen if charges of violent disorder are laid against people, only for it to emerge, or for them to claim, that they were acting in self-defence? Will this negate the charges, as it should do, if it were proved that they were only using such force as was reasonably necessary to defend themselves against what they took to be illegal forceful action by the police? This is a point that needs legal clarification, but it seems likely that the courts would find in the police's favour. For a successful self-defence plea to work for a demonstrator charged with using violent behaviour, he/she would have to establish either that the police's action was illegal, or that he/she honestly believed that it was. A judge is unlikely to declare that the police tactics were unlawful, probably seeing such a path as straying into the sacred area of police operational independence. Indeed, although the prosecution case collapsed at Orgreave, the judge was at pains to stress that it was not the police who were on trial, and the patently illegal tactics of the police that day escaped further judicial scrutiny. There is a real danger that violent actions by demonstrators that are genuine acts of self-defence in response to police tactics, will be

mistakenly characterised as violent disorder and successfully prosecuted as such.

Section 4 of the Act, referring to 'fear or provocation of violence' can also provide the police with scope for repressive behaviour. This section, (4 (1)), holds that an offence is committed if a person uses threatening, abusive or insulting behaviour, etc and causes another person to believe that immediate unlawful violence will be used against him, or if he provokes the immediate use of unlawful violence by that person or another. What happens if the person being provoked is a police officer? Will violent police conduct be protected if it was deemed to be provoked, or if the police claim that it was? Can this section conceivably be fashioned into a defence by the police where they use violence? Card (1987, p.44-45) has suggested that if a constable needs to resort to violence to arrest someone under this section then an an offence under section 4 will not be committed since the violence provoked will not be unlawful. This assumes that a violent police response will be justified anyway and that the force used by the officer will always be 'reasonable'. More worrying however, is the wording in the section that an offence is committed if a person is provoked into using **unlawful** violence, thus admitting that the accused will not be the only one who has committed an offence. Translated into the arena of the violent arrest by an officer for a section 4 offence, this means that the police will not even have to maintain that their force used is lawful and 'reasonable', since the statute expressly provides for the provocation of unlawful violence. Clearly the draftsmen did not intend that this should apply to the police as much as to the wider public, but the fact remains that the police will be the ones who enforce the Act and so are likely to be bringing charges of fear or provocation of violence quite regularly, and equally likely that they will be the ones who may be provoked to use force

or violence to effect the arrest. There is thus a strong chance that this could be used as a defence by the police whenever they use coercion to make an arrest and a possibility that it could be used as an excuse for irregular behaviour if they think that they can do so unchallenged and seemingly legitimated by statute.

c. Limitations on processions and demonstrations

The Public Order Act 1986 also made amendments to the laws governing marches or processions and demonstrations or 'assemblies'. Most controversially, these concerned in both cases, the power to impose conditions. In the case of marches there was concern over the fact that the power to impose conditions resides with the senior police officer (section 12) alone and that he is not required to consult with any bodies such as the local council or magistrates and so forth. The grounds upon which conditions could be imposed on a procession were also extended. In the 1936 Act a condition could only be imposed if there was a risk of serious public disorder. In the 1986 statute this remained, but added to it were the power to impose conditions if the senior police officer reasonably believed that the march would result in serious damage to property or serious damage to the life of the community, or if the purpose of the march is the intimidation of others. (Section 12). The use of the condition relating to the serious damage to the community should be followed with interest since it is the most vague, and open to selective interpretation. These are the same ground as may be used to justify imposing conditions on a public assembly (section 14) yet there is no definition of what may constitute serious damage to a community; inevitably, it seems that the right to quiet enjoyment of a locality that a community can expect and the right to shop are going to be weighed up against the right to demonstrate and to protest. Much will depend on the discretion of the police officer who is assessing the situation since any large procession or demonstration will

probably cause enough disruption to a community's life, albeit temporarily, to be classified as 'serious' even though it may not be at all violent. Civil libertarians might think that comparing the rights of shoppers to those those of protestors is an inappropriate way of enforcing the idea of balance, yet they are undeniably rights that police will seek to protect. It would however, seem to demean the status accorded to the right to protest if it was to be judged secondary in importance to the convenience of the shopping rights of the local community. and it would be a pity if 'serious disruption to the life of the community' was to be measured not in terms of violent behaviour and disruption, but in the amount of inconvenience caused to locals.

The types of conditions that may be imposed on a procession include directions as to the route that should be taken and even, suggests Card, the number of those taking part, its starting time and duration, and the prohibition of certain uniforms or masks etc, (1987, p.72) since section 12 does not limit what the conditions should be. Likewise with a public assembly or demonstration, (section 14), which is constituted by an assembly of 20 or more people in a public place, the senior police officer can use the same grounds when deciding whether or not to impose conditions. The conditions that may be imposed upon assemblies are more specific than for marches however, and are confined to limitations on the number of people allowed to attend, where the meeting can be held and its length.

A major criticism of the new legislation is that it has targeted activities such as picketing that should perhaps have remained the preserve of industrial relations legislation. The 1986 Act has certainly encroached into areas that had previously not been the responsibility of Public Order legislation, and the wording of the powers on assemblies so as to accommodate picketing within it meant that the attack upon trades unions rights and methods

that started with the Employment Acts of 1980 and 1982 was being vigorously continued by the present government. Many people might think that following the violence that has frequently accompanied industrial disputes in the recent past in Britain then explicitly providing for picketing to be brought within the law in this way is a reasonable response. However, what the 1986 Act has done for the first time, is to **criminalise** picketing. Industrial protest has, in the past, and for a variety of motives, been tolerated and understood, even though it may have been illegal. This may not be the case in the future for the potential is there to arrest pickets simply for being there if the numbers exceed the amount designated by the senior officer. A distinction must be made clear between illegal or unlawful and criminal conduct. Current common law guidelines suggest six as a suitable number for a picket, this being deemed enough to carry out the task of peaceful persuasion or communication of information, which is understood to be the purpose of picketing. If there were a great deal more than this present at a picket then the police could perhaps make arrests for breach of the peace, or if there was any secondary picketing then a civil liability might be incurred by the union since this activity is illegal and outlawed. Yet although such activities might be illegal, they are, or were, not criminal. Under the 1986 Act any mass picket, at which the participants would previously have been behaving illegally, would now be criminalised if they persisted with their behaviour and presence after the assembly had been made subject to a limitation of numbers since section 14 (5) states that 'A person who takes part in a public assembly and knowingly fails to comply with a condition imposed under this section is guilty of an offence, but it is a defence for him to prove that the failure arose from circumstances beyond his control.'

It was noted earlier when discussing violent disorder, that this particular offence would probably have fitted

the circumstances of those arrested at Orgreave. It is clear now that no particular offence need be committed to make oneself liable to arrest, since remaining part of an oversized picket or assembly makes one a legitimate target for arrest. The police (on behalf of the government) are now armed with such far reaching powers as to be able to destroy and undermine any industrial dispute should they so wish. Early indications are quite encouraging however, and have seen the police behaving with tact and diplomacy as illustrated by their sensible policing of the seamens' dispute at Dover and other ports. Here, despite the presence of secondary pickets and more than the recommended number of pickets, there has been no picket line violence. This should be contrasted with the Miners Strike and the amount of coverage that it attracted in the national media. The Nationl Union of Seamen conducted themselves quite properly in the 1988 dispute and still found themselves subjected to the might of the government's sequestration laws and so forth. If the police had decided to implement the new laws of the Public Order Act, which they could certainly have done, since the purpose of the picket was to protest against those who broke the strike and returned to work, and thus their actions could have been construed as 'intimidation of others with a view to compelling them to do an act they have a right to do' (section 14 (1) b) then they could undoubtedly have imposed conditions on the picket and made arrests if they were not adhered to. That the police have not done so is both a tribute to them and testimony to the superfluous nature of the powers under section 14.

d. **A power of dispersal?**

The new law on demonstrations was drafted largely with the control of industrial protest in mind with the consequent result that picketing was criminalised, just as raucous anti-social behaviour was criminalised by its earlier sections. However another aspect of the conditions relating to demonstrations is how they affect the issue of crowd

dispersal. In Britain there is no official power to order a crowd to disperse, but what will be the practical consequences of a condition on a static demonstration or assembly that limits its numbers by reducing them from the total already assembled? Such a condition would amount to an implicit dispersal order with the police able to arrest those who remained in contravention of the condition (s.14 (5), ibid).

The government's review of Public Order Law (CMND 9510, May 1985) considered and rejected proposals that there should be a statutory power of dispersal available to the police with a related offence of failure to comply with the police's directions. In doing so they referred to Lord Scarman's report into the Brixton disorders of 1981 (CMND 8427) in which he had considered the viewpoint of some that a new riot Act was needed. Today the phrase about 'reading the Riot Act' to someone enjoys widespread colloquial usage. It originates from the infamous Riot Act of 1714 whereby an order to disperse could be backed up by the death penalty for anyone who refused to obey it, within the statutory one hour time limit, and this severe statute was employed at such notorious historical incidents as the Peterloo massacre (see chapter one). Scarman himself elaborated several reasons why he thought a new Riot Act and power of dispersal was unnecesary; firstly that the police have ample powers of arrest that are sufficient for dealing with disorder (ibid, para 735), secondly that section 5 of the 1936 Public Order Act was correct in principle in that it required the prosecution to prove positive acts of criminal behaviour by the accused (para.7:34/7:36) whereas this would not be so if one was arrested for failing to disperse, and finally that there were many practical objections. These concerned the difficulty in ascertaining that a warning to disperse had been heard above the noise of the disturbance, in defining what area the police had in mind from which it would be an offence not to disperse after the expiry of the time limit, what would happen if the crowd moved out of the

area without dispersing and the difficulties that would be presented legally in defence of those who remained after the dispersal order (para: 7:39). An example of a defence given by Lord Scarman was that of a person who arrived in the area after the dispersal order had been given. Scarman also foresaw great difficulties arising around the concept of what would constitute a 'reasonable excuse' to be in the forbidden area. (Ibid). Scarman's rebuttal of the idea of a dispersal order was apparently definitive and met with the approval of the government in their Public Order Law review. This stated that the government had considered with 'particular care', proposals that there should be a statutory power to disperse an assembly (CMND 9510 para 6:14) but that they had accepted the force of Scarman's submissions and concluded that 'there is no advantage in introducing a statutory power to order an assembly to disperse, with or without a related offence of non-compliance.' (Ibid, para 6:15).

With this in mind, it is surprising that the government has allowed the police such specific powers in the conditions they are allowed to apply to static demonstrations and processions. Surely an order limiting the number of people allowed at an assembly and backing this up with a power to arrest those who infringe the order is tantamount to granting the police a power of dispersal. It may not be an explicit power in the mould of the Riot Act but its practical effects are likely to be similar. In fact, as the situation stands at the moment, the dispersal procedures used by the police will be less certain than if they were covered by specific legislation. For example, once a condition specifying the number of people allowed at a demonstration has been made (assuming that it is made sometime during the event), then what time limit will be allowed for the organisers to try and bring the attendance within that figure? Even if the condition detailing numbers is set out before the assembly if the crowd exceed that amount, will the police act immediately to try and reduce numbers or will they allow

a certain period of time before arresting people for breaching a condition? If the police had such powers at Orgreave or Stonehenge in previous years (they did possess them for the Stonehenge gathering in 1988) then what would be the effect if they had implemented them? At Orgreave, if the picket or assembly had been told that it was subject to a condition and that it had to reduce its numbers then what would have been the police response if this had failed to happen? Most probably it would have been the same as it was in 1984, but frighteningly, this time the police could claim they were acting legally and arresting people for failing to comply with a condition. The government have condemned the principle behind a dispersal order but they have accommodated it in practice. Perhaps the most telling criticism that should be made of such an order but one which neither Lord Scarman or the Public Order Review picket up on, is the fact that where a dispersal power exists there is a real danger that non-compliance with it may legitimate coercive police action, and that this non-compliance, rather than the initial behaviour at the demonstration, may become the justification for a largely unnecessary escalation in police tactics and force. In other words, failing to respond to the dispersal order supercedes the original offence in the police's judgement, and can become an excuse for them to exercise their coercive powers.

The dangers of allowing a dispersal power whether explicitly or implicitly can be seen by comparison with the French policing system where the French penal code gives certain officials this power. In France all large gatherings or 'manifestations' need clearance from the Prefect or the Mayor in the first place to avoid being classed as illegal gatherings. (Roach, 1985, p.122). The same people, (Prefect and Mayor) as well as certain senior police officers are the only people empowered to give the order to disperse, or the 'sommation'. The person

who gives this order must be clearly identified and whereas this was achieved in the past by wearing the tricolour sash and sounding bugles and drums, today it relies upon the use of loud-hailers and flashing lights. (Ibid, p.123). This is the way in which the French have confronted one of the practical problems identified by Lord Scarman. The first 'sommation' is however, only the first step in the dispersal process. This may be followed by a second 'sommation' where the police are allowed to use truncheons and tear gas, and a third, after which the use of arms is permitted. (Ibid.). The use of violence at a demonstration is the most common reason why a 'sommation' order may be given, but in France, the forces of public order are allowed to intervene without going through the 'sommation' procedures if violence has occurred. Roach comments; 'Clearly there is no lack of justification for intervention by the Police Nationale or the Gendarmerie Nationale.' He says of the dispersal procedures; 'It goes without saying that these instructions are not always scrupulously followed, hence the great number of 'bavures', (or accidents).' (ibid, p.124).

The French system has actually tightened up on previous arrangements for public order policing. Following the troubles of 1968, the government introduced in 1970 a repressive law called the 'loi anti-casseurs' which was to give the police more aid than the sommation regulations. It introduced the notion of collective responsibility which meant that if there was violence, the 'action of some engaged the responsibility of all and the public order forces could thus arrest anyone on a demonstration regardless of whether they had actually participated in the violence.' 'Ibid, p.125). This law was repealed by the Socialist government of President Mitterand but it showed the repressive path which France has taken with regard to control of public order, when such laws are combined with the availability of the two riot forces the CRS and the Gendarmerie Mobile. The use of dispersal powers then may

be difficult with problems arising in communicating the order to the crowd and in checking that failure to disperse does not become more of a justification for repressive police conduct than the original offence.

It is at first reassuring that the British government rejected a specific power of dispersal, yet closer inspection reveals that all is not as it had initially seemed. The new powers of the 1986 Public Order Act have created an implicit dispersal power and have enabled the discredited concept of collective responsibility to re-emerge in the background for such offences as riot and violent disorder. The Act was supposed to be balanced yet it contains no constraints upon the police and how they are allowed to police disorder, preferring to leave it to their discretion. It has greatly broadened the range of offences so that almost all forms of dissident behaviour can now be caught and prosecuted if the police so desire, and it has extended the influence of the criminal law, insinuating it into areas such as industrial disputes and loud behaviour that would not previously have been treated so seriously. Another change made by the Act, to the law of trespass that was enacted to deal with the problems caused by the hippy convoy, will be looked at in the next chapter that considers developments in coercive policing.

The concept of balance in policing public disturbance; individual against group rights.

The idea of trying to achieve a balance between the rights of protestors and local inhabitants, or an individual and a larger group is one that has been important in formulating the powers under the new Public Order Act. As argued above however, the extent to which this balance has been attained or is likely to be attained, is very much open to question. This brief section is intended to illustrate how malleable this concept of balancing rights can be in practice. It is important to be aware of this, since much of government, and therefore police policy, depends upon

the interpretation of balancing rights. The way in which priorities are decided in public order policing today is not the only way of judging situations and has not been the only way throughout history.

In the nineteenth century, there was a tendency for the courts to see actions that may have been peaceable in themselves, as potentially giving rise to disorder, and so backing police intervention. For example, in Humphries v Connor (1864) (17 Ir.C.L.R. 1) (Williams, 1967, p.114-116), the plaintiff was acting lawfully but could have potentially inflamed the crowd. This case concerned a policeman removing an individual's political emblem for fear that it would cause a disturbance. The plaintiff (the individual) was admittedly acting lawfully, but the constable's overriding duty is to preserve order and he acted out of necessity since he judged there was a strong likelihood of disorder. Misgivings about this decision had arisen at the time, Mr. Justice Fitzgerald commenting that 'we are making, not the law of the land, but the law of the mob supreme.' (Williams, p.117). In another case cited by Williams (p.116), a group of pacifists distributing anti-war leaflets at a Cambridgeshire aerodrome in 1935 had their literature confiscated on the grounds that its distribution was likely to lead to a breach of the peace. The police were found to have been acting unlawfully and the plaintiff was awarded damages of £1 (ibid. p.117). It was stressed in the House of Commons that 'only in exceptional cases' would lawful activities be restrained because of the likelihood of oppposition. Nevertheless the principle can be seen (particularly in Humphries v Connor), that the individual's rights are not always important. Although the emotive term 'mob' was used in the context of it being wrong to prevent an individual acting legally simply because it might provoke a 'mob' reaction, this could be re-evaluated if sustituted by neutral non-value laden descriptions such as 'majority' or 'substantial body of people'. After all,

the individual's action may be perfectly reasonable and legal, but so may the 'mob' or group reaction to it.

The interest of the thinking in Humphries v Connor lies in contrasting it with those judicial attitudes prevalent during the miners strike of 1984-5. Here, if Humphries reasoning were to apply, the individual's right to work, provoking the potential disorder that it did from the pickets and police would have been questionable. In the different age of 1980's, picketing has been subject to labelling with images and descriptions of illegality and misbehaviour to such an extent that media, and allegedly, public opinion sides with the working miner. The issue thus does not become one of comparing to what extent the rights and wishes of an individual should override the rights and wishes of a group of people (who are all individuals too of course) no matter what trouble this causes, but instead becomes a platform for staunch sloganeering about personal freedom and refusal to give in to 'the mob'. However, the reasoning of Humphries v Connor may still have been relevant for in that case the police action did not actually require that 'the mob' had done anything, but rather that the police had reasonable fears that there was a likelihood of a breach of the peace occurring. Transferred to the 1984 strike this would have undermined the whole government argument centred upon picket violence and mob rule since the police could have decided before a single picket turned up that a breach would occur if they allowed a single miner to work. This is not to claim after the event that this would have been an alternative and possibly more desirable and conflict-free approach, but rather to be aware that judicial thinking has not always been as it is now.

True, Humphries v Connor was criticised for apparently responding to 'mob' pressures, but if this weighted description is replaced, a perfectly reasonable line of argument could be advanced in its favour; if the wishes of a majority are not seen as 'a mob' but as reasonable people.

The tainted description of mob though is perhaps inevitable when talking about breaches of the peace. But is this to say that honest straightforward citizens never disturb the peace, or should never do so, whatever the provocation and no matter how strong their feelings? Can the public demonstration of a belief turn a respectable group of people into a mob? The importance of labels again emerges; the Salvation Army of all groups, were the scourge of magistrates in the late nineteenth century (see Williams pages 49-56) their meetings and processions were accompanied by widespread public disorder and opposing groups yet for all the trouble they caused, they were probably never seen as a 'mob' because of their devout beliefs. This was a description reserved for their opponents, prompting one to wonder whether the necessary attributes of a mob at that time included atheism?

It is not being claimed here that the awareness of group rights over the individual displayed in Humphries v Connor should have been used in the miners strike and that those miners who wished to work should have been prevented from doing so because of the disagreement of a majority of their colleagues. The Humphries case is mentioned simply because it shows that legal thinking has not always been the same as today. It also helps to re-assess this whole question of balance in public order policing and shows that contemporary demonstrators or pickets can have what may be reasonable arguments and beliefs abrogated by being labelled with terms that carry violent connotations, and thus have their credibility undermined and create the excuses needed for the exercise of police powers against them. The idea of balanced rights in the Public Order Act is found to be wanting and incomplete since it makes no provisions for accommodating the kind of group rights discussed above. The rights of a group are not accorded sufficient respect to guarantee them protection from coercive police intervention at law.

CHAPTER EIGHT

THE TREND TOWARDS MILITARISED AND COERCIVE POLICING

This analysis of police use of coercion has tried to avoid making broad statements to the effect that the police are more violent now than they have ever been before. However what can be asserted with confidence is that they are certainly equipped with more paramilitary means, technology and training than in the past, and there have been many incidents of excessively coercive policing that suggest the police have abandoned any attempts to police by consent in favour of maintaining control at all costs. This chapter looks at some of the controversial tactics and methods used by the police in relation to recent events of the 1980's and questions their propriety and long term consequences.

That Britain was and is becoming a more authoritarian country was noted by Professor Stuart Hall in his influential summary of modern trends 'Drifting into a Law and Order Society' (1979). This 'drift' was examined in chapter two, where it wass observed that such a phenomenon was not a new product of the Conservative government of the 1980's, but was an underlying movement that had developed over a period of many years. It would be wrong to lay all the blame for coercive policing on the Thatcher administrations, but they have undoubtedly contributed to the legal climate of intolerance in which the police are the chief instrument of suppression, and they have been remarkably supportive of, and unquestioning about, the excesses of police behaviour. It was also noted in chapter two that the police and government acknowledge the desirability of the social service model of policing and community policing whilst facilitating the dominance of more militaristic policing methods. Whether these have proved to be effective or damagingly counter-productive is the question at issue.

Underlying all the events covered by this chapter is the question of whether the forceful tactics used by the police are for containment or repression. Do the police initiate their own coercive policies and equipment or is its use forced upon them as a reaction to events; is police use of force defensive or aggressive? In answering this question

there must be awareness of the distinction between different types of public disorder such as riots and demonstrations, and that the way one incident is policed is not necessarily appropriate to others. The way in which events are interpreted and policed can help set the limits of 'acceptable' force for any ensuing conflict. For example if the police feel that a demonstration might degenerate into criminal behaviour, they will take a harder approach to policing it and their contingency plans will accordingly consider the use of force. If a strike is seen as criminal or illegal, repression of pickets actions may be seen by the police as more justifiable than tolerance and containment.

Reference is made to several recent examples of coercive policing that deal with riots and demonstrations. These illustrate both how the police actually behave coercively and their capacity to do so. This includes an overview of police riot tactics in the 1980's and a look at C.S. gas and water cannon as crowd control agents. The Southall distrubances in 1979 are dealt with and the role of the Metropolitan Police Special Patrol Group examined to spotlight the use of specialised units in public order situations. The chapter concludes with brief considerations of some coercive police tactics in the miners strike of 1984 and in dealing with the hippy convoy at Stonehenge.

It is not being claimed that all public order incidents will be dealt with forcefully, but the examples given from the last ten years show how coercive equipment and tactics that are controversial when first used, soon acquire a quasi-legitimacy. but this is achieved by public familiarity rather than consensus and legal authority. In this way the police have gradually been increasing their ability to use force and have been able to do so without effective challenge and controls.

Police tactics; Containment or Repression?

The distinction between policing different types of public disorder.

The police's traditional public order role has been the containment of disorder, yet nowadays new training methods emphasise an aggressiveness in the police approach. The concept of containment has almost been turned on its head with the result that aggressive policies and methods of conflict have become part of the police tactics yet are still cloaked in descriptions of self-defence and containment.

The police's choice in controlling public disorder can be broadly delineated as being between repression and containment. Should they aim to put down the violent disorder, or to contain it? At the moment, they seem to be choosing the former option. This is an area where riotous conduct should not really be bracketed with disorder at demonstrations for the purposes of this discussion. Where riots break out, with their attending tides of lawlessness and looting, attempts at containment of the troubles to one area by the police may not be enough and they may feel that their duty is to 'put down' or repress the riot; a choice of policy that although laudable, is inevitably going to lead to conflict and the need for aggressive police tactics. However, where demonstrations or mass picketing turn ugly, containment is probably more appropriate since there is arguably not the same widespread and unthinking threat to people and property as that engendered by riots.

The distinction between riots and static demonstrations and picketing must be made when discussing containment or repression for several reasons. Firstly, whatever the myriad underlying causes of rioting, and even if one accepts rioting as actions borne out of despair, political impotence and frustration, there is still an undertow of criminality associated with it. The impetus of a riot may be difficult to pin down sociologically, but it is expressed in destructive behaviour. This is entirely different from

demonstrations and picketing that become violent. Here, the original intention in most cases is to make a political point or voice a collective grievance rather than to behave violently (exceptions being the 'Stop the City' demonstrations and 'Class War' activities organised by so-called anarchist groups that explicitly exhort their followers to violent conduct.) Although there may be agitators in many demonstrations who try to foment unrest, manipulate crowd behaviour and who themselves may be willing to 'have a go' at the police, it can be asserted that demonstrations and picketing largely have purposes other than confrontation with the police. Thus, when this confrontation occurs if there are outbreaks of disorder, is the police's determination to repress such behaviour really the wisest option?

The past failure to distinguish between different types of public disorder is in part responsible for the equipping of the police with repressive technological aids, and their reliance upon coercive means. It may seem naive to glibly talk of different types of public disorder from a safe, detached viewpoint; a police officer who faces a flung half-brick will be rightly fearful of injury and in need of protection whether that brick be thrown during a riot, a strike or a demonstration. However, if a sensible and co-ordinated future policy based on reducing the police's reliance on coercive means is to be developed, distinctions about the dangers faced by the police, and classification of events accordingly, ought to be attempted or produced. Obviously all large gatherings have the potential to turn violent, but whether this is realised or not is another matter altogether, and it seems unnecessary to preventatively equip the police for a riot situation, if the likelihood of it materialising is small.

Indeed the phrase 'police in riot gear' helps to crystalise the argument here. Whenever there is a situation with a threatened or violent outbreak, the above aphorism

tends to be used to describe the police response, and, redolent as it is with images of serious disorder, may exaggerate the actual threat faced. The police's 'riot gear', although developed for use in riots and for self-defence, is in fact now deployed in many other situations and aggressively. Although it would not be right to criticise this simply on the basis of the words used, it does seem that tactics and methods used in serious disorders are all too readily deployed on less serious occasions too when they are not strictly necessary. There seems to be no 'moderate' police response; if disorder is threatened the next step up from the unarmed police cordon seems to be to send for the riot squad, or policemen similarly equipped. What is being argued here is that these police are over-deployed, and their use may sometimes be an over-reaction on the police's part.

Some may feel that the presence of the riot police may serve to increase tensions, and the sight of riot shields may invite missiles to be thrown, but this is not something that can be decisively and confidently proved; it is a 'chicken and egg' situation, and arguing against riot gear on the grounds that it has an automatic inflammatory effect is therefore unsound. However, without making judgements on whether the police or demonstrators are the instigators of disorder, or causes of its escalation, where riot equipment is available as a response to varying levels of disorder, the measure of extra protection it gives to the police will help to determine how coercive they can be. Officers in riot apparel trained in aggressive tactics and equipped with pads, helmet, shield and truncheon/baton are now being used offensively to break up gatherings and make arrests, rather than to contain unrest. With the evolution of police thinking that has seen such officers used attackingly rather than defensively, and given such human factors as the natural excitement and adrenalin of the officers when deployed, it is hard to see how their

presence could have a calming influence. They do not command public acquiescence and stability but rather, have to win it after combative clashes with the crowds.

To summarise the two points being made here; firstly, the use of riot equipment for all manner of incidents is both unnecessary and imposes an unhealthy reliance on coercion. The use of such equipment is not going to be argued with in genuine riot situations but these must be distinguished from the many other occasions when it is used. It has become customary to use such gear 'preventively' and aggressively rather than as a last resort. There needs to be a re-appraisal of the number of times such riot units or equipment have been deployed, what effect they had, and whether other tactics could possibly have been used without compromising officers safety. Secondly, in pursuing a policy when policing public disturbances of repression rather than containment, it must be realised that this ultimately leads to spiralling violence. The consequences of this are that the police are being implicitly dictated to by the dissenting bodies. If the crowds use extreme unlawful violence or force (missile throwing etc) and the police are committed to repressing this instead of containing it, then their equipment will accordingly be assaultive-based, rather than defensive. They will have to develop the technological means to gain the upper hand, and will doubtless use them.

Policing riots

That riots should be treated differently from demonstrations and other outbreaks of disorder has then been established. But how should the police behave in riot situations? What part have they played in causing the riots and how much force is justified? It must be remembered that in talking about a rift to coercive and militarised policing, that such policing has two connotations, as outlined in chapter two. Briefly, this means that by militarised policing, it is understood that the police may be equipped militarily for disorder and may use increasingly sophisticated tactics

and hardware in instances of public disorder, which is perhaps the image of military policing that springs to mind first. The second aspect of military policing is an uncompromising harder approach to everyday policing, in which the consent of the community is subservient to the police's objectives and policies, which may be controversial, confrontational and unpopular. Where riots have occurred recently in Britain, both these descriptions of military policing have been applicable. The first type used as a response to the violence, the second as a major cause of it.

The causes of rioting are acknowledged to be complex and related to a wide variety of social factors such as unemployment, poverty and deprivation and inadequate social and educational facilities. It becomes easy and convenient, to forget the police's role in all this, but in fact the actions of the police have been of great significance in the recent outbreaks of rioting in ther 1980's. Perhaps because it would be thought unfair, unreasonable and too simplistic, the police have not usually been blamed for riots, even where there is strong evidence that they were a dominant contributory factor. Instead, they are presented as the hapless protectors of society and are pictured fighting to regain control of the situation. By being painted as a vunerable group under attack, they win public sympathy and support. As Reiner notes, (1985,p.141) the media are instrumental in this process of portraying events from the police perspective; 'Considerations of personal safety and convenience lead to cameramen covering riots typically to film from behind police lines, which structures the image of the police as vunerable 'us' confronting menacing 'them'.' So the uninvolved public will gain their information from sources sympathetic to the police and biased in their favour, even if unintentionally. However, the cameras only start rolling and the reporters only start writing after trouble has broken out. The aftermath may be recorded but the forerunners to the riots escape attention.

The impression that is transmitted to the general public is thus incomplete. The reality of the situation seems to be that policing, if anything, has been underestimated, in its importance as a cause of rioting.

Lord Scarman, in his report on the Brixton disorders of April 1981 (CMND 8427) found that the disturbances there were 'essentially an outburst of anger and resentment by young black people against the police.' (Para 3:110 (7)). He chronicled how the riots had started off originally as the result of an arrest that the police were trying to make. (Ibid, paras; 3:30-3:80). Although Scarman attached no blame to the two young officers involved in this incident for the ensuing disorders, and even tried to deflect culpability for the troubles onto the crowd by saying that many of the young blacks were 'itching to have a go' 'ibid, para 3:77), it is nevertheless clear that the catalyst for the disorder was some form of police action. This is to become the start of a new familiar pattern, namely there is a lengthy period of harsh policing of a certain community which arouses widespread discontent and resentment. This forms the background for trouble to erupt, which when it does, is usually in response to one particular incident involving the police. Such a pattern has been repeated fairly recently; in 1985 the Broadwater Farm rioting in London occurred after the police had raided the home of Mrs. Cynthia Jarrett looking for stolen property, but during which raid, Mrs. Jarrett collapsed and died of a heart attack. There was rioting in Brixton in October 1985 after Mrs. Cherry Groce had been accidentally shot by a policeman during a dawn raid on her home. Earlier, in 1980, rioting had broken out in the St.Paul's area of Bristol following a raid on a cafe that was popular with local blacks. There have been many incidents that are less well known because they have not resulted in such serious disturbance, yet have possessed the potential to escalate and have been caused by policing; for example, the violent arrest

of Clinton McCurbin that resulted in his death, allegedly from a heart attack, in Wolverhampton in February 1987, led to violent clashes between the police and young black people. (The Guardian, 27.2.87). In Leeds' Chapeltown area a young man was arrested by police and allegedly beaten, which led to the police being stoned by a crowd, and two days of violence which included the petrol bombing of shops, cars and police vehicles. (The Guardian 23.6.87, 24.6.87). In September, 1986, the police launched an operation designed to combat drugs in the St. Paul's area of Bristol, which led to two nights of rioting. The police claimed that this was a success in that crime has been reduced in the area since the raids, (The Guardian 18.11.86), yet black community leaders say that relations between them and the police are now at a nadir, and that the effect on police links with the community has been disastrous. A member of the Bristol Commission for Racial Equality told The Guardian; 'Did the police really think they were going to stop prostitution and burglaries by coming into the community with 600 officers one afternoon? All they achieved was to frighten people and destroy the relationship we had built up with them.' (2.3.87).

It seems that no lessons have been learnt from the past riots and troubles, for the police and the community are still coming into potentially riotous conflict quite regularly. Indeed, the West Midlands police force devised a system of what they called tension indicators based upon such factors as crimes committed in a particular area, attacks on the police and strains on the community. These were meant to indicate when a riot situation was developing, and their use resulted in the police in the West Midlands being put on riot alert three times in the summer of 1986 alone. (The Guardian, 18.8.86).

Significantly perhaps, these riot indicators did not include police actions that were likely to be opposed by the community and to lead to conflict if persisted with. The police's reluctance or refusal, to recognise their own

culpability or contribution to the increases in social tension is unwise and misguided in view of the links between policing and riots as detailed above. This link was reaffirmed by the unofficial inquiry into the riots at Broadwater Farm in North London 1985. This inquiry (The Broadwater Farm Inquiry; Report of the Independent Inquiry into disturbances of October 1985, at the Broadwater Farm Estate, Tottenham) was chaired by Lord Gifford, and although as thorough and as necessary as the Scarman Report of 1981, lacked official status and was handicapped by the refusal of the Metropolitan police to co-operate. Nevertheless, its conclusions should not be ignored. It found that there had been 'glaring police irregularities' and a history of conflict and injustice towards the black community, and that the 'disturbances came about because of an appalling state of distrust and hostility which existed between the police and the people who lived in and frequented Broadwater Farm.' Furthermore the inquiry was concerned at the increased militarism of the police and the contradiction between co-operative community policing and the incursion of 'intimidatory mobile units' which the local police command had failed to resolve. (The Guardian, 8.7.86).

A major cause of tension, particularly in the inner city areas of Britain with high concentration of people from the ethnic minorities who have asserted aspects of their own cultures, is the existence of areas where the police are most definitely not welcome and their presence resented, yet where more officers are deployed to combat the illegal activities that take place there. A particular and well known example being the propensity of rastafarians to smoke marijuana. Since it constitutes a part of their religious belief the police do not need to employ their detective skills to deduce that cannabis will often be present at the social haunts of rastafarians. Lest the point being made here should be thought racist and stereotypical it must be added that other examples of illegal activities such as drug taking, gambling and drinking in shebeens are of course just as

likely to be found in white areas as well. Where these activities take place, the police will try to stop it by making arrests. The fear is that if the police were to 'turn a blind eye' to this sort of behaviour then it would multiply and the area would eventually become a 'no go area' where it would be dangerous for the police to operate. The former Commissioner of the Metropolitan police, Sir Kenneth Newman recognised that the areas that could become 'no go' zones were in fact the ones that had more police working in them than others to offset this threat, and denied that there were any such places where the police feared to go. (The Guardian 17.2.87). Yet where the avoidance of a 'no go area' involves such heavy policing that the community eventually responds with riotous behaviour, it must surely prompt a re-assessment of the police's tactics here.

Lord Scarman crystallised the problem when he wrote of the duties of a police officer in his 1981 report into the Brixton disorders. He contrasted the police's obligations to keep the peace to enforce the law since the two are not necessarily compatible. The police officers first duty is to 'maintain the normal state of society' by co-operating with others, the second is to enforce the law without endangering normality. (Scarman 1981, para 4:57); 'His priorities are clear; the maintenance of public tranquility comes first. If law enforcement puts at risk public tranquility, he will have to make a difficult decision..... Law enforcement, involving as it must the possibility that force may have to be used, can cause acute friction and division in a community - particularly if the community is tense and the cause of the law-breaker not without support.' (Ibid). Scarman is not saying that the police should not make arrests and try to combat illegal activities if there is a risk of resultant serious disorder, but rather, is advocating wiser use of police discretion. For example, instead of raiding pubs or cafes where drugs are thought to be available by using police in riot equipment the police

could take a more discreet approach involving community leaders, warning those suspected of offences first and carefully choosing the time and manner of arrest. The police are aware of the consequences of heavy handed tactics and so the need for sensitivity should be heeded.

In stating here that the police's role as a cause of riots has been under-estimated is not intended to absolve the government and other agencies from blame but merely to try and dispel the notion that the police just react to the riots rather than have a large part in instigating them.

Interpretations of riots determining police responses.

There are several schools of thought as to why riots occur and what they represent. After the Handsworth riots of 1985 they were characterised as being an outbreak of criminality by the Home Secretary Douglas Hurd. Such an explanation denies any political motive and justifies repressive police responses. The riots of 1981 in Brixton were, in contract, acknowledged to have an element of collective grievance about them as well as being a short term expression of opposition to policing methods. A major problem that has accompanied the recent riots has been the over-exaggeration of their effects and possible consequences and a failure to view them in a reasoned and objective context. This has had important and far reaching ramifications for the police use of coercion, for if the 1981 riots are seen as the beginning of a social era in which violent protest is going to be a regular occurrence, and the police's physical authority frequently challenged, then it becomes easier to argue that there is a real and ever present need for the police to be trained in anti-riot techniques and equipped with the latest protective technology.

Lord Scarman tended to see the disorders in unfortunately apocalyptic terms. He asserted in the House of Lords a year after the Brixton riots that: 'If that thin blue line had been overwhelmed, and it nearly was on that Saturday night, there is no other way of dealing with it except the

awful ultimate requirement of calling the Army.' (cited in Pike, 1985, p.24). During his report on the disorders, Scarman paid tribute to the police in terms reminiscent of a partisan leader in the Daily Express, remarking that he was thankful for '.....the courage and dedication which was displayed by members of the police and emergency services in Brixton over that terrible weekend. They stood between our society and a total collapse of law and order in the streets of an important part of the capital.' (Scarman CMND 8427,para:4.98). Such a viewpoint has been challenged and criticised by journalist John Clare, who witnessed in person, the events of the Brixton riots in April 1981. Clare feels that Scarman's 'estimate of the relative seriousness of the violence is heavily exaggerated' and that Scarman misunderstood the highly localised nature of the riots by portraying it as a threat to society as a whole. (1984, p.46). Clare expressed his misgivings that the significance of the riots was in danger of being wholly misrepresented since the lessons of Brixton in the Scarman view were that the police urgently need to be equipped with C.S. gas and so forth and that blacks are a potentially revolutionary, alien wedge in our inner cities, whereas the real lesson should have been somewhat different. Scarman's findings and interpretations of the violence were those 'that are likely to be drawn from a report that pretends that the intention and scale of the violence that week-end was such that our society for a time teetered on the brink of total collapse.' (Ibid,p.52). Clare felt that the real lesson was much simpler; '.....if you lean too heavily on a socially and economically hard pressed community, it does not take much to make it snap....' (Ibid). He also felt that the objective of the rioters was not to overthrow society but rather, to drive the police out of their locality.

If this latter alternative view of the riots were to be widely accepted it would have important inplications for the way in which the policing of public disorder and rioting is approached. It would undermine, for instance, the

decision of police forces to re-equip their men quite so thoroughly since the gear needed to defend one small area is arguably not as great as that needed as if 'society' as a whole is under threat. It would mean that the response of the police forces of England and Wales to the riots has been an over-reaction in that equipping all forces with protective riot equipment (that is then issued for other purposes with great frequency but barely, if ever, used for riots) has proven unnecessary. If the police did accept their own part as the object of rioters frustrations and hostility and withdrew to appease that hostility then they would arguably need less coercive equipment. Conversely, if the police are determined to repress the disturbances and pursue policies that are by their very nature and objectives, confrontational, then they can expect an escalation in hostilities and the need for defensive protection. To summarise here; if the police recognise that they are the butt of many grievances and their presence was proving counter-productive, they could withdraw and expect a decrease in tensions. Such a policy would possibly leave certain property vunerable in the short term but might have more beneficial human effects in the long term. In policing terms it would represent less danger to the officers and less need for technological aids. However, if the police see riots as essentially criminal and as a challenge to their authority, then repression will be the tactic that they choose, and the need for riot equipment greater. The interpretation of the riot helps to determine the level of coercion of the police response. At the moment, the British police take a blinkered short-term view of riots as criminal challenges to their supremacy that have to be put down. Numerically the outbreaks of riotous behaviour are few and so this again poses the question whether the re-equipping of the police forces has been necessary and whether it is likely to reduce the amount of coercion used by the police in the future? The answer would seem to be

'no', but as long as the police over estimate the threats posed by rioters then they are going to need some protective gear to enable them to follow their confrontational policies.

This perspective is not intended to be too complacent however and the dangers that the police face must be acknowledged. During the riots at Broadwater Farm the police were fired upon by rioters and also had petrol bombs and other missiles thrown at them. Most horrific and tragic of all however was the killing of police constable Keith Blakelock who was attacked by a group wielding machetes and knives and who killed him in an appalling act of savagery. Obviously, when events have become as serious as they were at Broadwater Farm, it would be folly to send police officers in to deal with no protection whatsoever. However, the determination on the police's part to 'win' confrontations with rioters and to subdue them inevitably leads to a policy of re-equipping the police and preparing them for repressive tactics. This means that the next time there is a riot, the rioters will know what to expect from the police and so will have to increase the ferocity of their protest to make an impact. If police appeared without riot shields and riot helmets in the front line then it may be less likely that the rioters will resort to petrol bombs since other missiles will prove equally effective against an apparently frail police line. The uncomfortable truth is that the police would have to be prepared for injuries to their men, but this might not be as high a price as would have to be paid if the riot was fuelled by aggressive police tactics and continued to grow. It would seem greatly unfair to those men on the police line if they had less protection since they would appear to be acting as 'guinea pigs' on behalf of society, however, the advent of all the protective aids for the police has not meant a serious reduction in the number of police casualties anyway but has instead affected the determination of rioters to harm the police and so influenced them into using more fearful methods of protest. The modern police

forces seem to have disregarded the advice of Sir Robert Mark who said that 'the real art of policing a free society or a democracy is to win by appearing to lose, or at least to win by not appearing to win.' (Cited in Whitaker, 1979, p.49). Whitaker notes that; 'In coping with disorder most British policemen have learnt that human control by close contact is infinitely preferable to a situation where helmeted men crouch behind water-cannon, so depersonalised as to encourage reciprocal aggression. Traffic policemen are not used, because their gaultlets, high boots and metal helmets might appear 'fascist'. John Alderson the (ex-) Chief Constable of Devon and Cornwall, advises, 'At all costs avoid a gap, which can become a kind of battleground between the two parties.' The riot at the Notting Hill Carnival in 1976 brought calls for better protection for the police than dustbin-lids, yet their unarmoured vunerability is regarded by many officers - despite the danger - as a crucial human touch that helps their relations with the public. Paradoxically, it probably makes a big contribution to the fact that most British demonstrators behave restrainedly.' (Ibid,p.56).

This 'Unarmoured vunerability' that Whitaker writes of is already just a memory and has been replaced by an image of strength and protection which is intended to mirror the invincibility of the state. However, the police themselves are victims here; they have been duped, for the equipment they have been expensively clothed in and trained to use offers no more protection against crowds who will be prepared to use proportionately higher levels of violence against them. In effect, the police have swapped a state of 'unarmoured vunerability' for armoured vunerability. Injuries to police officers are not less likely to occur, and when they do, they might well be of a serious nature, since the weapons todays rioters need to pierce the police's defences are those such as petrol bombs, air guns and bricks that are capable of causing great harm. The idea that the

new police equipment affords the police greater protection does not always ring true and may at times be illusory.

It seems that the police advances in technology have contributed to increases in violence, that they have been counter-productive and fed the circularity of violence between police and demonstrators. John Alderson certainly subscribes to this viewpoint; '....the excessive use of force in these tinder dry situations holds dangers for both user and object, inviting as it does, retaliation followed by reaction culminating in the escalation of violence. This has happened.' (1984, p.43). This escalation has taken place in that the police are now equipped with C.S.gas, plastic bullets and so forth, and are now prepared for extreme levels of violence. Alderson continues 'If, or when, social disorder breaks out again on any scale, the level of violence involved will begin on a higher threshold. What was once exceptional now becomes normal and acceptable. It is a policy of despair.' (Ibid).

The police tactics and decisions on how to police depressed inner city areas definitely affect the intensity and duration of riots when they break out. That is, the police's actions are not merely reactions to events but are sculptors of them as well. This must be remembered when looking at the next section that chronicles certain events marking how the police have increased their coercive capacity. Throughout, the questions must be posed whether the police's actions were strictly necessary as defensive measures, or whether the police themselves took the initiative in using and increasing the levels of coercion.

INCREASED POLICE COERCION? RECENT EXAMPLES OF FORCEFUL TACTICS

Riots

A distinction has been made through this chapter between the police tactics needed to control or contain riots and those needed in other situations such as demonstrations or industrial disputes. Although the disorder that can result from the latter type of incidents is great, concentrated

rioting is seen as the greatest threat to policing and societal stability today. Therefore, it is in response to, or preparation for, riots, that most of the police controversial equipment is designed. Rioting presents the ultimate challenge to the police's authority and the methods of putting down a riot will be more extreme and coercive that those that would be used for demonstrations.

The evolution of modern police riot equipment had its genesis in the troubles that accompanied the Notting Hill carnival in 1976 when the police under went threat from many missiles and sought protection using dustbin lids as makeshift shields. The image of a seemingly helpless police force cowering behind such sparse protection prompted a reappraisal of the police's personal safety and how it could be improved, with the result that when there were disturbances in Lewisham, London in 1977 the police were by then equipped with riot shields. There were used after trouble broke out when the police escorted a National Front march through Lewisham, the decision to do so being interpreted by the anti-Nazi movement as a great affront to the many black and Asian people living in that area. Such a policy was indeed remarkably insensitive and politically shortsighted since it left the police open to accusations that they were siding with the extreme Right wing National Front.

By the time of the 1981 riots, shields were a familiar part of the police's armoury. They were undoubtedly necessary to protect officers from the barrage of missiles that they faced, but were not entirely successful. Scarman found that the protection provided by the shields was inadequate; , 'the foam padding at the rear of the shields - themselves heavy and cumbersome - caught fire when petrol spilled over them.' (CMND 8427, para 4:91). Scarman also found that officers had used their shields 'improperly' by beating on them with truncheons and shouting 'in a manner reminiscent of ancient warriors going into battle' (ibid para 4:85). This was condemned by Scarman but is an aspect of police behaviour that was to be repeated during the

policing of the miners strike when the police at Orgreave in 1984 had banged on their shields both to intimidate strikers and to applaud their own colleagues when they returned to the police lines after attacking forays on the miners.

At this point it should be made clear that the type of riot shields under discussion are the full length ones that provide protection for the officers whole body. These must be distinguished from the short shields that, although providing a degree of protection, are essentially designed for attacking purposes. It is the short circular shield that officers assigned to 'snatch squads' use when they are sent into crowds to arrest offenders. These allow the officer some protection to his body whilst keeping the truncheon wielding arm free. Even the long riot shields are not used for solely defensive purposes however. In the aftermath of the 1985 riots, 'The Observer' reported that the Metropolitan police were using new tactics and weapons against rioters that were based upon chinese martial arts techniques. Scotland Yard were using secret manuals written by a Brigadier Michael Harvey, a veteran of Korea and Oman who had become Scotland Yard's self-defence adviser after the 1981 riots, and whose system had been used by the army in Northern Ireland. Harvey's manuals included advice on how to use the 'cutting edge' of a riot shield as a weapon. (The Observer, 6.10.85). This leads one to wonder exactly what the Metropolitan police were referring to when in a recent recruitment advert placed in the national press they stated that 'we have developed increasingly sophisticated techniques with shields.' (This advert, 'Have we got the job for you?' appeared in 'The Guardian' 27.5.88, amongst other papers). Other tactics described by Harvey concerned the use of two new weapons, a long riot stick, two feet longer and heavier than the traditional truncheon, which was used by the police in the Brixton riots of 1985, and the flail truncheon, a smaller ridged

truncheon that is attached to a chain that hooks around the officers fingers. Amongst the instructions in Harvey's manuals are those that show officers how to whirl the flail baton on the chain and thrust it into a suspects groin or sideways at the philtrum (the point where the nose and upper lip meet). The 'shield chop' is described whereby if someone grabs the officers free hand the shield should be raised and its edge swiftly brought down onto the wrist bone. (The Observer, ibid). Such developments are surely in direct contradiction to previous principles of minimum or reasonable force as it now seems as if the police are being trained to inflict maximum pain rather than to disperse or quieten a crowd. It is hard to see how, if, or when such tactics are employed, they will have any effect other than a provocative or distruptive one.

The use of a longer riot stick is another step that brings with it connotations of the regime and policing in South Africa where the use of the 'sjambok' by the police used to be a familiar sight on news bulletins prior to the censorship that accompanied the imposition of a state of emergency there. The 'sjambok' is a long riot stick that enables the policeman a greater reach and the ability to attack without risking direct physical contact with a person. Its potential for offence far outweighs any defensive qualities that it may have. In Britain, until recently policemen on foot were only equipped with a short truncheon, the long truncheon being the preserve of the mounted policeman. This weapon was criticised in 1975 by Lord Scarman in his report to the disorders in Red Lion Square, London. Strangely, even though Scarman accepted that the long truncheon had not been used in dispersing the demonstrators in Red Lion Square or some time past, he recommended that it be withdrawn from service as being provocative, even though the force was the most lightly equipped urban police force in the world. (CMND 5919,1975). Such reasoning has long since been discarded and any worries

about provoking the crowd replaced with a more clinical desire to be able to deal with the result of such provocation efficiently. Scarman's finding is not accepted by all in any case and Ward (1986,p.21) cites one police inspector who had admitted that the mounted police had drawn their truncheons and had 'physical contact' with the crowd.

Aside from shields and truncheons, the other riot control devices that have aroused much controversy have been plastic bullets (or baton rounds) and the use of chemical irritants notably C.S. gas. After the rioting at Broadwater Farm in 1985, the Commissioner of the Metropolitan police, Sir Kenneth Newman publicly announced his readiness to use plastic bullets if he judged them necessary; 'Petrol-bombing, arson and looting are alien to our streets. They must not go on. Last night I deployed members of my tactical firearms unit in readiness to use plastic bullets. They were not used, because the containment operation, though grave in its economic and human costs, was successful. But I wish to put all people of London on notice that I will not shrink from such a decision should I believe it a practical option for restoring peace and preventing crime and injury.' (Quoted in 'The Guardian, 8.10.85).

C.S. GAS AND WATER CANNON

Although plastic bullets were not eventually used during the 1985 riots, C.S. gas had been used for the first time against citizens on the British mainland during the rioting in 1981 when police fired CS canisters into the rioters in Toxteth, Liverpool. The police had on that occasion faced extreme hostility and force from the rioters and had been forced to make a temporary retreat. The rioters and police agreed a temporary truce on the late night/early morning of Saturday and Sunday the 4th and 5th of July to enable the staff of a geriatric hospital to evacuate their patients. This lull gave the Merseyside Chief Constable Kenneth Oxford the chance to prepare for the use of CS gas. (Kettle/Hodges, 1982, p.160). Many officers

had been injured and the chief constable feared that the rioters would try and attack the city centre, (a claim that was refuted by a local community group who claimed that they were dispersing) and so '...at 2.15 a.m. he gave the order that tear gas should be used, in the full knowledge that this breached Home Office guidelines which restricted use of the gas against armed and besieged criminals only. The gas had the desired effect - it scattered the crowds - but in the process caused injury, some serious, to five men. This only came to light twelve days later in a New Statesman report which revealed that the fifty-nine small gas projectiles fired should never have been used to control crowds. They were designed to flush out dangerous or armed men by piercing doors or windows, and the instructions that came with them said they should not be fired at people because they could cause serious injury. (The manufacturers describe them as lethal cartridges). At least two people were seriously injured in Toxteth and required operations in hospital; one man was hit twice - once in the chest, 'gouging an egg-sized hole,' and once in the back.' (Ibid dp.160). Manwaring-White describes the types of cartridge fired at Toxteth. (1983,p.134). They were Ferret Liquid CS gas Barricade Penetrating cartridges of two kinds, the Ferret SGA 100, and the Ferret SGA 300. The first type carry a warning that 'this cartridge may inflict serious injury should it strike anyone within a range of approximately 250 yards,' whilst the SGA 300 is even more dangerous and carries a far stronger warning on it; 'Warning. For police use only. Specifically designed for barricade penetration only. Do not fire at any person or crowd. Projectile may inflict serious injury should it strike anyone within a range of approximately 300 yards.' (Ibid).

The use of CS gas raises many issues of critical importance for the democratic policing of this country. Firstly, the legal authority for its purchase and the control and accountability over its use are keenly contested areas of current policy. The role of the police authority as a

check on its police force and their lack of powers in practice have been highlighted by the wrangle over whether certain police forces should be able to purchase CS gas and plastic bullets despite the disapproval of their local police authority. The result of this argument and its implications for the increasing centralisation of the police will be examined in part four. Suffice to say here that the legal basis for the purchase of CS gas and plastic bullets is procedurally dubious and seems to have circumvented accepted democratic methods.

There are other considerations that arise from the deployment of the gas at Toxteth in 1981, both specific, relating to that particular incident, and more general, concerning CS gas use as a whole. To deal with the shooting of the gas canisters during the Toxteth rioting one first has to ask how long the police had possessed the gas for and on what authority they purchased it? The answers to such questions inevitably lead back to the accountability problem highlighted above since the acquisition of CS gas for police in Britain has never been the subject of parliamentary scrutiny and approval. However, although there had been no explicit public acknowledgement that CS gas was being added to the police's range of equipment and options, it is reported that 'The U.K. police had been quietly stocking up with CS and by 1968 thirty-six different forces held supplies in cartridge or grenade form. In 1970 the Met's Chief firearms instructor visited the USA to study FBI weapons and methods and subsequently more CS guns and equipment were purchased. .....Early in 1982 the Home Secretary admitted that police in England and Wales had been issued with 1,000 CS gas canisters in case of riots. Many forces already have supplies.' (Ibid,p.137).

Quite how long the Merseyside police had possessed their supplies of CS for is uncertain, yet what is beyond doubt is that it was negligently, almost criminally misused, given the clear warnings on the cartridges. Even if one

was to agree with Chief Constable Oxford's decision to use gas in the first place since the police had been subjected to such violent attacks, one would have to admit that the use of these particular cartridges was inappropriate and dangerous. CS gas is manufactured for crowd control, but the CS that the Merseyside police used in 1981 was not. This prompts the question of whether or not the supplies of CS gas in Liverpool had been stockpiled for use in riot situations or whether they were for seige and counter-terrorist operations? Certainly the canisters that were fired into the crowd were designed to penetrate barricades and so were for kidnap and hostage situations. Surely if the Merseyside police had wanted to purchase CS gas for crowd control purposes they would have brought the right type of dispensers for it, and if they did in fact possess such suplies why did they not use them instead of using the wrong type of canisters that had to be fired from a gun at high velocity? Whatever the answer to such speculation, it seems likely that a mistake was made somewhere by the police and that the first deployment of CS gas by police on the British mainland was administered with an incompetence that befitted its novel and unfamiliar status.

Since the use of CS gas in Liverpool in 1981 it has been used on the mainland for seige purposes. This happened for the first time in a prison in October 1986 at Grendon psychiatric prison near Aylesbury, when a prisoner was holding another inmate as a hostage and was threatening him with a broken bottle. Police were called in and they fired CS canisters through the cell door, and successfully freed the hostage. (The Guardian, 18.10.86). This constitutes what might be termed a proper use of CS gas, in that it was targeted in a small controlled area with one attainable objective. In fact even though the hostage was freed, two prison officers were treated for the effects of gas afterwards. It was perhaps in readiness for such a situation, that the Merseyside police had built up their

supplies of CS gas that they used in 1981. Perhaps the police had not internally envisaged using the gas for public order purposes and only the desperation of the situation in the Chief Constable's judgement had made him use it for crowd control? Such an interpretation would be kind to the police and mask the error that was made in using the Ferret cartridges at all. It seems more likely that the gas was intended for crowd control, and the use of CS gas at Toxteth offered further confirmation of the fact that police tactics and weapons tried and tested in Northern Ireland are later implemented in England and Wales where the police think it appropriate.

Specific objections to the use of CS gas at Toxteth centre then around for what, and when was it initially purchased?, and its blatant misuse in being fired dangerously into a crowd. The more general objections to the use of CS gas apply to Toxteth and to any future occasion when it is being considered for use. CS gas can be criticised when used for crowd control on moral, health and tactical grounds. Morally, the use of CS gas is abhorent since it is, by nature indiscriminate, and the 'innocent' will almost certainly suffer along with the 'guilty'. There are those who hold that any one present during a riot and close to the police lines must by definition be taking part and be of criminal intent, or at the very least, be aware that it is a dangerous place. This school of thought takes it for granted that any true 'law abiding citizen' would automatically avoid any area where there was riotous disturbance. As with so many simplistic viewpoints on criminality this is seriously flawed, and contrary to principles of justice. There is quite simply, no way that the police can target with certainty those people who have been throwing missiles and so forth, and generally been prominent in the attack during a riot, and aim or direct the CS gas at them. It is therefore a weapon that relies upon guilt by association. Even those who may have taken no active part in the rioting will be affected by CS gas.

They will in fact be punished unfairly. Because the police can not control where the gas goes once released it can obviously enter houses if windows are open. Since rioting is often in residential areas there is no guarantee that the gas will not enter the houses of people who are not behaving violently or riotously.

The use of CS gas could be criticised at Toxteth on health grounds for the manner in which it was discharged, in that the firing of the barricade-penetrating cartridges obviously was potentially and actually injurious to health. This should not detract from the other health arguments against CS which would have prevailed even if it had been initially deployed in a 'safer' manner than the firing of the Ferret cartridges. The British Society for Social Responsibility in Science (BSSRS) describe how CS works as a crowd control agent; 'According to the original Porton Down patent, it operates by 'causing pain in the eyes, tears and spasms of the eyelids'. It also produces 'a sharp pain in the nose, throat and chest, which becomes worse and causes choking sensations as exposure continues....in high concentrations, the violent coughing which is set up may induce vomiting.'.....There are longer-lasting health effects too. Exposure can cause prolonged diarrhoea and allergic contact dermatitis, and may burn the skin in wet weather. Those who suffer from chronic bronchitis, may be provoked into an acute attack, or even bronchial pneumonia. When first used in Derry in 1969, children as young as fourteen months needed treatment for respiratory problems. Other possible long-term dangers of CS have still not been researched.' (BSSRS, 1985, p.71). Manwaring-White adds to this catalogue of side effects of CS gas by pointing out that a temporary fear of light, photophobia, occurs in 10% of people exposed to CS, and that some American policemen in Washington who were exposed to CS during the riots of 1968-71 have developed a type of skin cancer. (1983,p.136-137). Furthermore, she adds that 'CS especially affects

the most vulnerable, the old, the sick, asthmatics and children. Dr. Morris Fraser in his book 'Children in Conflict noted that exposure to CS exacerbated mental illness in children. It also contaminates buildings, is difficult to remove and makes any food contaminated by its inedible.' Given these disturbing implications, it becomes clear that any decision to use CS gas in the future will entail or should entail, consideration of more than just whether it will be effective in dispersing a crowd. If there is any possibility that children in particular will be affected by the gas, then this should prove an overriding argument against it.

It was mentioned earlier that the testing ground for new police technologies was Northern Ireland, and that this has been so in the case of CS gas. However, if the example of policing the province is truly followed it is unlikely that CS gas will ever attain widespread usage here since the police and security forces have become aware of the tactical limitations of CS through its deployment in Northern Ireland. Most crucially, CS gas is at the mercy of the weather. If the wind changes then the gas may be blown back into the faces of the police themselves, or may be blown into residential areas that have no responsibility for the riots. The form in which CS is launched at the crowds has also posed problems in the past; if it is by means of a small grenade then there is a chance that the demonstrators may be able to smother it and nullify the effects, or more worringly for the police, approach the canister with face protected and lob it back over police lines. The use of CS gas illustrates well how such an increase in force by the state will be met by demonstrators and eventually contribute to a circularity of violence. BSSRS (ibid,p.72) noted how after repeated exposure to CS gas, people developed a tolerance of its effects and were able to sustain high levels of activity such as throwing stones at the army from within the clouds of gas. Similarly, in more repressive states

(such as those of the East like South Korea) demonstrators or rioters who are accustomed to the state using CS gas against them will go prepared to combat its effects. Just as Japan and elsewhere have in the past attended demonstrations wearing motorcycle crash helmets in anticipation of the police using their batons against them, so masks and facial protection are becoming more common. If the police were to use CS gas regularly as a crowd control option, it is likely that the dissenters would quickly become accustomed to it and respond accordingly with the result that its usefulness would soon become impaired. It seems that if the Northern Ireland pattern is followed, CS gas will quickly be discarded as a public order option. The BSSRS report that CS soon fell out of favour in Ulster, to be replaced by the rubber and plastic bullets; 'No single canister was used in the North of Ireland after 1974 - until the latter half of 1981, when a few were fired off, presumably to protect the government from the accusation that they were pushing onto the police a weapon already tried and rejected by the Army.' (Ibid, p.72).

It appears that the future as far as CS gas is concerned may be quite encouraging in that the police will realise all the shortcomings of this tactic and refrain from using it for crowd control. However, even if this happens what does it tell us about the police and the amounts of force that they are willing to use? Unfortunately, any rejection of CS gas is not out of any moral misgivings that the police may have to about its use and a reconsideration of it being unreasonable force, but is rather that it is unreliable tactically and may rebound onto the police themselves. In this, the case of the CS gas is similar to the water-cannon. The latter is a riot control weapon that has been used by other states in Western Europe such as France, West Germany and Belgium. The water cannon works by firing a jet of water at high pressure to knock demonstrators over, or at lower pressure to merely soak them and deter

them. It can also be used to spray demonstrators with a coloured dye, the idea being that they can be indentified later as part of the crowd and their guilt of an offence inferred. Although this description makes the watercannon appear less fearsome than plastic bullets and CS gas, it is regardless, capable of causing grave injuries; 'In Europe where water cannon are quite widely used, police commonly direct the water jet at people who have fallen down, its force rolling them over and over. The jet can send broken glass from windows or dislodge rubble showering over a crowd. And in an anti-nuclear demonstration in West Germany in September 1982, the direct strength of the jet stripped bark from the trees, split clothes, and caused cases of massive bruising to the thighs and to the whole rib-cage. Injuries to one demonstrator required gynaecological investigation.' (BSSRS, ibid,p.70). But is it facts such as these that have made the British police relent in their pursuit of water cannon and reject it as a public order option? Again, this is not the case. The extreme force and potentially serious consequences to demonstrators were apparently acceptable to the government and police and it was other factors that lay behind the rejection. The Home Office purchased two water cannons after the 1981 riots in Brixton, Toxteth and elsewhere yet they have remained unused despite the outbreak of more rioting in 1985. The Guardian reported that the use of the weapon in Britain was unlikely because of tests on its capacity to injure people had not been completed satisfactorily, and could not be without firing it at live animals. The political sensitivity of such tests in the face of the resurgence of of animal liberation as a popular cause made the water cannon an object of controversy before it was even deployed. (8.10.85). However even more importantly for the police were the tactical shortcomings of the water cannon in a riot situation. They are cumbersome and unable to manouevre down smaller streets, and crucially, they dispose of their

water supply so quickly that they would need to work in pairs. One to be operating whilst the other refilled. This also meant that they could not move far from a water source. The Home Office actually ruled out their use as a means of riot control in 1986 in a written answer to a question in the House of Commons indicating that tests by the police showed that the vehicle's water supply of 2,000 gallons was exhausted in just two to three minutes. (The Guardian 9.3.86). Obviously once its water supply was spent, the vehicle is then vulnerable to attack by rioters. Its effectiveness as a disperser of rioters is also hindered by the fact that unlike CS gas, it can be avoided by the simple expedient of hiding behind a relatively solid object (perhaps behind a wall or in a doorway). The RUC in Northern Ireland (and the Army) have realised that the water cannon is not a viable public order option, and so too have the police in the rest of Britain. The same seems likely to be the case with CS gas if the mainland police follow the Ulster example after the one incorrect use of gas in Liverpool 1981. If this were to be the case, it might superficially appear that the police have partially retreated from their policy of tooling up, and this might bode well for their future preparedness to use, and actual use of, force. Sadly however, as seen above, the rejection of the water cannon and possible dissatisfaction with CS gas does not indicate a reluctance on the police's part to to use such force as much as reflecting police scepticism about their tactical worth. Also, as Manwaring-White comments; 'The police and government preoccupation seems to be that these new tools of coercion should not be politically dangerous rather than injurious to health.' (1983, p.152/3).

Given that it has been tactical reasons that have disabused the police of their initially favourable expectations of CS gas (and to a lesser extent, water cannon) it seems likely and probable that they will continue to search for other methods of crowd and riot control that will not be

rejected if reliant upon coercing the crowd as long as they are workable in practice.

Other riot tactics

The police in Liverpool in both 1981 and 1985 were criticised for other tactics that seemed to bear little or no relation to ideas of 'reasonable force'. The first of these methods resulted in serious injury to one person and death to another. Was it plastic bullets, CS gas or a baton that caused these? No, it was the result of coercive use of equipment that all police forces have; cars and vans. In fact the cars in question were land rovers adapted for crowd usage. The use of mobile high speed police units was first used in 1981 by the Manchester police on July 9th to disperse crowds. (Kettle and Hodges, 1982,p.164). Again, this saw the police of mainland Britain adapting a ploy that had been used successfully in Ulster. It relied upon charging the crowds at speed in the vans to disperse them and then stopping to allow small groups of officers in riot gear to get out and pursue suspects. On 9th July, 54 vans 'swept through Moss Side (Manchester) charging at crowds with their back doors hanging open' (Ibid). This tactic was 'effective' on the night, in that it aided the dispersal of the crowds, but it was counter-productive in that it angered many citizens. The 'Report of the Moss Side Enquiry to the Leader of the Greater Manchester Council' about the riots in Manchester (also known as the Hytner Report 1981, after its barrister chairman) concluded that, 'We found a great deal of evidence, much of which came from apparently reliable and respectable people, white and black, that many of the policemen in Moss Side in vehicles on July 9 were actively spoiling for trouble with young blacks. There was evidence of police vans touring the area with officers leaning out of the back shouting racial insults at black youths and taunting them to come and fight.' (cited, Kettle and Hodges, ibid). The Merseyside police were to adopt these methods as well but with tragic results. In

In a later outbreak of rioting at the end of July 1981 the police charged the crowd with landrovers and one 18 year old boy, Paul Conroy had his back broken when a police landrover mounted the pavement and crushed him against a pillar. Worse was to come however when on 28 July at night a 23 year old man disabled from childhood was struck and killed by a police landrover that was pursuing rioters. (Kettle and Hodges, 1982, p.173). The death of David Moore resulted in a charge of manslaughter being laid against the driver of the police van and his colleague, however they were both acquitted following the direction of the Judge, who told the jury that '....conviction required proof of a very high degree of negligence going beyond carelessness and dangerous driving.' (Ibid). Such a direction re-inforces the earlier theme of excessive police coercion being impilicitly legitimated by judicial compliance in retrospective judgements. The case of David Moore's death also concentrates attention of the distinction between police equipment ordered for its defensive qualities and then used attackingly and aggressively. The type of police landrover used for crowd control is usually reinforced to withstand missiles, with grilles on the windows, stronger bumpers and so forth. In other words, it is designed to protect its occupants should they come under attack. Is it therefore right and defensible, that these vehicles should be purchased as protection for police officers and then used as further instruments of coercion? The use of vehicles to charge crowds is particularly sinister from the point of view of accountability by analogy to other weapons. For example, there is at least a great deal of publicity about plastic bullets and CS gas and their supply to police forces, even if as yet there seems to be no democratic account-ability for their purchase and possible use. However, the supply and purchase of vehicles is a relatively innocuous and routine matter that does not attract much media attention unless the vehicles in question are armoured personnel

carriers. Where the vehicles are landrovers adapted for crowd control then there will be little or no questioning of the police's actions and motives, but if they are intended for the sort of use that was seen in Manchester and Liverpool in 1981 then there is much cause for concern, for the police will have effectively bought in more potentially lethal weapons 'by the back door'. Perhaps what is needed is a set of internal police guidelines setting out the correct uses of police vehicles. Even in a riot situation, the charging of crowds is a dubious use of 'reasonable force' and David Moore's death illustrates that not everyone has the capacity to take evasive action. Furthermore, the use of vehicles will probably contribute to increases in crowd violence if the rioters are to make any impact on heavily proptected landrovers and officers.

The death of Moore was not enough to force the abandonment of the tactics using landrovers, for identical strategies were used in Toxteth in 1985 when rioting again occurred. In October 1985 a crowd had gathered in Toxteth and smashed a window at the local police station after a trial at the city Magistrates Court had aroused great anger. Unbeknown to the Superintendent in charge of the community policing programme, Police Support Units and other mobile units from the Operational Support Division (OSD) were then sent into Toxteth. this Superintendent later was of the opinion that the use of the OSD contributed to the unrest on the streets. (Scraton, 1987, p.173-174). The method of using vehicles to drive at high speeds towards dissenting people and then disgorging riot squads to give chase was again evident, but whether it was 'reasonable force' and sensible policing is questionnable. Scraton writes that 'From the moment that the OSD was deployed into Toxteth it became virtually impossible for people to move in or out of the area. At the height of the OSD intervention Transit vans and Landrovers were being driven at fast speed on pavements and stopping to deploy riot officers, truncheons

drawn, onto the streets. People were 'targets' for these officers simply by being there and at one point the Arch-Bishop of Liverpool was pinned to a wall.' (Ibid,p.174). Indeed, the Catholic Archbishop of Liverpool, Derek Worlock said that 'Police communications had broken down - vehicles were moving around very fast and on pavements. That is dangerous.' (Ibid.p.174). The testimony of a man like Archbishop Worlock is of great value; it can not be dismissed by the police as the criticism of some politically motivated anti-police extremist, but must be accepted as the truthful opinion of a sincere and independent man. (This is not to say that anyone who the police think is a political extremist is incapable of telling the truth, but rather is a recognition of the fact that the police will often disregard criticism if they feel it has come from someone whose political opinions are diametrically opposed to their own).

Aside from the actual driving of the vehicles at high speed, the second prong of this action, the riot squads being deployed from the vans, caused much resentment too. One community worker in Toxteth described how the police being deliberately provocative; 'There must have been several dozen police officers all in riot gear and they were walking along the street in rows that filled the whole street. They were banging their truncheons on their shields.....and seemed to be trying to work themselves up into a frenzy....the shout that went out was 'Come on you black bastards'. They were shouting and screaming as they broke into a run....' (Ibid,p.175). The use of special squads of riot police has been synonymous with controversy in many recent events. Some of these will be examined below and the manner in which the police have behaved will be evaluated to see if the principle of 'reasonable force' is the influential guiding directive it should be. If such instances of forceful policing seem to be becoming the norm, the idea of a third force will then

be examined. Is a third force of riot police the logical result of the police's drift to paramilitary methods and equipment, and how suitable would such a force be for Britain?

POLICING DEMONSTRATIONS AND INDUSTRIAL DISPUTES

Southall, 1979 and the Special Patrol Group

The use of coercion by police in riots has been examined above. the police use of force at demonstrations and in industrial disputes is a different matter. The police are able to make plans for their strategies in advance and their actions exert great influence over the development of events. A feature of many controversial policing events has been the presence of officers from the Special Patrol Group (SPG); they were used to clear the demonstrators at Red Lion Square in London in 1974 when Kevin Gately was killed, and were strongly implicated in the death of Blair Peach in Southall 1979. as well as being the subject of many other complaints about police behaviour.

The SPG were formed as a mobile unit of the Metropolitan Police in 1965 ostensibly to provide aid to regular officers throughout the capital in their crime fighting duties. However, it was soon to assume the characteristics of an elitist paramilitary force, training in coercive tactics and sent in to deal with potentially disordered situations. At Red Lion Square in the anti-National Front demonstration of 1974 the police used mounted police officers to back up their cordon of officers on foot. These were quite normal tactics, comments Ward (1986, p.24), and had been used in the Grosvenor Square demonstrations of 1968. Here, the police response to disorder was said by Ward to be less aggressive than that at Red Lion Square even though the provocation and attacks by demonstrators were greater. In fact he identifies the SPG as being a cause of the increased violence; 'The crucial new factor at Red Lion Square was the Special Patrol Group. The SPG was responsible for the ruthlessly efficient splitting-up of the crowd:

one SPG officer told Scarman how his unit had cut through the demonstrators 'like a knife through butter'.'(Ibid).

This demonstration threw new emphasis on the SPG and heightened awareness of their crowd control role. Prior to this, the SPG were probably best known for their shooting of two Pakistani youths who were carrying toy pistols when they went to make a political protest at India House in London. It was then part of the SPG's function to guard embassies and high commissions in London and it emerged that they were armed for such duties. Although the Diplomatic Protection Group took over such duties in 1974 the SPG remained armed. (Rollo, 1980 p.177). After being relieved of diplomatic duties, the SPG came to be used more for crowd control purposes and as an elitist riot squad. Following their role in the Red Lion Square disorders, their public profile remained high after they were used in the strike of workers at the Grunwick film processing laboratory in West London in the summer of 1977. Rollo (ibid, pages 184-186) describes how the SPG were used to clear paths for the coaches bringing in the strike-breaking labour, and how they did this with great force, grabbing people out of the crowd at random and wading in quite indiscriminately. The same brutal hallmarks of the SPG vans were driven at high speed at demonstrators and there were charges by police on foot and horseback. (Ibid). However, it was at Southall in 1979 that the SPG's brutality reached its pinnacle with the killing of Blair Peach by an officer of the group.

The disorders arose out of the police's decision to allow an election meeting by the National Front to be held in the town hall in Southall, an area populated predominantly by Asian and West Indian people. The Anti-Nazi league and local groups organised a counter-demonstration for the same day (April 23rd 1979) and the scuffles between the police and demonstrators had become such that the police decided to try and clear the streets so that there would be a clear path for the coach that was bringing the members of the

National Front for their election meeting. The SPG were deployed for this purpose. Any conceptions of reasonable force were disregarded as the police set about achieving their objective of clearing the streets. It must be noted that in situations such as this, the police feel free to use violence since those people they are inflicting it upon are technically unlikely to see them again. The violence is used with a short term aim; once it has achieved this (clearing the streets) then it has been successful. If the primary **intention** was to make arrests, then the police would in theory, have to exercise more restraint since bringing a 'suspect' back to the station who was bleeding or injured from police action, might lead to personal trouble for the officer concerned. As long as senior police command acquiesce with such policies, then the police will be able to get away with them. In Southall 1979 obviously some people were arrested by the police but their intention was to make way for the National Front coach. The force used by the SPG and other officers achieved this end. In harsh terms, it was more practical than mass arrests since the infliction of injury upon people will frighten them off whereas if they are removed by arresting them, this creates extra work for the police at a later stage and the following through of trumped up prosecutions may be felt to be a waste of time. Whatever the reasons for the violence at Southall, it was horrifying in its severity and was quite clearly excessive. Rollo describes what happened; 'Charge after charge was launched against the demonstrators, mounted police with drawn sticks singled out and 'rode down' those who become separated from the crowd. The SPG smashed through the crowds in flying wedges and its snatch squads grabbed and arrested at random. Resistance met with even greater violence. Demonstrators who had fled down alleyways were trapped and forced to 'run the gauntlet' - dodging blows from police with drawn truncheons as they went.....the police were striking people at random with what looked like a determination to hurt as many as possible.

Asian and West Indians were singled out for 'special attention'.' (Ibid, p.156)

The National Council for Civil Liberties published a report by the 'Unofficial Committee of Enquiry' into the events of April 23rd 1979 to investigate the coercive police actions such as those described above and the deaths of Blair Peach (an anti-Nazi demonstrator) that resulted from them. The Committee of Enquiry was chaired by Professor Dummett of Oxford University and their report provides a graphic account of the day's events. The Committee found that the police had been under attack from the demonstrators and that several missiles were hurled at police. One PC was hit by a brick which fractured his jaw in three places. However, the Committee found that these attacks on the police were not premeditated (paras 9:10-9:12 p.148-49). They also detailed the catalogue of violence that was perpetrated by police officers. A couple of examples will be given here. Again, it must be stressed that the idea is not simply to compile a list of police excesses and complain about them, and the intention is not to paint the police always as the villains of the piece. However, in discussing the police use of force and the way in which it is used in practice (as opposed to the clinical way in which it might be discussed in the courtroom) examples must be given to illustrate the realities of the situation. The police hierarchy might claim after a demonstration that they used 'reasonable force' to control it. Only by looking closer at this claim can its objectivity and truth be assessed.

At Southall in 1979, the complaints about police misbehaviour were of a grave nature. One witness to the inquiry described his treatment at the hands of the police; 'Then they got me onto the ground...The Senior Officer said 'Pull his head back' which one officer did by the hair. He (the senior officer) then kicked me in the face...I was quite dazed by this blow and I could taste blood and feel bits of teeth in my mouth.' (Ibid,para 2:88). Aside from the death of Blair Peach, perhaps the most infamous

police action at Southall was the raiding of a house that had been used by a musicians co-operative. On the day of the demonstration it was acting as a medical centre and had been used by the Anti-Nazi League to store banners and placards. The enquiry describes (pars 2:101 - 2:112, pages 58-63) how the police stormed the house, allegedly after missiles had been thrown from within. The police equipped with riot shields and truncheons set about systematically attacking the occupants of the premises. They hit all those in the first aid room, including those already injured and doctors. A community leader, Clarence Baker, who had earlier advised moderation was attacked by several officers and was knocked out; 'He was taken to hospital, where he remained for 15 days in all, being under hourly examination for one day. The blow he received caused a blood clot on his brain. He still suffered headaches six months later. He was acquitted of all charges against him when the prosecution was dismissed as offering no case to answer. His arresting officer said he had seen him being forced out of the room by other officers, that he would not get up from the ground when requested. The officer saw no trace of injury all the time that Clarence Baker was in his custody.' (Ibid,p.61, para 2:107). All the people in the house were forced to leave and 'run the gauntlet' past a row of police officers in the downstairs corridor. These officers kicked, punched and truncheoned the people as they walked out, inflicting injuries on almost all of them. One woman, Sarah Woodin, described her experiences; '...'the policeman at the top of the row got me by the hair. He pulled my head back. He then brought his truncheon down on my forehead.....As I went down the stairs I was being kicked and my hair pulled.....When I was about half way down the stairs I heard one of them say 'steady on. It's a girl'. Then another said 'She's a nigger loving cunt'....I was kicked in the stomach with someone's knee. This was a hard blow. I received another in the back....' She was taken to Ealing hospital and given 11 stitches to close the wounds.

She was not charged with any offence.' (Ibid,para 2:108).

These examples, if believed, (and there is no reason not to believe them since they were corroborated by 31 statements of people in the house at the time Ibid,para 2:103) depict police actions that were clearly illegal and unnecessarily coercive. The police made no attempts to solve the situation peacefully and were able to assault citizens without good reason. In both the cases cited above it is interesting to note that they were injured by police but neither was found guilty of any offence. Indeed, Sarah Woodin was not even charged with one. This underlines how gratuitous the police violence was, which is not to say that commission of an offence would have justified such brutality, but is in recognition of a ploy that is often used by the police, namely, the charging of someone that they have assaulted with an offence, so that any allegations the defendant might make against the police will be judged in the context of him/her being viewed as an offender by the magistrates, and the legitimacy of their complaint thus subtly undermined.

The SPG were strongly implicated in this violence, the enquiry concluding that although the SPG only provided a small proportion of the officers on duty, they were prominent in the worst scenes of violence (ibid,para.10:50), and that although the SPG had been established as a mobile anti-crime squad, it had taken on the role of a special anti-riot squad in practice. Dummett's committee concluded that the SPG should have no place in the policing of demonstrations (ibid,). Blair Peach died after being struck on the head by an officer of the Metropolitan police SPG and several witnesses testified to this (see ibid paras.3:1 - 3:52). Lord Justice Bridge said in the Court of Appeal in 1979 that 'There is reason to suspect that Blair Peach died from a blow to the head struck by a police officer with an unauthorised and potentially lethal weapon.' (Ibid, para 3:52). This highlights one of the most worrying features of Blair Peach's death and the behaviour

of the SPG at Southall, namely that they had equipped themselves with weapons designed to inflict damage and injury to people, and that these weapons were patently illegal. In June 1979, the police commander investigating Peach's death found several weapons in the lockers of SPG members who had been used at Southall. Although he claimed that there was no evidence to show that any were used at Southall (ibid para,3:35) this is in effect irrelevant since their very presence in the first place is cause for concern. The weapons that were found in the SPG lockers were as follows:

Four police issue truncheons
One brass handle
One leather encased truncheon, approximately one foot long with a knotted thong at the end
One metal truncheon which was encased in leather of about eight inches in length with a very flexible handle and a lead weight in the end
One wooden pickaxe handle
One sledge hammer
One American type beat truncheon which was almost two feet in length
One leather whip which I would describe as a 'Rhino whip'
Two case openers or jemmies
One white bone handled knife with a long blade case
One black plastic handled knife
One crowbar about three feet in length
One piece of wood about three feet in length, two inches in diameter
One further crowbar.' (Ibid p.82, para 3:37).

This was the list of weapons as described by the lawyer for Blair Peach's family. At the post-mortem on Peach, the pathologist, Professor Keith Mant found that the instrument that killed him was weighty yet malleable and without a hard edge since there were no lacerations to the scalp. A police truncheon however, is lighter and usually

lacerates the scalp. Professor Mant concluded that 'the instrument used could have been a lead weighted rubber 'cosh', or hosepipe filled with lead shot, or some like weapon'. (cited in Rollo, p.160). Rollo adds; 'It could mean only one thing - the SPG officer who murdered Blair Peach had gone to Southall with a weapon specifically designed to inflict serious injury.' (Ibid).

Professor Mant's description of the murder weapon could have applied to some of the weapons found in the police locker rooms. The discovery of such weapons raised new issues concerning the police use of force. Thus far, in the analysis of the police's use of coercion it has been assumed that where they have used excessive force it has been because they have transgressed the bounds of reasonableness but that they have used only the equipment that they were quite legitimately issued with. The SPG's possession of metal truncheon's encased in leather and so forth has meant that this is a narrow minded and mistaken assumption. This also highlights the dangers of using elitist squads such as the SPG for riot control work. It would not be possible, one hopes, to arm the regular police with crowbars and rhinowhips etc, but the SPG were able to incorporate them into their complement of police gear. This either implies that the command of the SPG was poor and neglectful in that it failed to notice the inclusion of such weapons by its members, or as is more likely, that the SPG senior officers 'turned a blind eye' to their use, and thus implicitly approved of them. The SPG, in accordance with their status as specialists in dealing with disorder had adopted extra-legal methods to help them achieve this. The collection of such implements by members of the SPG also indicates (whether it was proved that they used them or not at Southall) that the attitude of its members was not to solve problems without resort to coercion. They clearly felt that using violence was part of their brief and were prepared to do so, otherwise there can be no explanation for their possession of the offensive weapons listed earlier.

As serious as the allegations of use of illegal weapons may be, they should not be allowed to detract from the damage that can be done by the conventional police truncheon. Professor Dummett's enquiry recalled the instructions on truncheon use that had been given to Scarman's Inquiry in 1974 and how they were to be confined to aiming at the arms and legs and only resorted to in extreme cases. The use of the truncheon on the head was to be avoided. (Ibid para 9:58). The unofficial enquiry found however that, 'The evidence we have received leads to the inescapable conclusion that, on 23 April, police officers used their truncheons, not for self-protection but as offensive weapons against people in the crowd; that truncheons were used randomly against people who were running away from the police and not offering any violence to them; that in many cases those injured were **not** arrested and no attempt was made to arrest them; and that truncheons, far from being used against the arms and legs of those hit, were repeatedly used to hit people on the head.' (Ibid).

The level of coercion used to control the demonstration in Southall was clearly excessive at times. The SPG's role, as seen above, attracted particular criticism. The SPG were also prominent in the Brixton riots of 1981 when their officers were implementing the controversial 'Swamp 81' stop and search operation. The SPG seem to have often been synonymous with controversial policing, and by definition, they had little to do with policing by consent, since they were called in when problems arose that could not be dealt with (so it was felt) by the regular police. Furthermore, winning, or retaining the trust and consent of the community was never a goal of the SPG. They would be sent to work in areas that were policed by other officers, and if they proved disruptive to the local community, this would not directly affect them since they were not permanently stationed there, but instead would leave those local officers with the task of rebuilding police-community relations.

The SPG were actually disbanded following an internal inquiry in 1987 and so they no longer exist by that name. However, the principle of retaining an elitist squad of officers to deal with particular problems remains and in the place of the SPG have been created eight Territorial Support Groups fulfilling much the same functions. Members of such groups serve for a four year period instead of the eight months duty of DSU members. The new groups are however to fulfill patrolling functions and plain clothes surveillance as well as the customary special support and emergency duties. It is to be hoped that the territorial support groups will represent a change in more than just name from the SPG. There can be no cause for optimism if the new units regard themselves simply as a reincarnation of the SPG and show the same distain for concerns of reasonable force as did their predecessors.

THE MINERS STRIKE 1984/85

The Miners Strike of 1984/85 saw the police play a heightened and disturbing social role. The government's resolve to break the strike and determination not to change the policies that had caused it meant that from the outset, uncompromising positions were taken by both sides. In the absence of any common ground the miners and the government were set on a collision course; conflict appeared inevitable and was duly forthcoming. However, this was not to be merely a conflict of opinions and views, but physical conflict between police and miners. Here was clear evidence that the police act politically for the protection of the government of the day. The government must be criticised for the extent to which they used the police, which probably surprised even the police forces themselves. There were few attempts to mediate and use civil legislation, but instead, the criminal law was invoked against pickets and strikers and the sheer weight of police numbers and resources was used to contain and repress any protest. Coercion was to play no small part in this policy.

The government and police framed their actions in terms

of protecting individual rights; namely the right of certain miners to continue working. However, as seen in the previous chapter, this was a one-sided view that ignored the legitimate claims of collective group rights. The government and police were able to sustain this approach by criticising the behaviour of the striking miners. By portraying it as brutal and intimidatory, they felt that the strikers had abrogated their rights and invited the police response. This version of events was perpetuated, and readily accepted by the mass media, who (particularly in the field of newspapers) are largely unashamed government supporters for whom objectivity has ceased to be a concern. The government were also able to launch such an uncompromising police operation because the strike was illegal under their employment legislation which required that a secret ballot of all members be taken before striking. The miners had taken separate area ballots that approved the strike, and its subsequent length and solidarity was testimony to the widespread support it had amongst the miners, yet because the statute had not been complied with, it was characterised as illegal from the beginning, thereby, giving the government the propaganda upper hand. This is just a brief outline of the divisiveness of the dispute. Much has been written about the policing of the strike, (see for example, Coulter, Miller and Walker, 1984 Fine and Millar 1985) and about the strike as a whole. It is not intended to re-examine all the strike in detail here, but rather to see how the policing of the dispute related to the police use of coercion. If the official version of events is challenged there was much that should be of concern in the way the dispute was policed.

The police operation throughout the strike was planned with military precision and great detail using the National Reporting Centre (NRC) at Scotland Yard. This was used to co-ordinate the movement and supply of extra officers from various forces to different parts of the country

when needed, (see the next chapter for further information on the NRC). There were certainly violent incidents during the strike, but just as Arthur Scargill (the National Union of Mineworker's leader) refused to condemn pickets violence, so the government and Prime Minister Margaret Thatcher, would not entertain thoughts of the police having been violent. However, the policing of the dispute demonstrated that the police had progressed quite some way along the road to paramilitarism and revealed an ethos that bore no resemblence to 'reasonable force'. Although there were many incidents of questionable policing during the miner's strike (such as the use of roadblocks), perhaps the most notorious was the clash at Orgreave coking plant on June 18th 1984. It is the events of this day, therefore, that will be concentrated on, as being indicative of the causes for concern during the strike.

The use of the NRC in the miners strike reawakened and justified fears of increasing centralisation within the police force. The NRC is briefly considered in the next chapter. The impotence of the police authorities and their lack of influence over their chief constables policies were other features of the strike, that will be looked at in part four. Tactically, and in relation to the police use of coercion, two particular features of policing the dispute are of special interests. These are firstly, the para-militarised equipment and tactics used, and secondly, the existence of internal police authority for such behaviour, in the form of an unpublished manual. The disturbance at Orgreave on June 18th 1984 shed, uncomfortable light on both.

The clash between pickets and police at Orgreave was characterised then and remembered now as one of the most violent and notorious of the strike. At the trial of many of those arrested at Orgreave and charged with unlawful assembly or riot, the police produced an array of weapons including an axe, ball-bearings, nails, a metal bar and a wooden mallet which they claimed had been used against them

although none of this was subsequently proved. This basically sets the scene for the police's explanation of the days events; they contended that they were under constant and dangerous attack from the pickets present, and that their response was justified. However, as the trial was to reveal this was not so. The police tactics that day bore no relation to attempts at containment and reasonable force and instead had the hallmarks of a military operation. Basically the 8,000 police present had formed a cordon across a field and road, and were faced by the pickets who numbered about 6,000. The decision was taken to clear the pickets and advance up the field,ostensibly for the sazfety of the officers because the police lines were under fire from a hail of stones and missiles. This reason was later challenged and found to be falise.

The manner in which the pickets were driven up the field and dispersed or arrested, was basically executed as a planned military manouevre. If trying to apportion blame for any violence is suspended for the moment and attention instead focused on the police strategy, their paramilitarism is evident and undeniable. The police line consisted of long shield officers in the front, backed by several rows of tightly packed officers so that any push by the pickets could be comfortably withstood. Behind the Units (PSU's). The latter consist of groups of officers carrying short-shields and truncheons that were to be used offensively. There were three discernible phases to the police action at Orgreave, firstly the police lines parted and the mounted police charged out into the crowd. As they did so, those officers in the line beat on their shields in a gesture intended to encourage their colleagues as much as it was to intimidate the pickets. The mounted police returned to their line to the applause of their fellow officers, only to be deployed again in a second charge minutes later. The second phase of the strategy came an hour or so later when it was the turn of the PSU's to come charging through the gap in the police line. These groups

of officers with short shields and truncheons appeared to be striking out at random and causing injury, without trying to take any prisoners. The third phase saw this charge repeated later on without any warning. However, during this last charge, the random hitting was accompanied by random arrests. Those arrested were taken back behind the police line and had to endure kicks, insults and being spat upon as they passed through. Whilst this third phase was underway, the line of long shield officers progressed up the field to establish a new position. (The above information can be found in Jackson and Wardle, 1986).

The ruthlessness of the police tactics crossed the borders of legality and simply ignored the supposed legal requirement to use only reasonable force. Of course, the police claimed that their tactics were in response to the crowd's behaviour, but in fact the days strategy smacked of pre-planning and intended execution irrespective of the provocation. Many miners were charged with unlawful assembly or riot and it was only at their trial that a clearer picture of the days events emerged. Ironically, it was a police video that revealed the truth and the serious extent of the police misconduct at Orgreave. The Commanding officer had been an Assistant Chief Constable Clements, and he had testified in court that there had been a ten minute push by the pickets, and such stone and missile throwing that the long shield officers could not contain it. Hence the decision to send in the mounted police. (Jackson Wardle, ibid.p.61). However, at the trial, the defence lawyers managed to obtain and use the police video of the days events, despite the prosecution's protests. This video was filmed by officers from behind the police lines unedited and with the times clearly indicated. It showed, and therefore proved conclusively, that the 'push' of the pickets against the police line lasted for a mere 58 seconds. (ibid.p.78). Furthermore, it showed that the mounted police charge had not been in response to missile throwing and a challenge to the police's safety, but was largely unprovoked

and a police initiative. The film depicted the horses running, without warning, straight into the pickets.

The second revelation arising from Orgreave,aside from paramilitary tactics but inextricably part of it too, was that the police strategies that day owed much to a secret manual called 'Public Order Tactical Options', which was supposed to be restricted to ACPO officers only. This manual 'exhorts the use of para-military manouevres which break the law and June 18th at Orgreave was their first public display - squads of officers with short shields and batons drawn, running into crowds to frighten and injure them were new.' (Peirce, The Guardian, 12.8.85). The manual also included in its instructions, the intimidatory police banging of shields even though Lord Scarman had criticised such behaviourin his 1981 Report on the Brixton riots. Certainly this practice can have no peaceful purpose, and such an expression of hostility ought to have no place in British policing. Possibly the most alarming feature of the manual however, was the fact that PSU's were trained to enter a crowd to 'incapacitate' people rather than arrest them. (Jackson, Wardle,p.83). Such incapacitation is obviously going to be achieved by illegal coercion. On the soundtrack to the police's Orgreave video, the order 'bodies not heads' can be heard, yet is was apparently disregarded.

Despite a lot of the tactics in the public order manual being quite illegal, many of its other instructions were ignored anyway. For example, it advocated that a warning be given before a mounted police charge, and furthermore that horses are not allowed to trot against densely packed crowds. (Ibid,p.70,p.72). Both these instructions were totally disregarded. The horses at Orgreave galloped into the crowds, and were shown to do so by the video, contrary to all internal police instructions and standing orders. The incapacitation of pickets was technically to be achieved without striking their heads, but having

trained and ordered men to 'incapacitate', it is naive to expect this to be closely controlled. The manual in effect is encouraging totally illegal behaviour (incapacitation without any further purpose is not recognised by law), but then is trying to say not to behave **too** illegally! But it can not have it both ways.

Other causes for concern in the policing at Orgreave were, the presence of some officers in boiler suits and riot gear without any identification at all (contrary to the manual), and the police practices that were later revealed at the trial of several of the defendants. One officer admitted that short-shield officers had been knocking people down that day whether they had been doing anything wrong or not (ibid.p.101) and, it transpired that arresting officers were being produced who had not seen the defendants before. Some officers admitted in court that they had had their statements dictated to them by men of the serious crime squad, and by officers who were not even at the scene. (e.g. ibid p.102,p.114). These then, are the means by which illegal police coercion is covered up and denied.

Eventually the charges against those miners arrested at Orgreave were dropped, humiliatingly for the police, partly on the evidence of their own film. Surprisingly, no policemen were disciplined for their part in the disturbances. The miners had mostly been arrested simply for being there and their acquittal was as much a vindication of their rights as it surely was a bad reflection on the police conduct.

The policing of the miners strike, as noted earlier, was significant for many reasons, only a few of which have been touched upon here. What is revealed beyond any doubt, as regards the police and coercion, was that the first steps towards paramilitarism have already been taken, and that the winning of a confrontation at all costs was a more pressing concern than behaving legally. The existence of the public order tactical options manual is perhaps the most telling indication of how free the police feel from legal constraints. (for more on this see Northam,1988).

Much has been made in earlier chapters of the individual officers willingness and ability to use coercion where it remains undetected by his superiors and the public. This assumes that the police hierarchy can be trusted to try and operate within the legal bounds of reasonable force. It is therefore of deep concern that the men charged with upholding the alleged traditions and doctrines of reasonable and minimum force, namely the Chief Constables, should have commissioned the public order manual and trained their men in its recommended tactics. How can the public be expected to believe, and have confidence in ACPO's commitment to the use of only 'reasonable force' when they are implementing tactics that rely solely on illegal coercion and intimidation? The miners strike finally saw the simple abandonment of 'reasonable force' as both a presentational and working standard, and witnessed a unilateral escalation in coercive behaviour by the police.

Policing Stonehenge

A free music festival to celebrate the summer solstice had been held near Stonehenge, Wiltshire, every year since 1974. Due to its association with drugs, concern about protecting the ancient monument of Stonehenge, and fears of local people, the festival was outlawed in 1985. Since then there have been annual clashes between police and the travelling people who still come to Stonehenge for the solstice. The nucleus of these pursue a nomadic lifestyle and are usually referred to either as the Peace Convoy or the hippy convoy. The worst instance of police violence against the peace convoy took place in 1985, and has since achieved a certain notoriety. This incident known as the 'battle of the beanfield' after its location, will be examined later. Wide ranging conclusions from just this one incident are not being drawn about police paramilitarism, although it was the sharp embodiment of attitudes towards, and treatment of, the convoy.

Curiously, the activities of a few hundred travellers

leading alternative lifestyles generated an absurd amount of mixed and over-reactions. The government fuelled the moral panic. Home Secretary Douglas Hurd applied his now famous description to the convoy on June 3rd 1986 when he called them 'a band of medieval brigands who have no respect for law and order and the rights of others' (NCCL,1986,p.15), Prime Minister Margaret Thatcher expressed her intention in June 1986 to'make life difficult for such things as hippy convoys.' Such attitudes create a political climate which is consistent with state repression of the convoy (using force where deemed necessary.) This type of reactionary and instinctive suspicion of the convoy is not without historical parallels. Radzinowicz detailed how 'the wandering poor' were treated harshly in the eighteenth and nineteenth centuries. A statute of 1752 (25 Geo.2,c.36 section 12) allowed the charging of vagabonds suspected of felony even though there was no proof. He adds 'Thus under this Act, a person could be detained in prison for six days on the mere suspicion of being idle or a vagabond or thief, and even if during this time no charge were preferred against him, his records were to be kept permanently in the files of the court. This distinctly arbitary measure of what later came to be know as 'preventive police law' was made permanent in 1755.' (VolIII,p.74). Preventive tactics are also a feature of policing in the 1980's hippy convoy. In June 1985-1988, members of the convoy were arrested for relatively trivial offences (such as obstruction) and then detained overnight on the eve of the solstice, to be released from custody the next day. This served its purpose of keeping them anyway from the stones at the crucial time. For example, on 20th June, 1986 convoy members were instructed by police to leave their vehicles and walk back in the direction of Stonehenge. Whilst doing so, in the direction indicated by the police, more than 200 were arrested for obstruction of the highway with vehicles. (NCCL,1986 p.14). Many of those arrested for this reason were later charged with obstruction of the

police. The travellers were detained for 18 hours before being brought before the magistrates on these charges. When they did appear in court, wide-ranging bail conditions were imposed, including the requirement that travellers leave the county by midnight. Many had first to collect their vehicle homes and so feared that they would not be able to comply with bail conditions, thus risking further fines or charges. NCCL commented that 'Detention for 18 hours seems excessive in relation to an original offence which only carries a fine and does not carry any sentence of imprisonment' and that 'The imposition of bail conditions by the magistrates, out of all proportion to the offence of obstruction of the highway amounts to punishment before trial, still less conviction.' (Ibid p.28). Professor Stuart Hall et al (1978), noted how 'crime' was defined differently at different periods of time. It reflected changing attitudes amongst various sectors of the population towards crime and the shifting application of the category by governing classes. Furthermore, they found that criminalisation, or the attachment of the criminal label to groups that the authorities feel it necessary to control, plays a big part in legitimising judicial control. (Ibid, 189). They wrote that 'there is something appealingly simple about the criminal label'; it resolves ambiguities in public feeling', and that 'there are many recent examples where legal controls have been sustained precisely by an inspired convergenceof criminal and ideological labels'. 'Ibid,p.189,p.190).

The peace convoy have clearly been subject to such labelling, and their activities have prompted legal change, most notably section 39 of the Public Order Act 1986 that has effectively made trespass a criminal offence. (see Card 1987, and Thornton, 1987 for further information). It enables travellers to be moved on from land if the owner has taken reasonable steps to ask them to leave, if they have caused any damage, insulted or threatened the owner, or brought twelve or more vehicles onto the land. This

was a late amendment to the Bill intended to give the police sufficient powers to harass and deter the convoy, yet it has not prevented their annual pilgrimage to Stonehenge, nor does it seem likely to.

In 1985, pre Public Order Act, the police had another strategy to try and deter the travellers. They had set up roadblocks under the dubious Common Law authority of Moss v McLachlan, (a case arising from the miners strike) rather than under PACE. On June 1st the convoy were trapped by these roadblocks, and surrounded by police and so drove off the road into a nearby bean field. Three hours of negotiations did not produce a disperal and so seven hundred police, in full riot gear, then stormed into the field and attacked the convoy. The description of 'police riot' was certainly applicable to their behaviour. They attacked and arrested over 500 people, charging them with obstruction of the police and highway, and unlawful assembly. The police also systematically smashed the vehicles (the homes and possessions of the convoy) and showed scant regard for the personal safety of the convoy members, including many women and children. The scene was witnessed by 'Observer' journalist Nick Davies, who reported that he saw 'police tactics which seemed to break new bounds in the scale and intensity of its violence. We saw police throw hammers, stones and other missiles through the windscreens of advancing vehicles, a woman dragged away by her hair; young men beaten over the head with truncheons as they tried to surrender; police using sledgehammers to smash up the interiors of the hippies coaches.' (The Observer, 9.6.85). Davies also recorded that the indentification numbers of most officers were hidden by their fire-resistant overalls, the Home Office guidance on truncheon use was being disregarded and the police command structure appeared to have disintegrated. The illegality of the police action was testified to by Lord Cardigan, a local landowner and prominent Conservative. He witnessed the whole attack

and said, 'one image will probably stay with me for the rest of my life. I saw a policeman hit a woman on the head with his truncheon. Then I looked down and saw she was pregnant, and I thought 'My God I'm watching police who are running amok''. (Ibid).

The criticisms of the police behaviour can not be dismissed as merely anti-police. They obviously contained substance. Indeed the Police Complaints Authority's investigation into complaints arising from the operation found that some officers were guilty of using excessive force. However, amongst the 1,363 officers used, they could not be identified and so disciplinary action against them was not possible. (The Guardian 25.3.87). Lack of evidence where there has been police misconduct is an all too common theme, that will be looked at in section four. However, not only was the police action found to be excessively violent at times, but the charges against many members of the convoy arising from that day were dropped over a year later. (see The Guardian 2.12.86). Again, the arrests had served their short-term purpose, but the dropping of so many cases is surely an indication that the police were wrong to make the initial arrests. The prosecution claimed that the minor charges were dropped because the cases were 'cold and old' , but as with the miners strike, the truth seems more likely to be that they were unsustainable and had been wrongfully made in the first place.

It seems that, as at Orgreave, the police at Stonehenge in 1985 had decided in advance that confrontation, and teaching the hippies a lesson, would deter them and perhaps force them to disperse. The Wiltshire police had hired a helicopter to police the convoy, cancelled all leave and received reinforcements from five other forces. The deployment of police in riot gear when monitoring the convoy and following them along the roads was clearly unjustified. It's members do not have a record of everyday conflict with the police whatever the mass media might

think. The gear the police were equipped with was at no stage used preventively, and was solely a basis for an unjustified attack. Such was the furore over the police's behaviour at the 'battle of the Beanfield' that the policing of Stonehenge since has been largely sensible although there were again violent clashes between police and hippies/ protestors in 1988. It is clear that there will continue to be annual trouble at Stonehenge as long as there is no provision of a recognised festival site and that neither the police not the public order legislation will deter or prevent travellers from trying to attend.

In terms of the paramilitaristic trend in British policing, Stonehenge, 1985 was important. Whether the officers were influenced or not by tactics recently deployed in the miners strike can not be certain but coming so soon after this dispute it seemed to confirm that the strategies used then were not exceptional but a yardstick for future operations to follow. The police's behaviour was illegal in that the force used was indisputedly excessive. That 'riot equipment' was used in a purely offensive capacity and that guilty officers (both senior and junior) have evaded accountability for their actions remain pressing causes for concern.

The incidents and equipment discussed in this chapter provide sufficient basis for concern that the police are becoming increasingly militarised. Is this leading, covertly or otherwise, towards an increasingly specialised force? This will be examined in the next chapter.

CHAPTER NINE

PARAMILITARISM AND SPECIALISED RIOT POLICE FORCES: SOLUTIONS TO DISORDER OR INFLAMMATORY RESPONSES

As the police have had to adapt to changes in their methods of dealing with disturbances, there have been calls for increasingly specialised units prepared for such eventualities. It is perhaps not reasonable, or fair, to expect all constables to be 'jacks of all trades' equally adept at community relations work, traffic patrol, riot duties and crowd control etc, and it seems logical that there should be some sort of specialised unit or arrangements for dealing with instances of large scale disorders. There is however, disagreement over what form such a unit should take, or indeed whether it should be a mere unit or perhaps a separate 'third' force in itself. There are those, critical of the police, who feel that Britain already has such a force, and that although it does not have a separate identity, it can be raised in practice by mutual inter-force co-operation and deployed fairly quickly at the scene of any trouble. There is some substance in such claims in that during the Miners Strike of 1984/85 the police were able to co-ordinate their operation quite successfully and send units of police with riot equipment to troublespots when needed, thereby fuelling claims that they had 'a standing army' available to be deployed against gatherings of civilians whose congregation is disliked by senior police officers.' (Gareth Peirce, The Guardian,12.8.85). However this would be disputed by many, and in any case, is not the sort of 'Third Force' that exists in many European countries.

Would Britain benefit from having a third force of police assigned specifically to riot and crowd control duties, and would development of a 'national police force' make this easier to accommodate? The current situation has seen the regular police forces devote part of their resources to training specialist units in para-military fashion. What part should para-militarism play in preparing the British police for public disorder; does the training in military style tactics make the police less likely to use force or will it make them even more violent and coercive?

Will this in turn provoke counter-violence from those that they are trying to police? These issues will be discussed in more detail in the chapter.

This chapter looks briefly at paramilitarism in Northern Ireland. Again, there is no attempt to analyse the policing problems of the area, and it is only mentioned as an example of paramilitary policing in context. The use of such police styles in Northern Ireland should however act simultaneously as a reminder that military might does not equal success, and as a warning against the wholesale imposition of police paramilitarism in England and Wales.

This chapter recognises the distinction between the development of paramilitarism within regular forces, and the existence of an entirely separate riot police force. Some of the supposed advantages of paramilitarism within the normal police force are considered. Namely, that a paramilitary unit allows; a division of policing responsibilities, a more disciplined police response in situations of disturbance and that their deployment would be preferable to military involvement.

The question of a riot police for Britain? is posed, and again the desirability of developing specialised units or a whole new public order force is discussed. The British system is compared to continental countries who have separate public order forces, such as France and West Germany, and attempts are made to analyse the respective merits of their ways of dealing with public disturbances. The public order forces of France and West Germany are described and their practical roles examined. By comparison with these countries, the plausibility of a riot police for Britain can be better ascertained. However, crucial differences between British and continental models of policing can be identified organisationally, functionally and politically that tend to militate against such a development in England and Wales.

a. PARAMILITARISM

The example of Northern Ireland

The Hunt Committee of 1969 looked at the Royal Ulster Constabulary in Northern Ireland, and its security duties that involved policing of a military nature. The Committee, that included Robert Mark (later to become the Commissioner of the Metropolitan Police) recommended removal of such duties and that the RUC be disarmed. The reasons for this were because 'policing in a free society depends on a wide measure of public approval and consent. This has never been obtained in the long term by military or para-military means We believe that any police force, military in appearance and equipment, is less acceptable to minority and moderate opinion than if it is clearly civilian in character, particularly now that better education and improved communications have spread awareness of the rights of civilians.' (Cited in Whitaker, 1979 p.,44). This report, referring as it did to the troubles in Northern Ireland, saw para-military policing as being ultimately unproductive, and so it has proved in hindsight, in that tougher policing has not eased the situation there; there is great resentment of the police in many quarters. Militarisation has though afforded the police in Northern Ireland greater personal protection which has been necessary since the Republican community see attacks on the police as symbols of British rule, as justified. Of course it could not be expected that para-military policing alone would have an overwhelming effect in reducing the troubles; policing, although sometimes the cause of problems, usually addresses the effects, and changes in policing the province could not hope to alleviate the violence without concerted political initiatives as well. However, given the fact that the troubles in Northern Ireland have become and remained seriously violent, it seems strange that initiatives in Ulster have spread to the mainland police forces. Bunyan suggested that weaponry developed for use, or first used in Northern Ireland would be used in Britain if the need

arose (1977,1983 p.94) and Manwaring-White notes that the RUC have '(proved to be an effective test force for all the weapons now used by the British mainland police.' (1983,p.118).

Much of the police equipment introduced in Northern Ireland, such as CS gas and rubber and plastic bullets has now been transferred to the mainland, but on false pretences. There is no realistic comparison between the situation in Northern Irelnd with its continuous serious violence and the ever-present potential of public disorder, with mainland Britain and the episodic nature of public order problems faced here. It is clear that the police themselves are forcing the pace of change rather than responding to an increasing threat. If the example of Northern Ireland is used and the words of the Hunt Committee remembered, it is apparent that the militarisation of the police in mainland Britain is premature. There is no crisis situation equivalent to that of Ulster and if military means are thought to be of limited use there, then their introduction in Britain is most unwise and potentially disruptive and damaging to police-community relations. This build up to a force resembling a para-military one has been looked at earlier however, and the questions that must be addressed now, assuming that the heavily equipped and armed police are here to stay no matter how undesirable and unnecessary they might be, are whether they should remain part of the regular police and the responsibility of every constable, or whether a separate third riot force or increasingly specialised units within the police is the best way to accommodate them? In discussing these matters, comparative reference will be made to other policing systems who have opted for specialised public order forces.

Advantages of para-militarism?

i. A division of policing responsibilities

Those who argue in favour of para-military police units or forces to deal with public disturbances can make many

valid points in support of their case. Firstly, there is the recognition that whenever there is serious public disturbance, those participating have withdrawn their consent to being policed, and so the police response can not claim to be an act of consensus; it is coercive. (In fact, the police would claim the consent of the silent but moral majority for the suppression of disorder, but this unseen body of citizens, in whose name the police are acting, would in all probabililty have had no experience of the social conditions and policing methods that are the focus of protest). So public order policing is coercive and definitions of policing by consent vary in this context, in which case, it is more desirable to apportion responsibility for what is going to be unpopular police action, to a relatively anonymous, detached body. By anonymous here, it is not meant that the officers should in any way conceal their identity, but rather that they should have no links with the community in which the trouble occurs. A potential problem with the present system whereby all officers have basic riot training and may have to don the shields and other equipment, is that officers who have been working locally and trying to build up constructive relationships with the community may find themselves walking a pram across the road one day and being deployed against the childs parents the next on riot duty! This would destroy that officer's personal credibility and jeopardise any ground that he or she had made in forging links with the public.

In fact, the protection of the individual constable's beat work and achievements is an unconvincing justification for para-military units. Even though the use of an alien unit would obviously appear to absolve the local constable from blame for any grievances that may arise since he or she may have been patently nothing to do with it, the actions taken would still be an overall police responsibility and the police per se would be held up for vilification

The argument about protecting the reputation of the local officers relies on notions of respect for that officer outweighing the damage done to a community by a repressive police response, and it applies equally to industrial disputes as to instances of rioting. During the 1984 miners strike, the policies of the police force as a whole made life difficult for individual officers in small mining villages who knew the inhabitants well. However, aside from such villages, the concept of the community policeman on familiar terms with many of his local residents is an outdated and inaccurate one. Even if an officer knows several people, it is unlikely that he will actually live in the community that he polices, this is particularly true of the community policing initiatives in inner-cities where the 'local' constable probably only frequents the area during working hours before driving home elsewhere. Therefore, the number of local beat officers who would seriously suffer the destruction of their work and public relationships if they were to be seen in riot gear, is probably numerically small and insignificant; certainly not enough to justify the creation of a third force. In any case, the actions of a riot police would still be police work, and therefore any local officers would be associated with it indirectly and tainted by any excesses of behaviour and complaints.

ii. A disciplined police response?

A properly trained separate para-military unit or force is also advocated on the grounds of efficiency. The basic premise is that in times of public disturbance and serious violence, it is preferable to be able to deploy a body of highly trained officers, specialising in the control of disorders since they are likely to be able to disperse demonstrators/rioters quickly and effectively thereby reducing the risks to property and more importantly of personal injury to both policemen and demonstrators. This at least is the theory; that disciplined and well-drilled

riot police will exercise more restraint in dispersal and thus minimise the chances of any citizens being the victims of indiscriminate force by wayward, inexperienced and untrained officers, and that their skill, training and protective equipment will make them less susceptible to the crowds violence and thus lessen police casualties. Reiner comments; 'In violent confrontation, a 'non-militaristic' response by police (i.e. one where they do not have adequate training, manpower, co-ordination and defensive or even offensive equipment) may mean that injuries will be multiplied. This does not just mean injuries to the police but also to others who will suffer from undisciplined and excessive violence from constables who lose their cool or their courage. If the use of violence by the police is necessary, it must be handled efficiently rather than aggravated by incompetence or default.' (1985,p.203-4).

However, there are dangers in making efficiency a yard-stick for public order policing and regarding it as something to strive for. For a start 'efficiency' is a deeply subjective term, although most would perhaps agree that it carries connotations of solving a problem clinically and with the minimum fuss. A police response could be efficient and still be highly undesirable. For example, the most efficient way to disperse a hostile crowd would inevitably mean the exercise of savage force, if by 'efficient' was understood the quickest way of breaking up a gathering and thereby reducing the likelihood of further damage to people and property. Such 'efficiency', so defined, might result in more injuries to demonstrating participants, and damage to the image of the police than an 'inefficient' police response of attempting to contain the troubles. Efficiency has been one of the key political concepts and central tenets of Thatcherite Conservatism, and although it is usually referred to in an economic context, its invocation with regard to policing is consistent with the dominant ideology of the day, and therefore likely to find many supporters.

Alderson has counselled against confusing 'efficiency' and 'effectiveness', for the two are distinctly different concepts; '....there are many systems of criminal justice in the world, which judged on their efficiency in coercing compliant behaviour, are superior to the British, though as to their effectiveness in meeting the needs of democracy and justice they would compare much less well.....I do not think that the centralisation of the power and resources of all aspects of the criminal justice system will accrue to its overall effectiveness, whatever may be argued for its efficiency.' (1987,p.1-2). Alderson draws upon the example of the police in Germany of the 1930's and their capability of dealing with opponents of the state, and remarks that 'I suspect that there cannot have been a more efficient system of criminal justice in keeping anti-Nazis quiet than that.' (Ibid,p.2).

Today, the riot force that perhaps best illustrate the connection between efficiency and repressive policing are the French 'Compagnies Republicaines de Securite' or CRS. The CRS are essentially riot police who are deployed in France instead of the regular members of the 'Police Nationale' when there are public disorders to be attended to, and they have a reputation for brutality. In fact, the CRS's roots lie with Nazi Germany, for they are a reincarnation of a special public order force called the 'Gardes Mobiles de Reserve', that were created by a law passed in 1941 by the Vichy government in German occupied France. The Gardes Mobiles de Reserve were disbanded when France was liberated, only to be reconstituted in 1945 as the CRS. (See Roach, 1985, p.111). Thus the type of riot force dreaded by so many in England, and present in France was originally formed by the wartime Vichy government, the pliable dupe of Nazi Germany. Despite it's creation in wartime conditions by a different regime, the free French government were obviously enamoured with the idea and appreciated the utility of such a force, and brought back the CRS in preparation for what might occur, rather than

on the basis of widespread disorders. That a free government should restore the creation of a defeated aggressive and dictatorial power might seem anomalous, particularly to observers in Britain even though political turbulence could be expected after the war. The reasons why the CRS were more acceptable in France than perhaps they would have been in the U.K. lie in the histories of the two countries respective policing arrangements, as will be seen later, for repressive centralised policing was not unfamiliar in France.

A recent example of the CRS's deployment was reported in December 1987 when 200 CRS policemen were sent to break a picket line at a Paris bank and retrieve members of the management inside. They smashed their way through picket lines hitting out at striking staff and inflicting injuries as they went. The trade union said that they had attacked without warning and with extreme violence. (The Guardian 10.12.87). This incident reveals the dangers of a separate para-military force. It gives the lie to claims that they would deal with problems in a more disciplined and restrained way, yet more worryingly, it shows how the definition of a riot police's functions needs to be tightly constricted and adhered to. It is apparent that the CRS were acting as a strike breaking political unit here rather than responding to a crisis in public disorder. This example also helps to put the 'efficiency/effectiveness' debate in focus, since the operation could doubtless be described as efficient in that it achieved its objective of bringing the managers out, yet it was surely not effective since it hardened the strikers resolve and brought more people out on strike in protest at the police's action.

iii. Riot police in preference to military involvement

A more contentious argument that may be advanced in favour of a separate riot police might be that the use of a suitably equipped police force precludes the necessity to call upon the army to quell disorder. This is described as more

contentious because such a position raises contradictions for advocates of a paramilitary police force. The basis for this position is that the use of the army is politically unacceptable; to turn military forces that are trained to defend a country, upon its own citizens, is anathema to conceptions of liberal democracy that prevail in Britain. It is an admission that the police can not cope and adequately defend society from disruptive elements, and it is action more appropriate to dictatorial or totalitarian regimes, where corrupt or repressive governments are reliant upon military backing, rather than consensus, for their authority. However, if to avoid calling upon the army is the goal, arguing in favour of a para-military police force seems paradoxical. Why not merely use the army, whose military training should surely guarantee the benefits in dealing with disorder, that have been ascribed to a para-military police?

In practice, things do not, and have not worked out this way. Historically, Britain retreated from using the military to control public disorders because they were too violent and were undermining the legitimacy of the state.

For example in 1831 in a lesser known incident than the famous 'Peterloo' of 1819, troops were estimated to have killed between 25 and 40 rioters at Merthyr Tydfil. (Williams 1967,p.181). Further examples of military use of deadly force abound. Troops were sent to protect a colliery in Featherstone on 7th September,1893. A group of people demonstrated against their use and the Riot Act was read. However, before the one hour time limit had expired, the soldiers fired on the crowd and killed two people. (see ibid,p.33-35). The Home Secretary set up a special commission to look into this but their report vindicated the army. The Commission 'took the view that innocent victims of action taken by the troops have no redress provided that that action was justified.' (ibid p.34-35).

The military continued to use deadly force with some regularity in the early twentieth century when dealing with

a wave of industrial disputes born from a new trade union radicalism and militancy. In 1911, soldiers faced a disorderly crowd at Llanelli during a railway strike. The Riot Act was read but only one minutes warning was actually given before opening fire. This was not enough to disperse and two men were killed. This was found at the inquest to have been 'justifiable homicide', but the jury added the rider that means other than firing would have been better to disperse the crowd. (Ibid.p.32).

In 1912, five people were prosecuted for seeking to undermine the loyalty and obedience of the soldiers by publishing an open letter in a paper urging them not to shoot protestors. Remarkably, the prosecution called this 'one of the gravest crimes known to law', and in the House of Commons, a Sir J.D.Rees declared in July 1912 that 'If there be any crime which is a great crime, a crime against society, against the Constitution, against the country, against every British subject, it is the crime of urging the troops not to shoot. If there be any greater offence, I, at any rate, do not know it.' (Williams, p.183).

The army were used to quell public disorder more frequently before the first World War, and their deployment in this role was to be discontinued shortly afterwards. Uglow notes that crowd control has been the task of the police since World War One and that 'the army have not confronted civilians since the general strike.' (1988, p.8180). This was officially the last time troops were used in a public order capacity against citizens (1926), although there are those who harbour suspicions that they were deployed without identification in the 1984/85 miners strike (e.g. see Jackson, Wardle p.76). This has not been proved however.

Although it would be wrong to compare todays armed forces with those of the nineteenth century in terms of their training and discipline, the use of the army cannot guarantee a restrained response. In the USA 'Experience has shown that the use of Army personnel in tense riot situations

may be counter-productive, inasmuch as a lack of training in riot control techniques often results in panicky actions and unnecessary bloodshed.' (Brewer,Guelke et al 1988, p.117). In America, there is no national or riot police, and if a public disturbance worsens beyond police control, then the National Guard (or the federal armed forces) will be called in to assist. The National Advisory Commission on Civil Disorders (or the Kerner Commission) favoured a separation of military style duties between police and army and concluded that 'If violence by rioters mounts beyond the control capability of the police, trained military forces should be called in. We should not attempt to convert our police into combat troops equipped for urban warfare.' (1968, cited by Gregory,1976p.8). In favour of this view, it could be argued that the army already have the necessary equipment for riot control and so the tooling up of the police could be avoided, and that the panicky reactions of army personnel described above may in part be because the National Guard comprises of part-timers who undergo a minimum of training. Overall, the American system of army involvement is said to be advantageous to the police; Brewer et al note that use of the National Guard in public order incidents separates the police from the pejorative consequences that follow from their involvement and it '...absolves the regular police force from association with the actions of those who police public order....This is one of the reasons why the public image of the police has not deteriorated in the USA to the same extent as in Britain, and it is one of the arguments used to justify the creation of a similar force in Great Britain. One other reason advanced for the creation of such a force in Britain is that it would prevent the regular force from being brutalised as a result of their involvement in the violent suppression of disorder, with particular disastrous effects on the wider image of the police.' (Ibid,1988,p.223-224).

There is no doubt that their last point is a valid one. The effects of the violent policing of the miners strike

seem to have left a detectable legacy, and one which was immediately apparent in the policing of the travellers or hippy convoy that attempted to visit Stonehenge, Wiltshire in June 1985. the events of what followed in 'the battle of the beanfield' have been described earlier, but it seemed that tactics recently learnt in policing the miners strike were implemented against a passive, unresisting group. However, it is being assumed that a form of riot control force, whether it be police or army, is both desirable and necessary in Britain, whereas to opponents it is neither, and either type of arrangement for public disorder would be opposed and regarded as a superfluous over-reaction, since public disorder occurs so infrequently and truly serious outbreaks of trouble are comparatively rare.

The use of the police rather than the army to suppress disorders is preferable in Great Britain for longstanding political and traditional reasons, despite the seemingly successful deployment of the military in the USA with no adverse political consequences. However, the American situation must be distinguished from the British for reasons other than political acceptability. In the UK a suggested alternative to military involvement is the creation of a separate national riot police force similar to those used in either France or Germany, whereas this is simply not feasible in the USA. America has developed specialised units (SWAT units - Special Weapons and Tactics) for use in certain situations such a hijacks and kidnaps, instead of regular police or alongside them and the National Guard, but a national police force is untenable. This is not only because of the sheer size of the country, (in which case you could not hope to have a riot unit waiting to be deployed to wherever trouble broke out as happens in France and West Germany, without a massive and largely unnecessary investment in resources), but also because of it's political structure. The U.S. constitution was designed to keep the powers of central government at 'arms length' and the lack of state interference became a hallowed part of American

citizens ideology. (see Brewer et al 1988,p.108). There are about 40,000 police forces in the USA, of varying sizes and functions and this reflects the localised history of policing, with states (as well as certain towns), having different forces. Combined too, with this amalgam are the varying federal agencies. This mixture of different organisations and political traditions means that 'Since 1945, the police forces of the USA have remained among the most decentralised and locally-based of any in the world.' (Ibid.p.110). Where the thought of a national riot police does not seem practical or possible, the perceived alternative of bringing in the military will be more readily accepted, and this helps to explain why the National Guard (who are organised at state level) can be used in the USA without severe repercussions politically.

In Britain, the use of the army would be politically unpopular and constitutionally dubious; it would also not mean, in all probability, that disorders would be policed or repressed more humanely with less force, and would present many problems of accountability. In sum, it would be contrary to British principles and traditions, (if it is possible to distill the essence of such abstract matters and make such a proclamation)and those of a liberal democracy. However, given that the British police are currently equipped with the latest anti-disorder technology and have developed separate units for crowd control and dispersal, it must be asked whether it should be used by; all policemen, small specialised riot squads, or a national riot police similar to the French CRS? That there should be a degree of specialisation in dealing with riots is now accepted as inevitable, and preferable to expecting untrained officers to handle them. The police's current emphasis on wanting to give all constables basic riot training but deploying specialised squads is obviously a sound and realistic policy. The question remains however, would a third police force devoted to public disorder be preferable to a mixed group of specialised units within different forces? Does Britain

need, and should it have a third force?

b. A RIOT POLICE FOR BRITAIN?

Most police forces in Britain have re-equipped themselves with protective gear and offensive weaponry for use in riot and disorder situations. The experience of the Miners Strike has led to many to conclude that there already exists a riot police in the U.K. which can be co-ordinated in a national level and deployed to troublespots. It was not only the technical readiness of the police for disorder that prompted this view, but the influence of the National Reporting Centre as well. The NRC is headed by the incumbent head of ACPO (The Association of Chief Police Officers) and is technically able to make logistical arrangements for inter-force mutual aid. The legal basis for the NRC lies in the 1964 Police Act section 14, which allows a Chief Constable to provide assistance at the request of another Chief Constable (s.14 (1)), and in section 14 (2) which gives the Home Secretary the power to order a Chief Constable to provide whatever assistance he deems necessary. The principle of mutual aid was not new; The Police Act of 1890 enabled local forces to make arrangements for mutual aid in case of disorder, but the scale of the operation mounted by the NRC during the Miners Strike was quite unprecedented.

The issue of contention concerning the NRC's role in the strike was whether it was collating information about manpower and equipment needs only, or whether it was actually involved in giving operational orders. The latter would have transcended any power claimed under the 1964 Act, and would have given substance to claims that Britain had a nationally directed police force. The police denied that the Centre was used for directing police operations nationwide but this was not accepted by everyone. John Alderson described the NRC as 'in effect a national operational centre' (Boateng 1985 p.239) and an 'Observer' reporter visiting the NRC claimed to have heard the registration numbers of pickets coaches being passed on to a Midlands force by an NRC officer with instructions that they will be monitored to the Nottinghamshire border and then turned back. (See Kettle,1985,p.31).

It can not be satisfactorily established beyond doubt that the NRC assumed explicitly operational duties, but it seems likely. Where is the boundary drawn between giving purely technical advice about the number of officers and equipment needed at a certain locality in order to police a certain number of pickets, and operational directions about when and how they should be deployed? In the strictest meaning of the term 'operational', the NRC would be excluded since it would refer to what tactics to employ once the men were assembled somewhere. However, in a broader sense, it would obviously qualify as having operational status, in that the information gathered by the NRC would be used to assess how best the police would respond, and on the basis of this, the appropriate number of police would be despatched. The NRC need not always be viewed in a critical and suspicious light however, since the last time it was operational before the Miners Strike was during the visit of Pope John Paul II in 1982, when the need for mutual co-operation between forces sprang from a less controversial source. What marked out the National Reporting Centre for criticism during the miners dispute was its perceived political use in order to break down the strike. The actual principle of mutual aid is sensible; it may be necessary on occasions of emergency and disaster to combine the resources of different forces. However, its use as an aid to ostensibly prevent public disorder in the miners strike is worrying for it confirms how actions previously regarded as political and legitimate, have now been criminalised, providing the justification for the might of the state's surveillance capability to be mobilised.

The co-ordination of police forces that the NRC provided, did indeed prove that Britain's police forces, for so long based upon local control, could be welded into an effective national unit when necessary. Charles Mclachlan, the Chief Constable of Nottinghamshire, was the President of

ACPO during the Miners Strike and therefore in charge of the NRC, and he reversed the argument about a national force when defending the role played by the NRC in saying that it had proved that the country did not need a national police force, for its operation had shown that police forces had been able to assist each other over a long period. (The Guardian 9.3.85.) However, such defence has done nothing to alleviate claims that the NRC and its decisions were unaccountable. Indeed, local police authorities could not keep track of their own policemen's activities for they were often under the control of the Reporting Centre in terms of deployment. Lustgarten comments; 'That such power should rest in the hands of the representative of an organisation with no statutory existence, who took decisions with major implications for policing in both receiving and sending areas independent of any democratic authority, central or local, is constitutionally unprecedented and cannot be justified in a democratic policy.' (1986, p109.) Mclachlan's comments are echoed in a theme taken up by Waddington and Leopold, (1986, p10) in which they assert that in the debate on a national police force, its opponents have failed to distinguish structure from function; 'In 1971 it was agreed not to introduce a 'Third Force' into the **structure** of the British police, but this was not to say that the functions that such a force would have fulfilled, had it been introduced, should not materialise.' (Their emphasis,) and that 'An effective system of local forces offering each other 'mutual aid' in times of stress inhibits rather than promotes the creation of a single national police force. ... As it is, the police on the whole have succeeded in maintaining law and order both in the coalfields and throughout the country, thus rendering the case for a national police force redundant.' (Ibid.)

This complacent view that individual forces can be left to develop their own riot units and that a national riot squad is unnecessary is not shared by all. Professor

Terence Morris has argued that the traditional British bobbies are being converted into a paramilitary force by stealth and that 'a fully-fledged riot squad could be better than what is actually happening in the ranks of our cherished police force.' (1985, p363.) Morris feels that assigning riot duties to all constables and slowly transferring the police per se into a paramilitary style force will ultimately prove disastrous in terms of police-community relations and discredit community policing initiatives. He thinks that 'The solution is, paradoxically, to make some policemen tougher in order to leave most policemen free to get on with a different kind of work.' and that it might be easier to control the activities of a unified riot squad than those of police support groups drafted into a district from other areas.' (Ibid, p364.)

There are problems with both solutions. In the case of expecting local forces to develop their own specially trained squads, there needs to be tighter control over these arrangements. The principle of involving a few men rather than the whole force in public order duties has already been acknowledged as sound. However, if it is to be adopted as a widespread tactic, then there need to be new regulations about their use and accountability. As one observer has noted, the development of small groups of police working together represents a divergence from traditional bases of policing in this country; 'The PSU operates as a collective group, in stark contrast to the 'individual constable' which has been the 'model' of traditional policing. Whilst this in itself is something of a myth, that self-image still remains among many rural forces. In law, the constable is individually responsible for his or her actions, whereas the PSU relies to a large extent on a group ethos which has become common in some urban forces, especially the Met.' (Lloyd, 1985, p71.) Clearly widespread use of PSU's or other riot control units within forces is currently incompatible with the slender

accountability procedures. There would have to be far-reaching structural changes that recognised a notion of collective responsibility for their actions, and there would have to be definite rules of engagement to decide when they could be sent in. These would be some of the basic pre-conditions that should be met if such units were to be brought under some semblance of democratic control. If the system remains as it is, then there can be little comfort that Britain has such units rather than an entirely separate force, if they are beyond local accountability and control. The danger with relying upon these squads within the forces is that the methods of accountability are unlikely to be changed in practice. A restructuring of control mechanisms would almost certainly not be entertained; such a reform would mean that the upper levels of police command would have to be prepared to take the legal responsibility for the actions of riot groups, and the notion that senior officers should admit liability if their group had behaved excessively seems unlikely to meet with police aprroval. When was the last occasion when a high-ranking officer was prepared to admit his men had behaved improperly in policing public disorder? As the system for complaints remains at the moment, however, everything is geared to the actions of the individual. Does this mean that abuses of power by PSU's (Police Support Units) would expose a loophole in the procedure and remain unpunished, or would a defence of following orders be sufficient to indemnify the individual officer members of such a unit against punitive action?

The use of specialised squads is not quite as straight-forward as may appear. What then of creating a specialised force, as suggested by Morris? This too would not be as simple as one might first think. The existence of such riot forces in other European countries such as France and West Germany may be used as examples by those who favour such arrangements in Britain. However, on closer inspection, comparison with these nations reveals more reasons

militating against the development of such a force here, than for it.

The plausibility of a British riot police? A comparative outlook.

Britain is indeed fairly unusual amongst the countries of Western Europe in that it does not possess a separate public order force, but this fact alone should not be too persuasive in favour of a third force without an examination of the histories of the various countries. One might think that since countries such as France, West Germany and Italy all have riot forces, and that they are all democracies, then Britain should not have too much to fear from a similar development here; their experience suggests that it would not necessarily lead to a repressive police state. Yet to make this general assumption would ignore the vastly different histories and paths of political development of the various nations, and would be a greatly mistaken and oversimplified view of what is in fact a complex issue.

The French and German public order forces will now be examined to see what their role is in practice, regardless of the philosophical basis for their existence.

France; the CRS and Gendarmerie Mobile

This section will look at what other countries' specialist public order forces actually do before assessing whether any force set up along similar lines in Britain would be desirable. It will be necessary to quote at length, the details of the forces,starting with the CRS. Roach writes that 'Fundamentally the CRS are riot squads, mobile, specially trained units which can be rapidly deployed under the authority of the Minister of the Interior through his departmental agent the Prefect. Though organised and trained on military lines the CRS are in fact civilians and part of the PN (Police Nationals). They are distributed over the whole of France through 10 territorial group commands, each one with a 'commandant' and a general staff.

The territorial groups comprise 61 companies of around 250 men, divided into command and service sections (45 men) and a motorcycle section. The 61 companies are based around urban or industrial areas, but they may be moved at any time to anywhere. Mobility is essential to their function of rapid response and of bringing reinforcement to the other branches of the police. The training and duties of the CRS are dictated by public order considerations. They exist in order to prevent and/or quell disorder. Their presence is designed to have an intimidatory effect and their often brutal interventions make them a much feared force. It may be a sign of the times that since 1968, the CRS with his riot helmet and military combat uniform, has replaced the officer with the kepi and the cloak as the image of the French police.' (1985, p119.)

As seen earlier with reference to their raid on a Paris bank, the CRS are associated with a forceful violent approach. The prime example of this was their policing of the 1968 student protests in Paris when they faced heavy criticism for the way in which they had behaved and been deployed. The CRS have made few discernible attempts to moderate their approach however, for in clashes between students and the CRS in 1983 in Paris over proposed university reforms, there was much violence. Roach details how **Paris Match** reported the incident; it deplored the brutality of the police and the CRS and claimed that there was a complete disregard for the procedural requirements necessary for a dispersal order. Furthermore, there were allegations that squads of motorcycles had been deliberately driven into demonstrators, and that the brutality was so great that even the police were 'disgusted by what they were asked to do'. (Roach, p130.)

With the election of the Socialist administration in 1981 one would perhaps have expected a change in perspective on policing matters from their right-wing predecessors. Yet some of the socialists first actions were to embark upon a

great recruitment drive for the police and a re-equipping of them. Guns, rifles, vehicles and bullet-proof vests were ordered and the government aimed to replace and renew some 60,000 handguns over five years. (Ibid, p113.) The French government has recently made efforts to see the police as more of a police service rather than a public order force, as has been attempted in Britain, and to bring in similar community policing measures. Part of this programme has meant trying to get the CRS more involved in general policing duties, but this has been difficult to achieve; 'However, despite ministerial declarations to the contrary, the CRS continue to be deployed as a front line public order force and companies are moved around the country as and when the authorities deem it to be necessary (in December 1981, 35 companies were on active service away from their home base.) Certainly there is no indication that the CRS are to be disbanded in the near future. The government's desire to see the CRS as a 'normal' police force will not be easy to achieve; forty years of public order duties have produced a police corps whose training, structures and ethos are hardly in tune with the community policing the government envisages. Having been created as a repressive force and more often than not used as the aggressive arm of policing, it will take time for a change of image to come about, especially as the government continues to feel the need to use the CRS to control demonstrations, manifestations, strikes, marches.' (Ibid, p131-2.)

It is not surprising that the CRS are being slow to assimilate general policing duties. Not only is it against their traditions and functions but the whole idea of trying to make them more of a service is inconsistent with their very existence; if the government are trying to change the emphasis on French policing and make it more service orientated, then the need for a separate riot force must be questioned. It makes little sense to have the CRS ready and waiting for disorder if the rest of the time they are being

used for everyday policing tasks, or hoping to be used for everyday tasks. As seen earlier, the use of police in Britain for 'normal' policing is undermined if those same officers are then deployed against the community behind riot shields. Quite simply, the two roles envisaged for the CRS are wholly incompatible. One cannot have a repressive riot force fulfilling service tasks and hope to be taken credibly. Such a unit could never win the public trust and respect if liable to be mobilised at any time. That a service role is even contemplated for the CRS is testimony to the fact that their position as a riot police is increasingly untenable, and damaging to public confidence in the state, and an indirect acknowledgement that they are a political liability.

The CRS may often be cited with trepidation in Britain, as evidence of all that is bad and undesirable about the idea of a riot police, but this perspective does not realise that the CRS are not the 'senior' riot police of France. This 'honour' goes to the Gendarmerie Mobile, who, as the public order wing of the Gendarmerie, are soldiers and part of the military. They are in fact the next step up from the CRS in the state's available responses to public disorder. Gregory notes (1974, p4) how, to meet the student protests in Paris in 1968, four phases of police action were available. First was the deployment of ordinary Parisian policemen with truncheons and riot shields, secondly was the same police but formed into special units, thirdly was the CRS and fourthly the Gendarmerie would have been involved. As it was, the problems were solved before it became necessary to deploy the Gendarmerie, but this shows their clear ascendancy over the CRS. In fact the unpopularity of the CRS during the 1970's, and their poor reputation made their deployment politically sensitive, to the advantage of the Gendarmerie Mobile. 'Because the CRS have acquired such a tough image as a riot-busting force their image and use has become politically sensitive. Thus during the 1970's

the CRS did not increase in size but the public order units (Gendarmerie Mobile) of the second French national and militarily organised police force, the Gendarmerie Nationale were expanded, increasing from 13,000 men in 1973 to 18,000 in the early 1980's.' (Gregory, 1986, p14.) Roach describes the Gendarmerie Mobile as follows; 'The 'Gendarmerie Mobile' is a specially trained and equipped public order force on permanent stand-by. Its function is to respond to circumstances causing or likely to cause a breakdown of public order, riots, strikes, manifestations, gatherings, disasters of any kind (fire, floods, etc). There are some 18,000 GM distributed over France in 24 'groupements', broken down into units of 130 squadrons made up of 134 men. Unlike the Gendarmerie Departmentale, the GM have no territorial limitations and are frequently on mission away from their base. They do not perform local policing tasks, their role is entirely geared to public order duties. As such they are the Gendarmeries equivalent of the CRS. Their training and equipment is in fact superior.' (1985, p120.)

The Socialist government of France has tended to favour the Gendarmerie Mobile seeing them as a 'more reliable, less politicised and better disciplined' force than the CRS. Being part of the military, the GM have a wide and awesome range of equipment at their disposal, ranging from the standard shields, helmets, batons, guns and tear gas to water cannons, armoured personnel carriers, helicopters and light tanks. Jammes anticipates British reactions and says; 'The mere mention of armoured cars and tanks usually horrifies the British public, who simply cannot conceive of their 'bobbies' riding round the countryside in such warlike vehicles. It must be appreciated, however, that the armoured cars and the tanks would be used only in cases of extreme emergency, ie in wartime or in a general insurrection and civil war situation, and not even the events of May 1968 were judged serious enough to warrant the parading of light

tanks in the streets of the capital.' (1982, p23.) Because the Gendarmerie Mobile are part of the army, equipping them in such a fashion is not a politically controversial issue; they even have a parachute squadron to enable them to reach scenes of trouble that are perhaps inaccessible by other means. Equipping a civilian force in Britain in similar fashion would not be possible, one would hope. Because of France's unique history and simultaneous development of two police forces, one civilian, one military, the hardware possessed by the Gendarmerie Mobile can not be questioned or made politically accountable. The Gendarmerie have traditionally carried out policing tasks as well as military and so, as noted earlier, the tension that exists in Britain about the use of the army, does not arise here. The Gendarmerie Mobile, although in possession of all that equipment that might potentially be used to control public order, still perform military duties where it might be equally necessary. Jammes provides a breakdown of the missions undertaken by the GM; 61% are public order duties, (of which 28% involve the Paris area, 22% the provinces and 11% overseas), 30% are providing assistance to the Gendarmerie Departmentale, 8% are military duties and 1% are civil duties. The GM, characterised by a 'strict but humane military discipline' and acknowledged as a 'purely military force' by Jammes, (Ibid, p28 and p27) are perhaps the best model to choose for those, like Waddington who think that para-militarism will lead to a disciplined appraoch and ultimately the use of less force in policing public disorder. However, to what extent it would be fair to hold up the GM as an example of how a paramilitary third riot force would lead to the efficient dealing with public disorder is open to debate. Citing the GM as a shining example of what could be achieved might turn out to be counter-productive, for it is, in effect, arguing in favour not of a specialist police force, but in favour of heavier military involvement; an option that has already been

discounted in Britain for the reason given earlier.

West Germany

The German policing arrangements have three constituent parts; the uniformed constabulary (Schutzpolizei or Schupo), the CID equivalent non-uniformed Kriminalpolizei (or Kripo) and the para-military stand-by police that deal with public disorder, the Bereitschaftspolizei. (See Thomaneck, 1985, p154); 'The **Bereitschaftspolizei**, unlike the other two branches are quartered in barracks; their members never act individually but only in units. Their traditional function is the training of young policemen, but their other - more public - function is to support individual police operations when large bodies of police are deemed necessary. In that sense they operate like riot police. At present the federal strength of this force is over 18,000. On the basis of an agreement between the various lands, its units are uniformly supplied by the Bonn central government with motor vehicles, telecommunications equipment, and weapons.' (Ibid.) Germany does also have another para-military police force, the Bundesgrenzschutz or Federal Border Guards. They are a force of some 20,000 plus and are responsible for security on the country's borders up to a depth of 30 kilometres. They are allowed to be used in situations of severe internal disorder, following an amendment to the German constitution in 1972.

A notable aspect of the German Bereitschaftspolizei is that all young police recruits go there for their initial period of training. It has the dual functions of operating as a training ground for new recruits, and of being the mobile public order force. Although the German policing system is organised around the ten lands of the country, which each have their separate administrations and parliaments, the BSP public order force, equipped by the central government, is a national body, able to operate anywhere in the country. This gives some consistency to the

response to public disorder in a country that still has a wide variety of policing methods, a legacy to a certain extent, of the re-organisation of the country after the second world war and the differences to policing taken by the allies of Britain, France and the USA that inevitably influenced their zones of responsibility.

The idea of training all new recruits in how to police public disorder has both positive and negative points. On the plus side, one could argue that the police would know how to protect themselves in disorders, and also that their experience should reduce the chances of injuries on both sides. This is an echoing of the 'para-militarism equals more discipline and less force' argument. Against this, it must be asked whether it is desirable to teach new officers coercive tactics first of all, or whether it would have been better to equate them with the more mundane but equally important aspects of policework? Early involvement in public order policing may make the job seem more exciting than it is in actuality and the truth may be harder to come to terms with. Also the wisdom of teaching recruits coercive policing methods must be questioned. Will this lead to those officers using their coercive skills before other solutions, will it make them too reliant on such methods? Much has been made in Britain about the potentially brutalising effect of serving on picket line duty during the miners strike, and how it might indirectly encourage a violent police response the next time that they face public order situation. However, such a blinkered perspective fails to account for the possible brutalising effect of the police training itself. It does not seem to have occurred to the police that violent behaviour by their men may not just be a case of responding to a violent threat offered to them, but may be instigated by them. In most cases, the police will have the weight of numbers and the protective equipment to be able to put their training into action and maintain the upper hand. The police have very

definite advantages in such situations; their equipment and training makes it likely that they will 'win' such confrontations with demonstrators or strikers. The Chairman of the South Yorkshire Police Committee during the miners strike, George Moores, said that 'They come into the forces as decent chaps and we send them away to training centres and they come back like Nazi storm troopers.' (Cited by Lloyd, 1985, p71.) Policemen probably do not need opponents in a confrontation to be brutalised. This is going to be an inevitable by-product of intensive para-military training. When policing the miners strike is described as a brutalising experience for officers this is apologism for any excessive force that they might subsequently use and overlooks the fact that such brutalisation is the direct result of implementing the official police policies, that call for, and rely upon the exercise of para-military style force. Such objections are relevant to the training of police in both Germany and the UK.

British and continental policing distinguished

There are three areas where major differences between Britain and the continental models can be identified; these are **organisationally**, how the police were structured, **functionally**, what the purposes of the police were, and finally **politically**, what was the police's relationship with the rulers of the state? When Robert Peel reformed the Metropolitan Police in 1829, they were deliberately meant to have a low-key, uncontroversial role, (see chapter one), and one of the reasons for this was because of the suspicion and hostility that the very idea of 'police' generated. This was in some large measure due to the French policing system, which, since its establishment in the seventeenth century, had laid great emphasis on the surveillance of those thought to be potentially disruptive, subversive and so forth. News of the French police had reached Britain and it had been assumed by many that the new police would have

the same brief as the French. But from the outset, the British police had different functions to the French; the English police were set up to either maintain public order or to combat crime, depending upon which perspective you take, whereas the primary concern of the French system from the outset, was the security of the state and widespread surveillance and domestic spying. Organisationally, the British police, developed as they were on the back of the old system of constables and magistracy, stressed local control wheras in France the opposite was the case.
P J Stead wrote that 'the evolution of the French police is an inseparable process in the evolution of the French state', (1983, p158) an evolution, Roach noted, that 'is marked by a relentless move towards centralisation and the policing of individuals, groups, ideas as much as crime.' (1985, p107.) Because Peel felt the need for sensitivity when introducing his police so as not to alienate the public, and in an attempt to secure popular support for his officers, he deliberately propounded the idea of the constitutional independence of the constable. This concept, with its consequent denial of political affiliation has caused many problems that have not arisen in the continental countries. It is because the British police have clung to these notions of political independence, that their use as a third force of riot police would be harder to accept, with the explicitly political functions that such a force would carry out.

In France today, the police are controlled politically; there is no attempt to set the police up as some sort of neutral body. The heads of police in France are all political appointments. The Minister of the Interior is in overall charge of all the police services, and the heads of all the important directorates are political appointments. Even at departmental and regional level, the Prefects or Commissaire de la Republique, who are responsible for public order and the maintenance of order within their territorial

limits, are appointed politically, and are the administrative agents of central government. (See Roach, 1985, p108.) This makes an interesting contrast with the British system, which has shyed away from all ideas of relating police direction with political control, and instead stubbornly clings to increasingly unconvincing concepts of policing being politically neutral. However, not only are the heads of the French police politically appointed, but they are often non-professional policemen too. This would be inconceivable in Britain; Chief Constables zealously guard their positions as operational and administrative heads of their forces and regard their work very much as a profession. The police have resisted and opposed attempts to bring them under direct political influence or control in the past, and when the Labour Party outlined their plans for making the police more accountable by giving local authorities directorial powers over them, the police were outraged. They feel that political control would inevitably mean selective and partisan law enforcement, which would be contrary to policing and democratic ideals.

The French police have been politically orientated from their inception, aiming not for the prevention of crime, but to maintain the security of the state. Such surveillance duties were historically more prevalent than public order tasks, but this emphasis has changed now, and public order has high priority. In 1969, the national police force ('Police Nationale') were brought under complete governmental control with the establishment of a Directorate General responsible to the Minister of the Interior. But political control was not the preserve of right-wing governments alone; the Socialist administration created a new post in 1982, the Secretary of State in charge of Public Security with responsibilities to oversee all police matters. (See Roach, Ibid, p115.) France now has comprehensive arrangements to contain and deal with public disorder. Not only does it have the CRS, who are the riot control force of the Police Nationale,

but there is also the 'Forces d'Intervention des Corps Urbaines' and the 'Gendarmerie Mobile'. The Forces d'Intervention' were formed in 1969 following the troubles of 1968, when area units were created called 'circonscription de police' and each one had their own public order force, designed to provide a 'rapid response to any public order situation' (Ibid, p116). Roach further comments 'The reform exemplified the high priority given to public order policing and for many commentators it represented a radical move away from traditional preventive policing to a more repressive coercive form of policing.' He also cites a French observer who remarked that ''Today it seems that the police functions in matters of public order are steadily taking over from all other duties.'' (Ibid.)

This change in priorities in French policing, from preventative surveillance to controlling public disorder has been easier to accept than similar policies would be in the UK because the French have long since associated their police with central government and political functions, whereas this has been denied in Britain. It has been easier for the French to shift their emphasis on to the responsive side of political policing rather than the preventive, since they are effectively both 'different sides of the same coin' and have the same aim; state security and the suppression of dissent. The purpose is not alien to the French people, even if the methods are now historically unfamiliar.

The idea of being honest about the functions of the police is one that does not hold much sway in Britain. The extension of police powers into the field of public order in the 1980's has been legitimated by portraying it as responses to growing criminality, and thus denying any political motives. Other states are more open about the function of policing public order, it has been seen how the French recognise its political importance, and this is something that has long been accorded attention in Germany as well. Historically, the emphasis on German policing differed from

the French; it was not surveillance but the maintenance of public order that was their primary concern. Germany has had a different historical development, consisting as it used to, of several states, to that of the unified France and Britain, yet general trends in policing are still identifiable, and the police themselves played an important part. The emphasis in Germany was on public order; the maxim that peace was the first duty of the citizen emerged in the nineteenth century but can still be heard today. (Thomaneck, 1985, p148). During the restoration of 1815-1848 'the police did their utmost to implement the principle that fear and acquiescence were the citizens first duty. The police were instrumental in the cementing of despotic rule.' (Ibid.) In fact even after the introduction of a constitutional monarchy, Prussia and other states remained 'authoritarian police states' after 1850. (Ibid.) The importance of public order was officially recognised and outlined by a directive of the Prussian Administrative High Court in 1882 which 'defined the function of the police as the maintenance of public order. The concepts of security and peace are only secondary to public order and originate from it. ... This definition of the function of the police has remained the guiding principle in Germany (after 1945, West Germany) to this day.' (Thomaneck, 1985, p148-149.)

The British police have never admitted to this being their primary function; to do so would be to ignore the 'service role' that the police have fashioned for themselves, in which they see themselves as fulfilling many social tasks and as guarantors of, rather than as a threat to, civil liberties. There have been no such official proclamations defining the functions of the British police with regard to public order, but its maintenance has not escaped the comment of senior officers. Robert Mark, the former Commissioner of the Metropolitan Police, has been quite unequivocal in his condemnation of pickets and 'politically motivated violence on the streets'. In talking about the Shrewsbury pickets of

the 1970's he said that they had committed the worst of all crimes, worse than murder, by their attempt to achieve an industrial or political objective by criminal violence. (Mark, 1979, p150.) Thus the police, with their inherent conservatism probably do see themselves as the 'thin blue line' upon which society depends for its stability, and so indirectly acknowledge their political functions. What Scraton describes as 'a clear coincidence of interests between ACPO, successive Conservative governments and senior Home Office officials has guaranteed the operational independence of the police', (1987, p182), and is further testimony to the way that the police have been able to exert influence on policy making and to dress up political issues as neutral legal ones; 'This unity of purpose, an ideological as well as political expression, is not unique to the 1980's but is an inherent feature of the development of the rule of law and its criminal justice system. It has been informed and characterized by a rhetoric of law and order which identifies all opposition to the established order as a 'threat' to the state. The objective is clear; to take acts of political opposition, redefine them as attacks on 'freedom' and place them outside the law.' (Ibid.) There are political differences then that would have to be overcome, albeit indirectly, if Britain were to establish a riot police. Whilst the public order police in France and West Germany fulfill a long admitted political function quite openly, this would not be the case in Britain where it would be claimed that its use was criminal rather than political. But, this would mean that Britain would have to be suffering from public disorder on a deeply entrenched and widespread scale if the existence of such a force was to be justified on grounds of necessity rather than political whim. It must be remembered that the continental countries with such forces have them not because they consider them necessary to deal with frequently occurring disorders, but because they are politically acceptable. They are also, of course, the

preferred means of dealing with disturbances, but they are largely on stand-by and more often idle than not. Therefore, if Britain were to create a third force of riot police, it would not have the legitimacy of the French and German systems because there is not enough serious disorder to warrant it on purely practical terms, but a denial of its true functions would be to deceive the public about the direction in which policing was heading, and to introduce a repressive arm of the state on false pretences.

There are many functional and political differences in the development of policing in different countries, many of which remain today. Organisationally too, the forces of Europe can be comfortably distinguished from the British in many significant ways. As was discussed earlier, developing a para-military police public order unit or force was thought to be desirable by some because it would render the involvement of the army unnecessary, even in critical situations. Use of the military has long been regarded as unacceptable. For example, Lord Scarman, talking in the House of Lords about the Brixton riots a year after they took place said that if the police ('that thin blue line') had been overwhelmed '... there is no other way of dealing with it except the awful requirement of calling the Army. To turn the military inwards on British people is not something which our tolerant and free society can possibly accept.' (Quoted in Pike, 1985, p24.) There is a slight ambivalence in attitudes to the army where the police are concerned. Army involvement in policing is usually welcome in terrorist operations (such as the Gibraltar shootings of March 1988) and, less controversially, to provide extra manpower to help comb areas for missing people, to look for bodies and so forth. Thus, co-operation between the two is common and acceptable in certain circumstances only, when the army are perceived to be acting on behalf of the populace as opposed to against them. However, on the continent, riot police are not used to prevent the use of the army because in some cases, they are

part of the military. Involvement of the army thus does not have the same stigma attached to it in countries such as France and Italy, that it does in the UK. Although in Britain the army were used in the nineteenth century to ruthlessly suppress public disorder, it was decided to replace them entirely with the police in this area. It was very much an either/or option in the early twentieth century, with the police emerging as the favoured group. On the continent this has not been so. In France there is a combination of both police and military when responding to public disorder. The CRS are used to break up disorder, but if they fail, or to work in similar circumstances, there are the Gendarmerie Mobile public order force. France has two national police forces, the Police Nationale and the Gendarmerie Nationale. The latter are in fact a military force who are under the control of the French Ministry of Defence, and 'Gendarmes' are therefore soldiers, or at least a combination of soldiers and police by function. 'The Gendarmerie Nationale has its origins in the French royal military forces - the Constabulary and the Marechaussee, which was formed after the French revolution. An ordinance of 1820 placed it under military command, and it remains today under the Armed Forces Ministry for planning and organisation. For its civilian police duties, however, it comes under the Interior Ministry.' (Gregory, 1976, p4.) The existence of two police forces in France is explained by Jammes (1982, p96) with reference to historical events. In particular, following the Revolution of 1789, the forerunner of the Gendarmerie (the Marechaussee) was so powerful, that politicians feared that it might present a direct challenge to the new regime unless counterbalanced by a civilian police force. In keeping with military standards the Gendarmerie, are regarded as the most effective and senior of France's police; 'However great the degree of real co-operation between the two forces, French people in general seem to have much more respect for the gendarmes than for their civilian

counterparts. In particular, they perceive them as being more disciplined and efficient, more integrated into the local community and less open to outside influences.' (Ibid, p99.)

In Italy too, the police are linked to the military. It has two main police forces, the Carabinieri and the Guardia di Pubblica Sicurezza (GPS), both of which are based on military lines. The Corpo di Carabinieri, which is perhaps the Italian equivalent of the Gendarmerie, was formed in 1814 as a military organisation to keep order in the Kingdom of Savoy. (Gregory, 1976, p5); 'As part of the Army the Carabinieri performs duties of a military nature in peace and war, and in a civilian role carries out all the normal police functions. The force is under the Ministry of Defence for military duties but comes under the Ministry of the Interior for everything concerning public order and security. Permanent officers are drawn from the Army and Carabinieri NCOs. Mobile units are used for dealing with disturbances to public order. ... The GPS has its origins in the National Guard formed in 1848 for police duties. The force is military in character and was designed to support the Carabinieri, whose rigid discipline was not felt to be suitable to all types of police work. It comes under the Minister of the Interior but has been linked to the armed forces since 1943. ... The GPS never reverted to a civilian force after the war and was used against political violence rather than to prevent crime.' (Ibid.)

In France and Italy the use of the army to help provide a stabilising influence on the state in turbulent times has long since been accepted. These countries followed a divergent course from Britain in the nineteenth century, when Peel tried to avoid a military appearance and character for the Metropolitan Police by keeping them unarmed and clothing them in a uniform that was characteristic and distinguishable from the military. Although Charles Rowan, one of the first Commissioners of the Metropolitan Police (together with

Richard Mayne) was a solider, his influence manifested itself in the organisation of the police into ranks based upon a military style hierarchy, rather than the fulfillment of military duties. The police and military did act in tandem to suppress public disorder but as noted earlier, this was halted because of the adverse effect the military were having on public relations and opinions. France and Italy, on the contrary preferred to combine the military functions and methods with the police concept. When the police are part of the army as in these countries, there is thus little stigma attached to involvement of the military compared to the UK. Again this can be traced to the historical functions of the police forces; in France and Italy, with their emphasis on state security, the police-military connections were entirely in keeping with the mandate of suppressing dissent and widespread surveillance. There was no attempt to 'police by consent' as in Britain, therefore it did not matter if the policing methods did meet with public disapproval.

CONCLUSION; AGAINST A BRITISH RIOT POLICE

The police forces of the continent, and their ready acceptance of public order forces, should not be used as evidence that Britain should adopt a similar force. This would ignore the significant and irreconcilable differences between the British police system and others. If a separate public order force were to be introduced here, it would not be for the same reasons that they exist in Germany, Italy and France, and so any supportive references to them would be irrelevant. Organisationally, the French and Italian systems are based on military lines, and parts of their 'police' forces are actually soldiers. Functionally, the German, Italian and French police have explicitly recognised their brief of suppressing public disorder for the protection and security of the state with no pretence of neutrality. Likewise politically, the connection between policing and

politics is not denied; it can hardly be so in France where even regional police heads are political appointments. Contrast this with Britain where the police studiously avoid any public order links with the army, where they claim to be apolitical and where they emphasise the importance of good police-community relations, combating crime, policing by consent and police independence. The police forces of the continent, strongly aligned as they are with the centralised concerns of the state are thus not unduly concerned with the idea of legitimacy; public approval of their actions and functions is simply not considered to be of over-riding importance. If it truly is in Britain, then a third force of riot police will not be feasible without contravening the traditional values upon which it is claimed policing in this country is based.

The idea of a riot force is undesirable for a further three reasons. Firstly, as the example of the French CRS have notoriously shown, para-militarism does not necessarily mean that matters will be dealt with cleanly, professionally and with less force. This is an idea that finds a disparity between the practice and the theory. Admittedly, the Gendarmerie Mobile have proved themselves more efficient and less brutal overall than the CRS, but their discipline stems from the fact that they are actually members of the army. Using the army to quell disorder is a different matter altogether.

Secondly, once a riot squad is formed, there are problems in ensuring that their deployment is confined to certain remarkable circumstances. There is a real danger that they will be deployed in instances that were not covered by their initial brief and that they will extend their sphere of influence. Thus there is the danger of an escalation of the expectations, and actual occurrences of violence wherever a riot squad is used. Incidents that may previously have been sorted out by other means might now be met by crushing, uncompromising force and the overall threshold of violence

increased.

Thirdly, a reason that may often be overlooked by those in favour of a riot police, and that is whether such a move meets with the approval of those who would have to staff it; the police themselves. In Britain, the police are represented by their federation, but they lack any unionisation with true political clout, having abrogated their right to strike and unionise in exchange for a favourable pay deal. The role of the police may have been gradually extended in Britain to the extent that they are now highly politicised, but this is not necessarily something that the police themselves are happy about. After the miners strike, the Police Federation called for a judicial inquiry into the policing of the dispute along the lines of the Scarman Report of 1981 for two clear reasons; firstly, to clear the allegations that the police have become by stealth a national police force under the central direction of the National Reporting Centre, and secondly, there was the fear that, whilst the police had not been directed in their tactics, nevertheless the government had relied upon the police too much and not fully accepted its responsibilities. The Federation wanted to know why nationalised industries conspicuously failed to use the government's own legislation to prevent unlawful picketing. (Police Federation, 1985, p34.) The police are keenly aware that there are dangers for their social standing and impartial reputation if they are seen as a willing arm of government, sent in to uphold government policies. The police would appreciate even less being an obvious tool of government, which is what a riot force would be. Furthermore, this rallying against being used by governments to defend unpopular policies is something that the police of France and Germany have expressed as well. Gregory reports that in France 'After the 1968 troubles the police were unhappy at having to bear the brunt of discontent caused by a lack of consensus on government policies.' (1976, p4.) The CRS felt the same way after they had been

used to cope with large protests in Languedoc in 1976 after the over-production of cheap wine. These protests resulted in the death of one CRS officer and the wounding of 11 policemen. The French police federation felt that the wine problem was a political and economic issue, and not one of law and order. (Ibid.)

The German police have their own trade union, the Gewerkschaft der Polizei (GdP), founded in 1950, and this has forwarded the view that the police should not be seen as an instrument of power of the state, but as providing a public service and thereby contributing to democratic life. The President of the GdP has remarked 'We are the politicians' truncheon. And we are fed up with it.' (Quoted in Thomaneck, 1985, p179.) Thomaneck also notes how 'The GdP has continuously reiterated its view that such arms (mortars, machine guns, hand grenades) are anathema to a democratic police force which should strive hard to foster mutual trust and co-operation between police and public.' (Ibid, p159.) Clearly if the police would rather solve public order problems in a different way, then their voices should not be ignored.

PART FOUR

POLICE COERCION AND ACCOUNTABILITY
THE IMPOTENCE OF CONTROL

INTRODUCTION

Having examined why both the individual officer and the police force as a group may use coercion, and looked at some recent examples of coercive and paramilitary style policing, it is appropriate to consider how the police can be held accountable for such actions if illegal, and whether the accountability procedures act as a deterrent constraint on officers tempted to resort to coercion where it may not be strictly necessary. Throughout this investigation into the police and reasonable force, there has been much criticism of the many vague and legal provisions in this area and suggestions that it be reformed, tightened up, and generally made more explicit as long as this can be done without compromising unduly the essential need for police discretion. This would not be an easy task, but it has been assumed it would make the police more accountable and easier to control, and would reduce the chances of the police using unlawful force. However, such modest and conservative proposals rely upon the overriding assumption that laws, rules and regulations can be used to effectively control behaviour. This will be examined to see whether cosmetic legal changes can affect the ideals of the police culture and influence behaviour accordingly.

i. Complaints against individuals

Where a complaint has been made against an officer and it is alleged that s/he used excessive force, does the system efficiently detect and discipline such officers? Many allegations are made against the police concerning their violent conduct yet proportionately very few are resolved in the complainant's favour. Why is this? Is it adequate to explain this in terms of the bitter and vindictive nature of the complaint against the police? Although there are

undoubtedly many false complaints made to the police, and although certain complainants are well aware of the damage that can be done to individual officers by such complaints, the low number of findings of assaults by police that are upheld relative to the amount alleged can not be simplistically explained as the work of maliciously motivated anti-police complaints that were found to have no substance. What is probably more likely is that the complaint will founder due to lack of evidence, or the police will undermine the credibility of the complainant, and in many cases, criminalise him or her by charging them with other offences. This both deflects attention from the police's own conduct and in some way seems to provide them with a retrospective justification for their behaviour. The natural reluctance of certain elements within the criminal justice system, to criticise the police in all but the most clear-cut of cases also increases an officer's chances of 'getting away with' the unlawful use of force.

The complaints system is usually only operated however when a member of the public makes a complaint. There may be many occasions when the only witness to coercive police behaviour is another officer; the misconduct may then go unreported. Can the imposition of regulations ever influence internal police behaviour to the extent that policemen act as constraints on their fellow officers? This is, of course, doubtful, with rather depressing consequences for the control of police coercion. Would a wholly independent system of investigating police complaints be likely to result in more officers being disciplined for use of force, or would it have little or no impact? These matters will all be discussed.

ii. Accountability for coercive policies

Whereas there are clear mechanisms for bringing individual officers to account even if doubts exist about their true worth and effectiveness, there are no such parallel

provisions for the citizen or group of people who wish to complain about the behaviour of the police force per se. The emphasis both at law and within the police themselves, on the individual constable being responsible for his own actions means that in instances of harsh, coercive policing such as that at Orgreave in 1984 and Southall in 1979, the police hierarchy who plan and implement such policies remain free from official and legal censure whereas their men may technically be reprimanded or charged for individual acts committed in the pursuance of that policy. The notion of collective responsibility, incredibly seems not to be recognised where coercive policing is either alleged or

There does exist a supposed element of democratic control over police force policies, in the shape of police authorities, but this is in reality, a facade. Should their wishes contradict those of their Chief Constable or the Home Office, then they can be and have been overruled and ignored. The views of elected representatives of local communities are thus subservient to a person holding office through appointment. Another issue that is of great relevance here is the status and power of the Chief Constable. The influence that one man has over policy is so great, and the checks on his power so few in practice, that the chances of a police force being accountable for violent policies are slim if those policies enjoy the approval of the Chief Constable.

The efficiency of the police complaints procedures will not be examined with regards to any matters other than police use of coercion or violence. Again, it must be stressed that since the police use of coercion is being discussed, the perspective will often be that of investigating the police's misuse of power and force. This is not intended to paint a one-sided picture of a consistently violent police, but is merely recognising that there is a violent side to police work and moreover, one which is quite often violent at the initiation of the police

themselves. It is not being claimed that the police are necessarily more violent than in previous years but it is being asked why, if there have been instances of **illegal** police violence in the past, have subsequent accountability procedures not made its use less likely?

In sum, part four looks at the control mechanisms for both individual constables and the police force per se in relation to the use of coercion. It examines the powerful role of the Chief Constable in this matter and asks whether laws and regulations can ever be an effective constraint on police misconduct.

CHAPTER TEN

INDIVIDUAL OFFICERS; ACCOUNTABILITY AND COERCION

The first point to make here is that there is simply no way of ascertaining with any accuracy, the true extent of illegal police coercion. That it is more widespread than may be generally realised is very likely but extremely difficult to prove.

Immediately, the heart of the issue is revealed; proof. Proof of police misconduct, and concrete evidence that an officer has used excessive coercion are rarely obtained, resulting in the frustration of many complaints. The use of coercion can be divided into two groups; firstly, those occasions when force is used successfully since it achieves a police objective and is not complained about later (despite being excessive and illegal), and secondly, when unlawful coercion is the subject of a later complaint.

Unreported police coercion

Dealing with the first group it becomes clear that all the pitfalls and possible misinterpretations of criminal statistics discussed in Chapter two, are relevant here. In other words, the official number of complaints about police assault (whether or not these are later upheld or rejected) paint only half the picture. Just as the official criminal statistics relating to theft, burglary and various categories of assault must not be viewed as definitive, since many cases will obviously not have been reported, so must the number of complaints alleging police assault not be construed as an accurate reflection of the levels of police coercion. Criminologists are fond of expounding arguments about the 'dark figure of crime' and stressing that the true crime rate is probably far worse than that portrayed by the statistics, and this is echoed by what might be termed the 'dark figure of police assaults'. It is likely that a very considerable number, possibly even the majority, of assaults committed by officers are not reported as complaints even if the assault has been illegal. Incidentally, use of the word 'assault' throughout this chapter entails a stricter

understanding than the broad technical definition of assault. At law, an assault can be all manner of trivial and unforceful contact that is not consented to. The image that the word 'assault' popularly invokes is probably of more strenuous physical contact than a tap on the shoulder, and assaults, for the purposes of this chapter, will be understood to be harsher forms of physical force (such as kicking, punching, slapping, strong intimidatory pushing and so forth), than the mere contact necessary for the legal definition. However, such assaults, such uses of force envisaged in this chapter do not have to be of sufficient seriousness as to cause visible injury. Many police assaults will be unlawful even if no visible short or long term injury is caused to the suspect.

The severity of the 'problem' of police using coercion and assaulting people is hard to quantify then, since many instances of such behaviour remain unreported. But why is this so? There are several reasons. Primarily, the population's ignorance of police procedure and behaviour, and of their own rights, means that many people will simply not realise that they have a legitimate cause for complaint where the level of the police's coercion has not caused injury. This does not mean that the force used was necessary or acceptable. One might argue that this is just as well, since if people were to start making complaints about being pushed and so forth, police-community relations and police morale would be adversely affected, and lots of extra paperwork and time consuming duties for policemen would be created. However, there are probably many occasions when injury is caused and still no complaint is made against the offending officer. This will often be the case if a suspect is being charged with an offence by the police for which they have evidence to suggest, or good reason to believe, he or she is guilty. Likewise, where the suspect pleads guilty, then if the police use coercion during the course of the arrest and interrogation process,

that suspect is unlikely to complain (even if aware of his rights), realising that his or her status as an offender would undermine the credibility of the complaint, and that complaining might invite further unwelcome attention from the police if still in custody. In essence, what happens here is a sort of congruence of police cultural norms with criminal ones. Habitual criminals, accustomed to the working of the criminal justice system, realise that the police may routinely use varying degress of coercion to help achieve their objectives, and may even **expect** such treatment to be meted out to obstructive, arrogant suspects. They may be aware that if they do not 'play by the rules of the game' then a punch or a kick might result, and this holds true for areas other than confessions. For example, if the suspect is behaving boisterously, some coercion may be administered to quieten him down. Just as the 'criminal community' (if one can ever use such a generic term with confidence) may settle their differences with fights and force, so certain defendants will recognise and accept it as legitimate (even if it is not) when the police do the same.

It follows that many examples of coercive police misconduct will not come to light because they are perpetrated upon offenders who are unlikely to complain anyway, if subsequently convicted, and whose own crimes and behaviour will overshadow the police's violence and undermine any complaint they did register. It is because of this situation that the police are able to use a tactic that will be elaborated upon later, namely charging innocent non-criminals with an offence they have not committed to cover up their own (the police's) illegal use of coercion, in the knowledge that they can deflect attention from their own behaviour by charging that person.

To attribute the 'dark figure of police assaults' to the populace's ignorance of their rights and the extent of police powers would probably hold true for many, but is unsatisfactory in that it patronises many other informed

members of the community. Of course, many people will be only too aware that the police have exceeded their powers in using excessive coercion. Why do these people not complain? The answer to this seems to lie in their lack of confidence in the complaints system, a feeling that to complain would be futile since there would be little chance of the officer being found guilty of an offence, (either criminal or disciplinary) and reprimanded. The major reasons behind the lack of confidence in the complaints machinery are that investigations into allegations are carried out by policemen who may naturally be reluctant to find against their colleagues, that evidentially a complaint will be hard to sustain in that the internal solidarity of the police will make corroboration of it difficult, and that very often the case will turn on the word of an officer against that of the complainant. Furthermore, potential complainants may not wish to pursue a complaint that has little chance of success since it may result in them becoming known to, and disliked by, the police, and open to possible future police harassment. This is not a fanciful fear. If a complaint fails, the officer concerned may well sue for defamation, backed by a Police Federation fund, or the complainant may find him/herself being prosecuted for wasting police time, attempting to pervert the course of justice or malicious prosecution. All these factors may militate against making complaints, but of course this does not mean that police abuses are not occurring. The 'dark figure of police assaults' will probably never be known, but it can be asserted with certainty that any consideration of violent policing based upon official figures, will be a great underestimate of the true position.

REPORTED POLICE COERCION; COMPLAINTS OF VIOLENT POLICE BEHAVIOUR

Some of the reasons given above for people not pursuing complaints, also prove to be insurmountable hurdles to those

who actually do make a complaint. Paramount amongst these is the lack of evidence against policemen, a factor that is indissolubly linked to police culture and solidarity. One is forced to conclude that lack of evidence, rather than malicious unfounded complaints against officers, is keeping the number of findings against police officers unnaturally low in coercive assault cases. For example, between 1970-79, only 50 officers were convicted of assault (985 HC Debates, 19 May 1980, columns 30-34, written answer cited in Bailey, Harris and Jones, 1985, p26). This seems a creditably small number if it is interpreted simply as a sign of the police's integrity and good conduct. However, such a naive viewpoint must give way to a more cynical approach when the number of allegations of assaults are compared to the actual convictions. The Director of Public Prosecutions, in written evidence to the Home Affairs Committee of the House of Commons in 1982, noted that in the first year after the 1964 Police Act came into operation, his department received just over 600 complaint files. By 1977 this had risen to over 9,000. About 50% of these allegations concerned traffic related matters, but of the remaining 4,500 or so, 60% contained allegations of assault. (Home Office, Home Affairs Committee, HMSO, 98-iv, p83). This would amount to approximately 2,700 allegations of assault. Hewitt (1982, p17) notes that there were 2,393 complaints of assault by police officers in 1980 but by May 1982 only 35 prosecutions had been brought. In 1984, the Police Complaints Board (now succeeded, following the Police and Criminal Evidence Act 1984, by the Police Complaints Authority) received 3,318 complaints of assault, only 56 of which resulted in disciplinary charges, (cited in Harrison, 1987, p8).

Clearly there is a massive inconsistency between the assaults alleged and those actually proved. Indeed one must remember that of the 56 disciplinary charges brought in 1984 above, it is not known how many officers were eventually found guilty. How can this inconsistency be explained? The

idea of the malicious complainant is certainly not a police invention; the police will be subject to many fraudulent and unfounded complaints, although the exact numbers of these are not known. Just as the police might bring a charge against an innocent person to cover their own misconduct, so might some criminals make false allegations against the police to try and undermine the police action. However, whilst the police can use this tactic successfully, it is unlikely to work as well for the offender. What is needed is further information on the assault complaints and a breakdown of what happened to them and why, if a more accurate impression of the extent of police coercion is to be gained. For example, for all those complaints which are judged to be malicious, there should be a summary of why this conclusion had been reached. Likewise, all the complaints rejected due to lack of evidence should be recorded, and details of the evidential difficulty proved. In other words, simply listing the number of complaints made, as is done at present, really provides no information. This figures needs to be broken down into further categories that show why the complaints either fail or continue. If this was done it would probably show that although malicious complainants exist, they are far outweighed by those who are genuinely aggrieved at police behaviour.

So, after removing the unfounded malicious complaints, why do so few of the remainder succeed, assuming that they are all legitimate complaints? There are two main reasons for this, and together they constitute an unofficial and unwitting filter system. Firstly, there are the difficulties in gathering evidence already referred to, which mean that many allegations can progress no further than the simple registering of a complaint. This is obviously an unsatisfactory situation for the complainant, whose faith in the police will be greatly harmed, and it may also be a cause of dissatisfaction to the officer who, just because a complaint is discontinued on evidential grounds,

may not feel he has been totally cleared. This may be a matter of some importance to a constable who feels he behaved correctly, and yet has not been totally vindicated as he would wish. Secondly, even where there is evidence to support a complaint, actually obtaining a judgement in court or in a disciplinary hearing against an officer is difficult and unlikely due to the instinctively supportive attitude towards the police, that is adopted by the criminal justice establishment.

Lack of evidence curtailing complaints and police investigating themselves

Perhaps the subtitle to this section ought to be re-styled since in many complaints against the police, what is frustrating for complainants is that there is, or was thought to be, plenty of evidence against the police force or the individual constable(s) concerned. The complainant may not think the evidence is lacking but the investigation of the complaint may find differently. The investigation will be carried out by a police officer. That the police investigate themselves has long since been an object of sustained debate and widespread criticism. Calls for an independent police complaints investigation body have become a familiar feature of recent discussions on police accountability.

Slowly it seems, the investigation of police complaints is becoming more independent. The 1976 Police Act created the Police Complaints Board (PCB) which introduced a lay element to police complaints procedures for the first time. However, their powers were limited to recommending whether or not disciplinary charges be brought against an officer and whether these should be heard in front of a tribunal. The PCB was a watchdog without teeth however, since the investigation of the complaints remained the preserve of the Chief Constable, and the PCB were only sent memoranda on the complaint after the DPP and Deputy Chief Constable had

decided upon whether or not to charge the officer with a criminal or disciplinary offence. Thus decisions had been made, and even if the PCB disagreed with these, all they could do was make recommendations; they lacked the power to see these enforced, and in practice used their limited influence sparingly.

The PCB were aware however, of the difficulties in breaking down internal police solidarity, and that policemen investigating their colleagues were likely to be sympathetic to them and make little impact on the closing of ranks; indeed perhaps they would not try too hard to penetrate the professional code of secrecy and mutual covering-up. In showing themselves to be dissatisfied with the available system of investigating complaints, perhaps due to their own particular impotence, the PCB drew particular attention to the investigation of assault complaints in their Triennial Review Report of 1980, noting that in such cases; 'the investigating officer is perhaps more likely to be influenced by early experience of his own and to be more ready to accept the policeman's account of what took place than that of the complainant.' (HMSO, 1980, CMND 7966, para 61.)

One of the more notorious cases of police violence committed during the PCB's existence, was the killing of Blair Peach in Southall 1979. In a letter to Blair Peach's companion Celia Stubbs in 1981, the PCB said 'The evidence tends to confirm that Mr Peach and other members of the public were hit by police officers at Southall but the extremely thorough investigation has failed to identify the officers concerned in the individual incidents which were the subject of complaints.' (Cited in Scraton and Chadwick, 1987, p76.) The PCB's inability to influence the search for Blair Peach's killer merely exacerbated and publicised their shortcomings. The above letter sadly shows that the investigation of the complaints was unable to even fracture the wall of police solidarity and Peach's killer still remains free and possibly within the ranks of the police

force today. Despite eye-witness evidence and narrowing the suspects down to certain units of the SPG, this particular investigation could not be completed.

The PCB was not a great success and could not claim to be an 'independent' body in the sense that was being advocated by critics of the complaints system. The National Council for Civil Liberties were one such body seeking the independent investigation of complaints, yet prior to the 1984 Act, support for such a system came from other, more unlikely quarters. The Police Federation, in its evidence to the Home Affairs Committee in 1981, said they were 'Convinced that the continuing arguments over police complaints would not be resolved by grafting on yet another 'independent' appendage to a system which continued to rely on police investigations. There appears to be no way in which the public or at least those individuals who are interested in the question, will be convinced of the fairness of the system so long as the police appear to be judges in their own cause.' (Home Affairs Committee, 1981, 98-i, p3.) Similarly, the evidence given to the Commons Home Affairs by the magistrates representative body 'Justice', reached the same conclusion. They thought it 'essential' that an independent element should be introduced to investigations into allegations of certain offences including assault, and although conceding that the police were skilled in questioning and uncovering malpractice, they questioned the motivation behind investigating officers, commenting that; 'it is an undeniable fact of human nature that some police officers will be motivated to disprove or minimise the complaint, particularly if it is made against a member of his own force, or a neighbouring force. The letters and reports we receive tell far too often of investigating officers doing their best to persuade complainants to withdraw their complaints.' (Home Affairs Committee HMSO, 1982, 98-vi, p126, para 6.)

Despite the lobbying for a totally independent complaints

procedure, the legal opportunity to create this was spurned by the Police and Criminal Evidence Act. It did, however, substantially revise and improve the system formerly presided over by the PCB. The PCB was in fact replaced by a new supervisory body, the Police Complaints Authority or PCA (section 83 PACE) that had greater powers than its predecessor. For example, certain categories of complaint have to be referred to the PCA. (Sections 87,88 PACE.) These include serious assaults and misuse of coercion, where the complaint is of misconduct that leads to death or serious injury. The latter is defined as a fracture, damage to an internal organ, impairment of bodily functions or a deep cut or laceration. The actual investigation of a complaint will still be carried out by police officers but PACE has given the PCA more powers to supervise this investigation which is a definite improvement on the limited role the PCB used to play. Section 89 gives the PCA the discretion to approve the appointment of the investigating officer - if they disagree, then they can have him replaced. Perhaps even more welcome is section 89(5) which enables the PCA to impose directions and requirements on an investigation so that it is conducted in the manner that they wish. Michael Zander has commented that 'there is little doubt that the Authority will be in a position, if it wishes, materially to influence the actual handling of the case.' (1985, p143.)

The Police Complaints Authority are often referred to as 'independent', but as seen above, this is not entirely true, and can never be so as long as the information they are given, and the investigation of all complaints is carried out by police officers. The flow of information to them is controlled by and dependent upon, the police force. It seems likely that following the Police Federation's reluctant conversion to the cause of independent complaints investigation, the police will accept an entirely independent system of complaints investigation at some future date, and the PCA may be historically revealed as a stepping stone towards its

achievement. It would, however, be misleading to describe the current system as independent.

What may also be revealed in future is whether an independent complaints investigation, if ever implemented, will be successful. A note of caution must be sounded here, and a reappraisal of what is meant by 'successful'. If success is measured in terms of winning back public confidence, there seems little doubt that a totally independent investigating team would succeed. However, such a reason is ultimately symbolic or presentational; the public would have more confidence in the integrity, impartiality and thoroughness of the investigation if it was carried out by persons other than policemen. Yet would independent investigation of complaints be successful in the other sense, namely in gathering evidence and tackling police solidarity so that cases could be presented for adjudication rather than being rejected earlier due to investigative problems? It seems unlikely to be an improvement on the current system in this sense; lay investigators would probably be even less likely to penetrate the 'stonewalling' and closing ranks of the police than would policemen. There are also practical reasons that would hinder independent investigators. For instance, the DPP in his submission to the Home Affairs Committee in 1982 pointed out that 'the first few hours, even minutes after the receipt of a complaint are vital. If time elapses before an investigation is started, evidence may thereafter be unobtainable. The complainant in an assault case must be medically examined, any alleged weapon must be seized and the scene searched for evidence. Any person in, say, an adjoining cell must be interviewed and it may be necessary to examine the suspect officer's knuckles or to search his locker before he has time to remove anything which might incriminate him.' (Evidence to the Home Affairs Committee, HMSO, 1982, p9-iv, p85, para 16.)

If the only change to police complaints procedure was to make the investigation independent rather than by the police

then this, despite enthusiastic public approval, would have little or no impact upon discovering and reducing violent police deviancy. Even the 'restoration of public confidence' argument in favour of an independent system would begin to look a little hollow if the independent investigators failed to penetrate the veil of police solidarity and secrecy, and complainants realised that their claims still had as slim a chance of success as they had done previously when the police were investigating themselves. It must be made clear then, that although symbolically welcome, an independent investigation of complaints would make little practical difference to the current situation if it was the only change. It would need to be accompanied by a reappraisal of the whole system including recognition of notions of collective police responsibility in order to start edging away from the idea of the individual officer being legally responsible for his own actions, which currently provides the police with a shield to hide behind, and deeper long term structural changes that aim to tackle the basis of police cultural solidarity.

In any event, to return to the difficulties posed in investigating complaints by the lack of evidence; just as the PCB had found this a problem, so now, were the PCA despite their wider powers. For example, in the case of the harassment of Manchester University students by the police and the violent policing of the demonstration at the students' union, the PCA investigated 33 individual complaints and 63 incidents yet the DPP decided that the evidence justified prosecuting two officers for perjury and just one for assault. (The Guardian 27.2.87.) The two officers accused of perjury have since been cleared (The Guardian 14.5.88). An eyewitness to the events of that demonstration wrote to 'The Guardian' spelling out the consequences of the PCA and the DPP's failure to investigate the matter satisfactorily. 'I saw the effects of this one policeman's assaults; at least 40 people injured on the night of March 1st 1984, many of whom required hospital treatment. A young man constantly

battered, ruptured by an internal examination, and scarred emotionally and physically for life. A young woman intimidated into silence.' (The Guardian 3.3.87, letter from David Scott.) However, the evidence was obviously not considered sufficient to sustain any criminal charges against police officers. The PCA report had also found no evidence to substantiate students' complaints that the police covered up their numbers or were not wearing any, making their identification extremely difficult. This is an allegation that was also made during the miners' strike, and about the policing of the hippy convoy in 1985. The PCA also held an inquiry on the events at Stonehenge in 1985 that became characterised as 'the battle of the Beanfield'. Their report found that 'Some officers clearly used excessive force, but it has not been possible to identify them amongst the 1,363 officers involved and therefore disciplinary proceedings, which demand a clear identification of officers are impossible.' (Cited in The Guardian 25.3.87.) Whether or not lack of proper identification numbers on officers was a factor that day, the inability of the PCA to uphold complaints due to a lack of evidence is again demonstrated.

In their annual report for 1987, the PCA expressed concern about police solidarity and said they were worried that officers may close ranks and give false evidence during the investigation of a complaint, in order to protect each other. (The Guardian 12.5.88.) The report noted that assault allegations formed the majority of the 13,147 complaints that they had received, and referring to the Holloway Road incident (where those responsible for the unprovoked police assault on five youths took so long to be discovered and charged), recommended that in future cases officers should be charged jointly with using excessive force, or that each officer should be charged with neglect of duty. These were seen by the PCA as ways of tackling the police remaining silent despite knowing of their colleagues misconduct. The PCA also criticised the 'inordinate delay' that often existed

between the lodging of a complaint and its investigation, and noted that this has sometimes appeared to them to be because the police are trying to dissuade the PCA from pressing charges. (Ibid.) Such delays may also serve the purpose of allowing the police ample time to decide how to respond to the charge, and a lengthy delay may also constitute a 'cooling-off' period after which the complainant may decide that he or she does not wish to proceed with the complaint anymore, or after reflection, they may find the bureaucratic procedures daunting.

The lack of evidence cases referred to above in public order situations are very different to the ordinary 'run-of-the-mill' allegations against individual officers. In public order situations the primary difficulty may be, as indicated above, over identification. Even if the police hierarchy concede that some of their men behaved badly (which is unlikely) it then has to be proved who they were. In individual cases, the identity of the officer may be known, yet this does not make the gathering of evidence any less of a problem. For example, 'The Guardian' newspaper started to monitor four cases of complaints against the police in 1983, all of which alleged excessive force was used by the police. The paper's interest was in the procedure of complaints through the system but none of these followed by 'The Guardian' was concluded in the complainant's favour. It reported on their progress two years later, by then one had seen a civil action launched against the police whilst of the other three, insufficient evidence prevented prosecution of the officers concerned. (The Guardian 18.3.85.) It is worth considering the nature of two of these complaints in slightly more detail; one man Marville Pounder had alleged he was hit with a truncheon, kicked, and his head banged on the floor of the police van. There were fourteen witnesses to the case of Ian Murray who was arrested for drunken driving but excessive force on the part of the police was alleged. In both cases there was found to be insufficient evidence

against the police (Ibid), for a prosecution or disciplinary action.

The solidarity of the police force, as seen earlier, is one of the major obstacles to the gathering of evidence. Policemen are reluctant or unwilling to inform on colleagues, and this, coupled with the current system of police investigating themselves, makes the gathering of evidence difficult. Furthermore, many witnesses to the police action, who have not been assaulted themselves may be reluctant to testify against the police if it will mean the possibility of an antagonistic relationship with them in the future, and lead to the fear of harassment. It is obviously not being claimed here that the police will systematically harass everyone who makes a complaint against them. However, the fear of harassment, whether this later proves to be justified or totally unjustified, is a potent factor in dissuading potential witnesses from giving evidence against the police. In reality, and proportionate to the number of complaints made, those who subsequently suffer harassment are probably numerically small. The fears of harassment are aided though by the contemporary worries thrown up by the police's increasing use of computer technology. Many have vague fears that, for example, a routine stop for a parking offence will reveal that they have previously made a complaint, or been a witness against the police, when their car number is checked on the central computer, and that this will inevitably influence the police's behaviour towards them. Again whether this is a valid fear or based on anecdotal opinion is largely irrelevant as long as it is acknowledged to be widely held. (Incidentally, the police, their use of technology and the Data Protection Act 1984 is an area that is of great relevance to any civil libertarian work on the police and deserves further study. For a useful introduction to this topic, see 'Techno Cop' BSSRS, 1985.)

If police harassment does take place it will often be extremely difficult to prove (as was the police action

causing the original complaint) for similar reasons. As Skolnick (1966) and Goldstein (1960) observed, much police work is carried out in what the latter termed 'low-visibility' situations. This means that quite often only the police officer and the complainant will be present at the incident, and when a complaint is reduced to the word of someone against a constable, its chances of success are slim. Holdaway, with the benefit of his working experience as a policeman, provides an example of how the low-visibility of police work can combine frighteningly with the 'insufficient evidence' problem in assault cases. He reveals that 'It is considered safer to hit a suspect on a part of the body where bruising will not show - in the stomach, for instance - or to administer a quick slap on the face. One criticism levelled at officers who had used truncheon on a prisoner's head was; 'Well, we have been involved in it for years, but people of course, are hit where it doesn't show, not like it did on that kid.' (1983, p128.)

In this way, force can be used, but there will be insufficient evidence later to suggest that it has been. Obviously such police tactics will not be that widespread and routine but it is well to be aware of their existence.

Although people may fear police harassment and retaliation unjustly, there will also be instances where it does occur, and is proved or admitted. For example, in 1985 a Liverpool man, Lester Cooper, was awarded over £4,000 damages after successfully claiming that the police had harassed him for six years. He had made a complaint against the police and had been subjected to numerous car stops and searches as a consequence of this. (The Guardian 9.7.85.) In 1988 a young Londoner, Trevor Monerville, was acquitted of attempted robbery and causing actual bodily harm to a police officer. He had initially been in a fight when he and his friends were mistaken for a group of robbers, although all charges against them were later dropped or dismissed. Whilst in police custody earlier in the year, Monerville had allegedly been

badly beaten up and had to later undergo brain surgery that has left him with memory loss, poor vision and fits. As a result of this assault he decided to launch a civil action against the police for serious assault and brain damage and his family claimed that since he made clear his intention of suing he has been consistently harassed. (The Guardian 10.8.88.) The case of Steven Shaw (highlighted earlier in chapter four) was another recent example of someone who was harassed by police officers, and although he had not made a formal complaint, he was strongly involved in actions critical of the force. Police harassment may then, take place either within or outside the station and be a pertinent factor in the lack of evidence following incidents where excessive police coercion has been alleged. To re-cap, the other major reasons for the paucity of evidence against the police include the complaints system whereby the police investigate themselves (perhaps not as thoroughly as possible), the influence of internal solidarity that precludes giving evidence against a colleague, and the ignorance of the potential complainant, who may not realise that he has valid grounds for complaint.

Falsified prosecutions and cross-petitioning to hide the use of coercion

The above are matters that have been touched upon in previous chapters and are of great importance in enabling the police to create uncertainties over their use of force and to frustrate attempts at accountability. The basis of such police tactics lies in officers instincts of legal self-defence and relies upon them exploiting the trust and high regard in which they are held by the various agents of the criminal justice system. Although described above as being two separate matters, in essence, and frequently in practice, they are the same. By a falsified prosecution, it is understood that the officer will have used illegal force in dealing with the suspect, and to remove attention from this,

he or she will charge that suspect with an offence that they have not committed. Cross-petitioning occurs when an officer or officers have behaved coercively and illegally and the subject of the coercion is aware of this and makes a complaint. The policeman then cross-petitions the victim by charging him/her with an offence, such as assault. Using these methods, and preferring false charges against people serves two main purposes for the police; firstly the supposed offence committed by the citizen can be used as a post-hoc justification for the officer's own actions. Thus although at the time of the police coercion the citizen had committed no offence and the officer's actions were unwarranted, when later reporting the incident to his superiors or presenting it at court, any force used can be explained as being necessary in response to the trumped up charge. Secondly, if the citizen decides to make a complaint against the police, then his credibility will be undermined by being charged with an offence against the police, then this will add weight to the impression that the suspect deserves punishment and is a confirmed law-breaker. This last tactic has recently been used with such severity that not only has the complainant's credibility been undermined, but he has been criminalised. A good example of this is the case of Steven Shaw and the Manchester police force.

The 'dark figure' of police assaults can be effectively cloaked by these police methods and the true level of violence used made impossible to ascertain. Incidentally, this is used throughout police work to cover up irregularities, regardless of whether they involve force or not, for example, if the police have made an unjustified stop, search, or arrest of someone, they may charge the person with 'obstructing an officer in the course of his duty', or 'breach of the peace'. Nowadays, the general arrest provision in section 25 of PACE allows the police much scope in deciding afterwards why they have acted against someone, even if they had no adequate legal reason

for doing so at the time.

Of course it must be constantly borne in mind that the police will normally use such charges as obstruction and so forth with good reason. However, the very breadth of such charges, and the frequency of their valid use means that it is difficult to realise when they are being misused. In other words, because charges such as assault, breach of the peace and obstruction are used for so many circumstances, it is easy to abuse them. Because they are routine there will be little reason to suppose that an officer is using the charge defensively and wrongly, rather than legitimately. Thus, in the welter of statistics for such crimes, which are on paper committed **against** the police, there will be many instances of **police initiated** coercion.

False and malicious prosection is however a two-way problem. The police will be subject to many unjustified complaints that have been made against them through motives of spite or vengeance. A complaint against an officer is a serious matter and one which can have undeserved and damaging consequences for the constable concerned, particularly if not positively resolved in his/her favour. The introduction by PACE of the informal resolution procedure will enable many complaints to be kept out of the laborious complaints procedures, but still any that remain, particularly if vindictive and unfounded, can cause much personal stress and official trouble for the officer concerned.

Holdaway, as noted earlier, found that officers using force may try to hit a suspect on a part of the body that was not susceptible to bruising. He also cited a prisoner who had been in a station when 'the CID came in and hit me in the stomach where it couldn't be seen. So I just knocked my head up against a wall and cut myself all round the eye there.' (1983, p128.) Although this particular prisoner perhaps had good reason to try and make plain an injury if he had been assaulted by police anyway, his testimony

demonstrates that suspects may be prepared to inflict injuries upon themselves. Where a suspect does this in order to add substance to a complaint (where in fact there has been no police assault) it may cause great problems as regards proof, and it can be seen that the vindictive complaint against the police, even if it does not eventually succeed, can be a massive inconvenience and a potential slur on an individual officer's record and reputation until cleared.

Similarly, malicious and unfounded allegations will be made both by and against the police so the same thing happens with assaults. Although the police will be guilty of many illegal assaults themselves, they will also be subject to them. Indeed in April 1988, the magazine 'Police Review' reported that there had been so many assaults on police in the previous year that it was equivalent to an attack taking place on a constable in England, Scotland and Wales every half an hour. There were 17,000 attacks on police in 1987, a 20 per cent increase on the figure for 1986. Strathclyde was the worst area with one attack for every 2.57 officers, and in the London Metropolitan Police, assaults rose by a third from 3,400 to more than 4,500. (Cited in The Guardian 8.4.88.)

In June 1988, the Metropolitan Police Commissioner, Mr Peter Imbert, referred to assaults on police when presenting his annual report. There were 4,534 violent attacks on officers during 1987, resulting in 752 officers being off sick throughout the year with injuries sustained from them. This was a 33% rise in assaults from 1986 and meant an average of 63 officers a month were off work because of their injuries. (The Guardian 9.6.88.) As deplorable as these facts may be, they can not be taken at face value. Although not wishing to play down the seriousness of the problem of assaults on the police, and whilst recognising the difficult and dangerous nature of their task, different interpretations of these statistics may

reveal more information which relates to the theme of cross-petitioning and unfounded prosecution of innocent members of the public.

Many instances of assaulting a police officer in the execution of his or her duty may be relatively trivial and involve no injury whatsoever to the officer. However, it is a useful charge to use in covering up violent police deviancy. If an officer illegally uses force against someone and that person reacts by using force defensively (and legally), the police are able to charge them with assault. A London solicitor specialising in criminal defence work told 'The Guardian' that the apparent increase in assaults could be explained by the police's propensity to charge for very minor technical assault, and pointed out that the figure actually meant that there had been 4,534 allegations of assault made by the police, which does not allow for those who were charged and acquitted. (The Guardian 17.6.88.) Thus, the figures may not actually represent as great an increase in assaults on the police as at first appears, and may even indicate that the police are being over zealous in their use of the 'assault' charge. It must be remembered that all assaults on the police that appear in the statistics are self-selected by the police themselves, not reported by the detached, impartial citizens. This inevitably means that there will be occasions when the charge is abused, or used defensively or maliciously, in the knowledge that a charge of assaulting an officer will be viewed with disdain by magistrates and judges. An example of where this was unsuccessfully attempted by an officer occurred in 1985. A disabled Rastafarian and his girlfriend were stopped by the police, taken to the station and strip searched. The man, Patrick Wilson, was charged with careless driving and assaulting a police officer, both of which he was later acquitted of. A High Court jury found that Wilson had been maliciously prosecuted and assaulted by one of the officers and ordered the Metropolitan Police to pay

compensation when awarding exemplary damages to him. (The Guardian 7.12.85.) In this case, the officer had tried to justify or hide his own unlawful acts by instituting a prosecution, but was unsuccessful. It was perhaps more diffcult to sustain in this particular instance because the man's disabilities made his assault on the policeman less likely, but in other cases, officers will be able to use this tactic more convincingly.

In public order incidents too, the police will be able to use similar strategies based around acting first in their own interests, and preferring charges to cover their actions later. For example, it is standard police procedure to arrest participants at demonstrations and so forth without informing them why at the time. This may serve tactical short term ends for the police and it would perhaps be better to then free those arrested unconditionally. However, since there would be a high likelihood of the police being accused of false imprisonment, charges of assault, obstruction or some such will be brought to give retrospective legitimacy to a short term aim (that of controlling the disorder) that has already been achieved. If the police are making arrests at incidents of public disorder where violence has taken place and they have responded by using force, bringing an assault charge against a citizen who has been the victim of excessive police coercion will be an effective blind since such a charge would not be incongruous in the circumstances. During the miners' strike, and at instances such as Orgreave, highlighted in earlier chapters, the police used these tactics, arresting and charging many miners with offences that included many of riot. As was seen, these were rejected and most of the men freed, however the civil libertarian implications of such police behaviour are extremely worrying, particularly given the legislative swing towards them following PACE 1984 and the Public Order Act 1986. Not only will the police be able to cover up their own

irregularities by cross-petitioning or falsely prosecuting, but if those charges succeed, then there is a strong likelihood that innocent people will be punished. Thus, there is a double injustice. The initial injustice of the police's illegal coercion or misbehaviour will be later compounded by the citizen suffering additional official punishment.

The police culture's working rules in dispensing summary justice rather than being corrected by the proper rules of the criminal justice system, will instead be upheld and reinforced by this second official castigation of the citizen. This is a serious flaw in a criminal justice process that claims to offer equal rights and representation to all, and in fact reveals the practical imbalances that exist to the advantage of the police and the detriment of those that fall foul of them.

Another element akin to the cross-petitioning of complainants by the police is that of charging them with an offence should their complaint fail or be dismissed. This constitutes a considerable disincentive to making a complaint in the first place. If a person fears being prosecuted afterwards for wasting police time or attempting to pervert the course of justice, then the decision to mount the initial complaint will be one of great risk. This is what happened in the case of Steven Shaw. Remarkably, on police advice, the DPP decided to prosecute him for attempting to pervert the course of justice. After all else that he had suffered, Shaw, fearing for his personal safety and liberty, has left the country rather than answer this charge, and a campaign by Manchester University students and lecturers has since been waged to try and persuade the DPP to drop the charges. Another well publicised example of the police prosecuting a complainant had taken place, again in Manchester, in 1985 when Jacquie Berkeley, a young black woman, was convicted for wasting police time. (See Walker, 1986, p3-7.) She had made the serious allegation that she

had been raped by officers within Greenheys (previously Moss Side) police station in Manchester, had identified officers involved who were indeed on duty that night, and had been examined by psychologists, rape counsellors and academics who gave evidence in her defence that her behaviour was consistent with someone who had been raped. However, her case was dismissed by magistrates who found her guilty of wasting police time.

If, as seems likely in both the Shaw and Berkeley cases, the police had acted illegally initially but remained unpunished for it, the the later charging of the hapless victims with offences against the police and criminal justice process is in effect flaunting the power and effectiveness that police culture has in subverting the law, and is a reinforcement of the inequality of the police and their victims at law. The very fact that people who are most probably innocent can be either cross-petitioned or later charged with offences by the police when it is the latter who are guilty of misconduct, is surely if not proof, then at the least a strong indication of their unassailable position and their confidence that their illegal actions are safely beyond the reach of the accountability procedures. This issue has now led to disagreement between the Metropolitan Police and the Police Complaints Authority.

The PCA, in the light of incidents such as those involving Jacquie Berkeley and Steven Shaw have argued that people making formal complaints about police malpractice should be guaranteed immunity from prosecution. (The Guardian 23.5.88.) The Metropolitan Police, perhaps understandably, are refusing to agree to this, arguing that they wish to be able to prosecute malicious complainants on the basis of their original statements. The PCA did want assurances that the statements taken by police when a complaint is made would not be used for anything else, namely the basis of an action by the police. Perhaps a compromise ought to be met whereby the police can prosecute those who make complaints

against them if they feel they are malicious, but they will have to take fresh statements and prepare a fresh case to do do. This is preferable to a blanket guarantee of immunity from prosecution since this would undoubtedly be abused by the more unscrupulous members of the public who feel aggrieved after dealing with the police. However, another idea might be to give the PCA a veto. For example, if the PCA make a report on a case to a police force, and the police decide to use the PCA's evidence to charge the complainant, then they should consult the PCA first to obtain their permission. If the PCA think it inappropriate, they could veto it. This would thus protect genuine complainants whilst still giving the police the power to prosecute in clear cut cases and would constitute one move towards redressing the balance between the PCA and the police. The PCA's reports should be treated as their property, and they, rather than the police, should have the power to decide their use.

The police then, want to be able to prosecute in some cases where complaints against them have failed. Interestingly, the reverse of this principle, if applied against the police, would not be welcome. Namely, where the police charges against miners, demonstrators, hippies, strikers and so forth, are dropped in great numbers, this would appear to be tantamount to an admission of wrongful police action, or at least errors in the police judgement. However, the PCA take no action against the police, even though retrospectively there might appear to be a good case for complaints of wrongful arrest, false imprisonment and so forth. The police would not entertain thoughts that they should come under scrutiny at such times (when charges fail), whereas if complaints against the police fail, they wish to retain the option of prosecuting complainants. There is more than a hint of hypocrisy here.

The problem of police using cross-petitioning or false prosecutions to disguise their own misconduct is a

profitable one for them, but extremely difficult to detect and prove. Even if the system of investigating complaints was changed it is hard to see how this tactic can be prevented where, due to the nature of the encounter, it will often rely upon the word of the police officer against that of the citizen.

Compensatory and damages payments

In building up a picture of why the police seem to be convicted of so few assaults commensurate to the number of those it is assumed take place, damages ought to be considered. Damages payments need to be divided into two types; those that result from court actions brought against the police where the judge finds against them, and those where the police, realising that a complaint is justified will make out-of-court payments to the victim. This latter procedure may occur in some of the most clear-cut instances of police misconduct but will serve the useful purpose of keeping them concealed from the public eye and thus avoiding too much adverse publicity. Ironically then, little may be known of some of the worst instances of police violence. By settling the matter without recourse to the courts or sometimes the PCA, although perhaps satisfactory to the individual who is compensated without having to endure the adversarial nature of the criminal justice process, serves the police's ends well, but is ultimately unhelpful and obstructive when placed in the wider context of how to make the police accountable.

In fact, the police making voluntary compensation payments is not synonymous with accountability for three principal reasons. Firstly, it is the police themselves who decide to make the damages award rather than risk an adverse judgement, and who agree to do so out of court and out of the public view. This appears to indicate the police's belief that one or more of their officers are definitely at fault, and any defence of theirs would be unlikely to succeed in

court. The police themselves come to this conclusion without the need for external pressure to be exerted on them. From the outset then, the matter is dealt with internally by the police and they will keep all records of the incident; but not from any primary motives of wishing to see an injustice rectified, but rather, from the expedient viewpoint of wishing to 'hush up' what has happened and to satisfy the aggrieved party with the minimum of fuss and embarrassment to them. Thus the intention or function of a police out of court damages payment has less to do with accountability than with the self-defence of the police institution.

Secondly, if an out of court payment is made, its purpose is to compensate the citizen rather than to discipline the officer. Information on the officers involved in such cases, their identities and even if they faced disciplinary action or not is unavailable, and so whether they were ever held accountable for their actions remains unknown. Given that payments will be in the most clear cut of cases, (or put another way, in the most extreme examples of police abuse of force) it is obviously in the public interest that the officer's behaviour should be examined and punished, yet it is not clear whether this will always happen. In any event, the type of cases where police award out-of-court payments, are those where the police coercion or misconduct would warrant criminal, rather than just disciplinary charges. If the police are avoiding judicial censure by making the payment, they are unlikely to press criminal charges against one of their officers, since this would result in the sort of unwelcome exposure that they had sought to avoid. Therefore, even if the officer does face disciplinary action he will in effect be treated undeservedly lightly, considering his illegal actions. However, it is by no means certain that officers in these circumstances even face disciplinary charges, and if they do, of what severity they are. Tony Bank, MP, was told by

the Home Office that false or malicious imprisonment featured in 36 out of the 52 cases settled out of court in 1986 by the Metropolitan Police, and that twenty-two involved assault. (The Observer 5.4.87.) Yet, Mr Banks' attempts to discover what action was taken against the errant officers, was unsuccessful when he was told by the Home Secretary, Douglas Hurd, that such information could only be obtained at a disproportionate cost. Mr Banks commented; 'The fact MP's cannot get answers to these questions demonstrates that the Home Secretary's claim that the Metropolitan Police are accountable through Parliament is a nonsense.' (Ibid.)

Thirdly, a compensatory out of court payment by police, although apparently indicative of accepted fault on their part, is not always treated by police as proof of their culpability. For example, after the shooting of John Shorthouse in 1985, the West Midlands Police made a payment to the family even though the constable involved had been acquitted of the charges against him, and stressed that it did not mean they accepted they had acted wrongly. Although this was admittedly of a different nature to the type of cases in mind here, it demonstrates the point well. Also, the Metropolitan Police have paid the family of Blair Peach some money but have insisted that it is not an admission that their officers were responsible for his death. To many people, and perhaps to common sense, the police making a payment to the victim of their own misconduct would appear to indicate recognition of their guilt. This will undoubtedly be so in many cases; however, due to the incomprehensible logic of police thinking, it will apparently not be so in others. For this reason too, out of court damages settlements can not be regarded as an instrument of accountability.

In 1986, the Metropolitan Police paid out a record £376,000 in compensatory payments, most of which were made out of court. The largest single sum was £236,000 to

Barry Carliell, a 35 year old man who was almost blinded after a ferocious assault by an officer in Islington police station. This was an out of court payment but the guilty officer was jailed for two years as well. This demonstrates that on the scale of violent offences, those at the top end will not be tolerated by the police hierarchy even if prosecuting will bring them bad publicity. This was a particularly extreme case, however, and normally it will be possible to operate the out of court compensation system to mutual advantage. The citizen will be compensated and the police will have avoided too much bad publicity.

Where damages are awarded in court by a judge after a civil action against the police, it is more embarrassing to the police force for it represents official censure of them and may result in widespread public knowledge of their misconduct, potentially damaging to their reputation and police-community relations. However, even where the judge finds against the police, there is no guarantee (as with the out of court payments) that the officer responsible will then face criminal or disciplinary charges. The civil action against the police is being increasingly used (as will be seen later) as an alternative to pressing criminal charges against them.

Damages settled both in and out of courts and awarded against the police's violent behaviour can have the effect of keeping many serious cases of assault from the official complaints statistics, and of protecting the police force by keeping them from receiving the sort of widespread harmful publicity that always attends criminal trials of errant officers. Moreover, even though a damages award will frequently indicate undisputed, clear misbehaviour by a constable (and the police's recognition of this) it is not a guarantee that the culprit will be disciplined or charged, and it does not represent a means of achieving police accountability as much as a legalistic procedure that the police use defensively rather than contritely.

Unlikelihood of success in prosecutions of police for misconduct

The previous sections have detailed many factors that contribute to the police being able to use illegal coercion without fear of legal or official reprimand, and the unlikeliness of being punished for it will obviously encourage its use. However, what of situations where the officer is actually charged with an offence and faces the possibility of a court appearance? Again, the criminal justice process will be in his or her favour.

Before deciding to prosecute in most cases, the DPP and now the Crown Prosecution Service will invoke what is known as the 51% rule. This means that the case will be assessed and the chances of a successful prosecution evaluated. If there is thought to be a more than 50% chance of a prosecution then the prosecution will be undertaken. (This is a general rule, although in some cases a prosecution will be launched even if there is thought to be a less than 50% chance of success, for example if the public interest demands it.) However, for police officers, it is likely that a higher level of evidence will be required initially since the conviction rate for police officers is therefore less likely to succeed than a similar charge against a citizen on the same type of evidence. A simple example of this would be where a prosecution for assault is sustained by the evidence of a policeman alone. The reverse of this, achieving the prosecution of an officer for assault on the evidence of one citizen is highly unlikely. The Home Affairs Committee in 1981 noted that of all officers prosecuted for assault, only 47% were convicted whereas the figure for all other citizens committed to trial for assault was that 89% were found guilty. (HMSO, 98 iv, p91, para 324.)

A previous Director of Prosecutions, Sir Thomas Hetherington, admitted in 1980 that 'our conviction rate of prosecutions against police officers is

certainly lower than in other cases. But this may just be a reflection of the traditional reluctance of juries to accept the word of a citizen, with perhaps, a criminal record, against that of a police officer - a reluctance which I find wholly understandable but which sometimes makes it rather difficult to assess the chances of success in prosecutions of police officers.' (The Guardian 2.6.80.)

The same DPP admitted to the Home Affairs Committee that his experience suggested that juries were definitely more reluctant to convict police officers as opposed to other defendants and that the main reason why his office decided not to prosecute in assault allegations against the police, was because it was often a case of oath against oath, and that a conviction is difficult to get if you have the oath of an officer against that of a complainant. (HMSO, 1981, Ibid, p91.) Glanville Williams comments that 'The effect of the rule in practice is that corrupt and violent policemen are not brought to book when ordinary people would be.' (1985, p116) and that 'The 51% rule played a part in frustrating Operation Countryman, and if persisted in seems likely to be of permanent benefit to corrupt and vicious policemen. The failure of a prosecution against a criminal policeman may be unfortunate, but it is not so unfortunate as a practice that inhibits the prosecution of such policemen generally.' (Ibid, p117.)

The police benefit doubly from the criminal justice process's kindly disposition towards them, even if they have used undue force. Firstly, as seen above, the chances of the DPP or Crown Prosecution Service proceeding with a prosecution are less than those for other citizens since the prosecutors are aware of the scepticism with which juries treat cases against the police and the correspondingly lower likelihood of obtaining a conviction. This inhibits following the case through. Secondly, where cases are actually prosecuted, this same characteristic of juries may militate against a guilty verdict being returned.

Additionally, the attitudes and directions of judges are often markedly supportive of the police in a manner inconsistent with the alleged impartiality of their office. There will be many instances whereby the aim of the police violence is consistent with that of broad criminal policy and so the judge will overlook its illegality. Lord Denning, although an idiosyncratic law maker, displayed the kind of supportiveness broadly representative of the judiciary's attitudes towards the police in his comments on the Birmingham pub bombers and their attempts to appeal. Denning pointed out that if the appeal were allowed it would by implication mean that the police had behaved illegally, with excessive force, a possibility that he would not entertain.

The direction of the judge at the trial of those police officers who mistakenly shot Stephen Waldorf was also heavily weighted in their favour when he directed that a self-defence argument was acceptable. (See chapter three.) Ward notes too, how the law and the courts aid the police; 'The contrast between the treatment of officers of SPG Uniform 1/1, and that of the defendants from Southall convicted in Barnet Magistrates Court on the flimsiest of police testimony, shows how far the police are from 'equality before the law' (as does the virtual legal immunity enjoyed by the police during the miners' strike.) The present law on public order seems designed, not to constrain the police or to protect the rights of the citizens, but to give the police the 'tools for the job', the legal cover for whatever coercive action they may deem necessary.' (Ward, 1986, p47.)

It is not just judges who will behave in an accommodating manner towards police coercion, but the entire criminal justice establishment. Coroners, for example, will be loathe to criticise the police, even in cases where there is serious doubt as to the propriety of police conduct, and many suspicious deaths in police custody have not been satisfactorily explained despite the holding of an inquest. (See Scraton and Chadwick, 1987.) Lustgarten points out that

since 1984, inquest juries no longer have the power to add 'riders' to their verdicts, and comments that 'The function of the proceedings thus becomes a sort of public absolution of responsibility for the institution involved.' (1986, p142.)

A recent example of a case where the police appeared to use excessive force, yet the coroner thought differently, was when a young man, Clinton McCurbin, was killed during a struggle with police officers in Wolverhampton in 1987. Apparently, McCurbin had violently resisted arrest in a shop and it needed two officers and a customer to restrain him. One officer had him in an arm lock around the neck which appeared to some witnesses as if he was 'practically strangling him.' (The Guardian 27.10.88.) The officer maintained the neck grip even after McCurbin had ceased to struggle and had gone limp, because he thought that he may have been faking. (Ibid.) Other witnesses said that the force used by the officer was 'reasonable'. (The Guardian 2.11.88.) However, the coroner's summing up appeared to allow little room for doubt as regards the officer's conduct. He told the jury 'In my view it would be unsafe and wrong even to find the arresting officers misconducted themselves in a difficult situation in any sense whatsoever. I consider a verdict of misadventure would be appropriate, but the decision must be yours and yours alone. (Ibid.) It may be that the jury reached the correct verdict in returning 'misadventure' (a curiously unsatisfactory term that sheds no light on culpability), yet the above direction can hardly be described as impartial. It would be interesting to hear exactly what levels of force the coroner regards as 'reasonable' in 'difficult situations', and how the latter are defined. This is yet another example of an accommodating attitude towards police officers and a suspicious one towards suspects.

One of the myths of policing that is still perpetuated by some commentators (eg Richards, 1985, Alderson, 1979), is

that the police officer is merely a 'citizen in uniform'. This view portrays the policeman as being essentially no different from other people, and implies that the acknowledgement of this by the public forms the basis for policing by consent and the legitimation of much police behaviour. However, this is an image and myth that needs to be de-bunked. It is presently not as true as it used to be (if indeed people ever did view officers simply as citizens in uniform) particularly now that the police have a wider range of powers, and to have presented it as such has been persistently misleading. People simply do not think of the police as being like themselves. Ironically, the uniform (originally worn to distinguish the police so as to allay public fears about them being plain clothes spies) has served to symbolise and emphasise that they are different from the public. The police are on a different level in the public consciousness; one which apparently makes it hard to believe that they would lie in court and subvert the law. The idea of the 'citizen in uniform' argument is that beneath the uniform is a man or woman with the same vulnerabilities, fears and so forth, as everybody else. This is the source of much sympathy for the police and is undoubtedly true. However, it is a concept that is used defensively and one-sidedly by its proponents, in that much will be made of the human frailties of officers where to do so will engender sympathy and support, whereas these characteristics will be overlooked if referred to in a detrimental sense. That is, even if it would be a natural human response to use undue force on occasions, this will be denied. Where an officer faces a charge relating to misconduct, it will be the uniform, and therefore the police institution, that influences the court, instead of the individual within that uniform.

Civil actions for damages

The failings of the police complaints system and the

unlikelihood of criminal sanctions succeeding against errant officers have perhaps contributed to the growth in civil actions against the police as another means of redress. The number of such actions (for all types of misbehaviour, not just assault) is growing, but has not yet reached epidemic proportions. Between 1976 and 1986, cases brought against the Metropolitan Police for damages grew by approximately 350 per cent. (Clayton and Tomlinson, 1987, a.) It is now being realised that the civil action may be preferable to making a formal complaint and seeking a criminal prosecution. Clayton and Tomlinson, who have written a book on all types of civil actions against the police (1987) point out that 'Damages claims are fifteen times more likely to succeed than complaints.' (1987, a, Ibid.) In 1986, 5,093 complaints were made against the Metropolitan Police, out of which only 141 or less than 3% succeeded. The figure for civil actions was that out of 126 launched in London, damages were awarded in ten out of the forty-one cases that went to trial, with out of court settlements being reached in another fifty-two cases. (Ibid.) Statistically then, civil actions appear more likely to be resolved in the complainants favour.

There are practical reasons in favour of civil actions too. Suing a police force is not likely to result in the plaintiff being cross-petitioned and it is one way in which the lack of evidence need not prevent an action being taken, since if proven harm has resulted from police behaviour, the Chief Constable can be sued for the actions of his men, whether they have been identified or not. In this way, civil actions both compel a recognition of some sort of collective responsibility, and can be used to seek rulings on the policies of the police force as a whole, and to censure them.

The preceding sections show how a picture can be built up of some of the factors that help to explain the low figures for police violence and conviction. The sum parts of this weigh heavily in the police's favour and create the

conditions in which coercion may be used excessively without fear of redress and punishment.

CHAPTER ELEVEN

PUBLIC ORDER, POLICE COERCION AND ACCOUNTABILITY

Lack of redress for police coercion in policing public order

The use of excessive force by individual officers may not always be discovered or punished, but at least a system and series of rules exist to combat this. As seen above, it is not particularly successful. However, compared with the arrangements for controlling the police in public order incidents, and their later accountability for any force used, the system appears positively thorough. Sadly, this is a reflection of the lack of effective accountability procedures that relate to the policing of public order. In both the recent major statutes relating to policing, (the Police and Criminal Evidence Act 1984, and the Public Order Act 1986) the opportunity to legislate to control the police's general policies has been spurned. Part IX of the 1984 Act related to complaints against individuals. The evidential difficulties in identifying the police culprit have been acknowledged, yet the wronged citizen can not base his complaint upon the behaviour of the police force as a whole, even if their policy was thought to be unnecessarily violent. Thus, if the individual officer can not be identified (and this is highly likely in a public order context), the citizen is denied any automatic recourse to legal redress.

Although, as noted earlier, the use of force by police officers in public order situations may bear little resemblance to their use of coercion in more 'everyday' policing situations, it is interesting to observe one legal result of this and its consequent implications for police accountability. Whereas the individual officer is subject to the same laws as those he polices, and may be charged with them (albeit rarely), this appears not to be the case with policing public order occasions. For example, an officer who thumps a suspect unnecessarily has committed an assault, and may be charged and convicted of it. However, in crowd control situations, even if police behaviour could

be technically suited to fit the definition of a criminal offence, the police are unlikely to be charged with it. To take an example that would probably be offensive to police officers yet which neatly illustrates this point; the offence of riot under the Public Order Act 1986 (section 1(1)) is defined as being 'where twelve or more persons who are present together use or threaten unlawful violence for a common purpose and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety.'

Some of the police actions during the miners' strike would fit this description, as would their behaviour against the peace convoy in 1985. The concept of a 'police riot' is not recognisable at law here although this was the term used by Judge Otto Kerner in his report into the US race riots in 1968 for the US Presidential Commission. That police behaviour had degenerated to such an extent that it was described as a 'riot' is significant for its recognition that the police's actions may sometimes be as out of control, undisciplined and destructive, as those they are supposed to be policing. As Steve Uglow notes 'It has now become clear that there is as much concern about the tactics of policing crowds as there was about public disorder.' (1988, p77.) This concern has apparently not been registered by the legislature yet, and so the different treatment the police enjoy in the criminal justice system extends to their public order role, no matter how oppressive their tactics are. Quite why the policing of public order either should remain this free from judicial scrutiny, or has been able to do so is an unsatisfactory anomaly in an age of high-profile, uncompromising and often confrontational, public order strategies. Why the laws enforced by the police should not be used against them where obviously appropriate, is a question that has not even been asked, let alone answered, yet is surely a valid point if excessive police coercion at public order gatherings is to be confronted.

In case the example of a 'police riot' be thought too extreme, consider the other new offences introduced in the Public Order Act 1986, of violent disorder (section 2), affray (section 3), fear or provocation of violence (section 4) and harassment, alarm or distress (section 5), which may merely require the threat of unlawful violence as well as its use. Even some police officers may admit that there were occasions during the miners' strike and in dealing with the peace convoy in 1985, when their own actions contained the necessary elements for these offences. The police will never, of course, be charged with these crimes, for many obvious reasons. The Public Order Act is administered by the police to control others, the draftsmen would not have intended that it should be used to regulate police behaviour, and the police would not use it against themselves; to do so would have disastrous effects on police morale. More fundamentally, in policing public dissent, it is very much an 'us' against 'them' situation; the police, when required to use force on these occasions, do so with the intention of suppressing disorder quickly under the auspices of acting on behalf of the unseen community or the silent majority; their actions are generally portrayed, and accepted, as being necessary. It goes largely unconsidered, and it is seemingly heresy to suggest, that the police behaviour itself may on certain occasions be menacing and criminal. Why this should be so is unclear, for the laws of probability suggest that policing of difficult situations is not always going to be impeccable; this would be impossible and an unreasonable expectation. However, the blithe acknowledgement that the police have an inordinately difficult and unenviable job to do at times, although a partial **excuse** for the problems in controlling officers occasional extra-legal responses, should not be a **reason** for failing to enquire further into public order policing to see if officers' behaviour can be regulated.

There is in fact a discreet, if not unwitting double

standard surrounding inquiries into police misconduct in individual and collective situations. Individual police misbehaviour is recognised to be greatly damaging to the police's image and is roundly condemned by senior officers. By contrast, coercive policing in public order situations is rarely admitted publicly by the police hierarchy, let alone criticised by them, and does not receive critical widespread media coverage. This can be partially explained in terms of the recipients or victims of the police's coercive behaviour. In the individual cases, the indiscriminate police action, although consistent with police subcultural norms, offends the due process of legality, whereas excessive force in public order situations sees police culture and the aims of due process working in tandem. That is, the laudable goal of maintaining order supersedes the manner in which this is to be done. The injudicious use of coercion may aid the dispersal of crowds and the arrest of suspects, and thus help to maintain 'order'.

Despite the vagueness of the 'reasonable force' provisions in the Criminal Law and Police and Criminal Evidence Acts, there are many occasions when it is clear that individual police behaviour has transgressed their limits, yet this is not so in public order policing. Becausing the 'ground rules' or basic conditions in public order situations are so different anyway, what is needed is a specific set of regulations to govern police use of force in them. If police excesses in this area are to be curbed, it must first be recognised that they occur, and secondly, legislation must be framed that specifically addresses this. It is difficult enough to asses how much police use of force is 'reasonable' in individual arrest cases let alone in incidents of mass disorder. Officers will not be charged if, in following their superior's orders to disperse a crowd, they act excessively and unlawfully. Yet if there were legislative guidance within which such orders could be accommodated, then the chances of controlling the police

tactics would be increased.

As the law stands at the moment, there is a distinct imbalance. The whole area of demonstrations and processions is one accompanied by much talk about the rights of peaceful protest, assembly and free speech even though the extent of these are not enshrined in law and are left in practice to the discretion of the police. The government's White Paper 'Review of Public Order Law' (CMND 9510, May 1985) described its approach as one of 'balancing freedoms', namely the right to protest with the need to restrict this in order to prevent disorder and protect the rights and freedoms of others. However, any rights that demonstrators may have are firmly subjugated to the whim of police officers. There is no guarantee of freedom from unlawful interference by police. The public order situations in mind here are demonstrations, strikes and so forth, rather than the main feature of the gathering, unlike during a riot when the participants arguably have less ground for complaint about police behaviour, if already acting illegally.

Sometimes an incident will be of sufficient seriousness and result in such trouble that there will be calls for a public inquiry. Occasionally these will be acceded to, but relatively infrequently. Thus, although Lord Scarman chaired inquiries into the disturbances in Red Lion Square in London in 1974, and the Brixton Riots of April 1981, there have been no public inquiries into policing the miners' strike, the riots at Broadwater Farm in 1985 or the continuing agitation between police and hippies in Wiltshire to list but a few of the controversial incidents where an inquiry may have been constructive. Even where police inquiries are held, it would be misleading to describe them as another means of controlling the police or holding them accountable. Police tactics may well be criticised and any subsequent recommendations regarded as influential and persuasive, but ultimately, they lack legal authority. Furthermore, there are no particular criteria that need to

be met before a public inquiry is instituted. It is very much under the control of the political masters of the day, and so only if the public interest is thought to be more important than political expediency, will an inquiry take place. The power to order an inquiry rests with the Home Secretary under the Police Act 1964 section 30(1), and if he thinks it is not practically necessary, or not politically desirable (the two factors being virtually indistinct here) then he can refuse it. The public inquiry into 1974's events at Red Lion Square was actually called for by the police - a more effective lobbying body than other pressure groups.

As Ward points out (1986, p45), the government were prepared to hold an inquiry into the events at Red Lion Square, and the death of Kevin Gately in 1974, because the police were 'confident that they could not be directly implicated in Kevin Gately's death.' (Ibid.) This was not the case in Southall in 1979. In the event, Scarman's 1974 Report found that Gately was the victim not of a 'brutal policeman' but of 'the situation in which he found himself. That is why, in my judgement, those who started the riot carry a measure of responsibility for his death; and the responsibility is a heavy one.' (HMSO, 1975, CMND 5919, para 40.) Scarman's implication that the demonstrators hold some responsibility for Gately's death is worrying and deserves refuting. Scarman implies that the police would not have needed to charge if the demonstrators had obeyed their orders, but the logical conclusion of such theorising is that demonstrators' behaviour will serve to legitimate as much police coercion as is deemed necessary. This appears to be commonsense at first, and obviously the police will have to respond to demonstrators' actions, however, in the context of the death that occurred after the clash between police and rioters and with the suspicion of police involvement in that death it is no reassurance to future demonstrators to hear that their actions (which for the most

part are legal) can legitimate a range of forceful police responses that carry with them the risk of death. Surely it would have been preferable for Scarman (in accepting the need for the police to use coercion to quell disruptions) to have ignored the emotive issue of responsibility for Gately's death. Scarman's quotation above, is the first step on a path of dubious judicial reasoning in which the demonstrators' illegal actions are almost felt to deserve the reciprocal illegal police response. This is not so much an acknowledgement of the police's right to use 'reasonable force' (although it will be presented as such) as the allowance of retributive force or coercion used as summary justice. Again, a congruence of police subcultural values with accommodating judicial explanations will be noted.

The goverment were not prepared to allow an inquiry into the events at Southall in 1979 and Blair Peach's death since the likelihood of the SPG's and other policing methods receiving stern criticism was high. Thus although there was much evidence pointing to police culpability for Peach's death, a public inquiry was denied; a course of action that was perhaps not in the public interest although was doubtless greeted with satisfaction by the police and government. Public inquiries can serve many useful functions but with their institution, terms of reference and authors appointed by government, accountability and control of policing is not one of them.

Collective Responsibility

As seen in earlier chapters, the constitutional independence of a constable is the reason why each officer is held responsible for his own actions alone. Just as this can prove unfair to the officer in firearms cases (see earlier chapter on firearms) for similar reasons, it is most unsatisfactory to aggrieved citizens during the policing of public disturbance. The usefulness of the constabulary independence doctrine has already been acknowledged; namely

in its enabling individual policemen's behaviour to be explained as such, which implicitly absolves the police organisation from culpability. In the public order context, this is frustrating since although the police will be acting as a group following planned strategies, any complaints can only be made against individuals, who are unlikely to be identified anyway. Thus, the police hierarchy can vaguely blame unknown individuals for any wrongs in the policing, secure in the knowledge that their policies can not be called to account.

The lack of control over the police's general public order policies highlights many inconsistencies and the hypocrisy that pervades the theory and practice of policing. Although both PACE 1984 and the Public Order Act 1986 purported to be concerned with balancing police powers with corresponding safeguards neither made any attempt to control group misconduct by the police, or coercive policing policies. The emphasis on the individual officer being personally responsible for his actions is another area of inconsistency. Although the individual responsibility line is prominent and frequently cited, the Chief Constable will be jointly liable for the actions of his constables when a tortious action is instituted against the police. The Chief Constable will then be deemed to be in a master and servant relationship with his officers, and is thus vicariously liable for their actions. As Lustgarten notes 'This is quite important, because it means that a person may recover damages for police wrongdoing whereas a complaint or a criminal charge arising out the identical incident would fail if the plaintiff could not identify the particular officers beyond a reasonable doubt. This happens more often than might be imagined, particularly on picket lines or crowd melees, or where a large group of officers raid a house.' (1986, p136.)

A civil action for damages appears to be the only way in which some semblance of collective police responsibility is legally recognised. The concept should be extended to the

criminal law however, to cover incidents of firearms use and public order policing where the individual officer's discretion is secondary to the instructions he has received from his superiors, and where he or she acts as part of a pre-planned, co-ordinated strategy. It seems illogical and unfair that when a police superintendent (or supervising officer of any rank) gives the order to baton charge, for example, that any proceeding violence and injury perpetrated by his men can not be brought to account if the officers can not be identified. When the army behave controversially they are able to plead that they were acting under superior orders. This is both a defence to individual soldiers, and a reference to the collective responsibility of their commanding officers for their actions. If a system of collective responsibility was to be agreed for police officers, it is important that it should not just be viewed as a defence for individual police officers, and an excuse that they were merely 'following orders'. Instead, it should be used to try and combat the effects of internal police solidarity.

In cases such as the investigation of Blair Peach's death and the beatings of the five youths in the Holloway Road, the list of police suspects had been narrowed down to a small group within which it was relatively certain the offenders were contained. It is inconceivable that other officers, and the commanding officers, were not aware of the identity of such people or did not have strong suspicions. Furthermore, when the police are involved in coercive behaviour in a public order context, such as at Stonehenge in 1985, although it may not be possible to identify and prove the involvement of individual officers, the police will be well aware of their command structure and therefore know who was in charge of certain groups of constables. Collective responsibility could be used in both these contexts. It would have to rely on instincts of self-preservation in that superior officers would be held

responsible for the actions of their men if the constables themselves were unwilling to admit misconduct. This would in a sense be unsatisfactory - it would initially encourage division and mistrust between ranks if a senior officer was compelled to 'name' those under his command who had behaved illegally yet would probably be an effective start towards combatting police solidarity. After a while, officers would be aware of the operation of the system, and so being reported or charged by their superiors would probably cease to be viewed as some kind of betrayal, and be accepted instead as routine procedure.

The idea of collective responsibility in public order policing then, is that the superior officers (whether these be immediate superiors or those higher up in rank) should not be able to divorce themselves from coercive behaviour that results in part from the implementation of broadly planned strategies. It is envisaged that it should work in two ways; firstly by holding superior officers responsible for the behaviour of those under their control if the individuals involved are reluctant to come forward. Secondly, and most importantly, the senior officer will be encouraged to name the individuals responsible for misconduct, or else s/he will suffer unfairly by being disciplined. In theory this would make the police considerably more accountable and less able to use coercion with impunity in low visibility circumstances.

The idea of collective responsibility for policemen's misconduct would be consistent with long established legal edicts recently confirmed, such as the law on riot which relies upon notions of collective responsibility, as does the new offence of violent disorder; they require twelve and three people to be present, respectively. If the army, and the criminal law (in different circumstances) recognise collective responsibility, why should the police be free from it? Recognition of the idea would not automatically mean rejection of the constitutional independence of each

officer - this would still be the operative standard in most cases. However, where appropriate, methods of enforcing collective responsibility should be instituted and the constitutional independence argument should not be used as an obstacle to this.

Although collective responsibility would be a welcome advance, like the independent investigation of complaints, it may prove to be more of a cosmetic rather than practical change. For example, if collective responsibility meant that more senior officers would be sanctioned, if held responsible for the actions of those under their command, then it is doubtful that this would happen very often. The influence of police solidarity pervades throughout the organisation, both at street level, where constables are protective towards, and unwilling to inform on colleagues, and at management levels where, if anything, the police hierarchy are less likely to want to criticise their officers. The morale of the police force would be severely undermined if those in positions of authority, and therefore the more experienced and able officers, were to be disciplined under rules of collective responsibility and the public image of the force tarnished if the senior officers were found guilty of misconduct. Even if laws confirming collective responsibility were brought in, the police could probably boycott them in practice, and they would have to rely on the judiciary for enforcement.

Collective responsibility would incur the disapproval of senior police figures but would possibly be more acceptable to the rank-and-file. Throughout this study, the solidarity of the police has been stressed, for it has great importance to policework generally and the use of coercion specifically, and collective responsibility is seen as one way of tackling this. However, according to Maurice Punch, talk of police solidarity ignores the 'divisiveness' between ranks, which he sees as a central feature of policing; 'In short, a major conflict of interest is latent in virtually every police

department, which mirrors that between bosses and workers in many organisations ... but which becomes acute when moral blame is being distributed because the dynamics of investigation inevitably tend to focus the spotlight **downwards.**' (Punch, 1985, p151-152, his emphasis.)

Collective responsibility would reverse the trait of concentrating investigations on the lower ranks. Rank-and-file constables would see that they are not always scapegoated, and any resentment they feel, (and divisiveness that results) from the unequal distribution of blame for misconduct would be partially redressed. If Punch's assertion is correct, collective responsibility would command much support among the lower ranks of the police force, since senior officers would not be able to divorce themselves from the consequences of policies that they directed. It would be interesting to see if collective responsibility could dent the edifice of police solidarity. Even though it would undoubtedly face many practical obstructions, it would nevertheless represent a step towards a fairer and more effective system of accountability for police coercion, and the principles upon which it is based would surely merit a broad political concensus.

The Chief Constable; an effective constraint on coercive public order policing?

In the absence of specific legislation to control policing, the position of Chief Constable plays an important role in the area of accountability; unfortunately more so in theory than in practice. Having bemoaned the lack of collective responsibility for coercive policing, it is technically present in one way in that the Chief Constable is generally responsible for the actions of those in his force. Representations must be made to him about any grievances concerning his officers' policing methods. This section briefly considers the importance of the Chief Constable's position and then examines his relationship with his police

authority, supposedly the means by which the wishes of the policed community are expressed, and the proper instrument of accountability.

As noted above, a Chief Constable will be held responsible, or jointly responsible for the actions of his men in certain limited circumstances (although this is not the same as being accountable) and it is the chief who will be sued in a civil action, as a representative of his force. An example of this happening in 1988 was when Staffordshire Police distributed hundreds of neighbourhood watch leaflets blaming black youths for some crimes in Wolverhampton and asking people to note the registration numbers of cars driven by black people. ('Today' 20.6.88.) The leaflet was initially considered a hoax 'because it was so offensive' according to its critics (Ibid), and the net result was that the Commission for Racial Equality sued Staffordshire Police and their Chief Constable, Charles Kelly.

The Chief Constable will also exercise internal control over the members of his force in the day-to-day running of police operations and implementation of standing orders. However, when there is reason to question excessive police force in a public order context, the Chief Constable can not be relied upon to present a check on power. He will face the choice either of admitting police coercion, criticising his own officers, seeking to find out why they behaved so, and disciplining them accordingly, or of denying misconduct took place and claiming that the police operation was necessary and sensibly handled. The former course of action is virtually unheard of; police chiefs do not usually admit that their men are at fault, preferring either to pretend that there has been no police misconduct, or presenting it as a necessary and legal response to illegal provocation or action. If a Chief Constable was to criticise his men publicly, his working relationship with them, and thus the operation of the whole force would be impaired. Conversely, when, as is usual, a police chief defends his men against

allegations of coercive misconduct, it may boost his internal standing in the force, but at the expense of the support of large sections of the community, who will have no faith in his alleged independence and impartiality. That the police chief always sides with his men and will react defensively to criticism is unsurprising, and is in fact normal behaviour for any profession; his defensiveness is only to be expected, and is entirely consistent with police cultural responses when feeling beleaguered. The Chief Constable can not be relied upon to curb police coercion then, but what is worrying is the antithetical influence he can have on coercive policies; so much power is vested in one person that his personal actions and opinions, coupled with his freedom from effective accountability can have repercussions that positively enable police forces to follow more coercive and conflictual policies. Far from preventing police coercion, a Chief Constable is in such an unfettered position that he can unwittingly encourage it. With the lack of a clearly delineated system of accountability for general coercive policing, aggrieved individuals and bodies may only complain to the Chief Constable, either directly, through police authorities, or the media. The ability he has to ignore or dismiss such complaints without needing to furnish explanations, means that such coercion is unreviewable. Thus the personal power and lack of accountability of the one person, the Chief Constable, as a representative of his force, becomes symbolic of, and reflects the lack of accountability for, coercive public order policing. The two are interwined.

Development of Chief Constable's powers

The modern Chief Constable is part of a tripartite structure of administration and control with the Home Office and police authorities. The word 'control' can only be used loosely however, since there is both in theory and practice, little that the Chief Constable can be prevented from doing

if he judges it reasonable, no matter that his view may not be shared by many others. It is both worrying and anomalous that in an age that strives for democracy (without always achieving it) unelected Chief Constables are able to wield vast personal and state powers relatively unchecked. It is unsatisfactory to attribute and equate their lack of accountability to constabulary independence and historical precedent since Chief Constables today bear little resemblance in function and size of their force to their predecessors.

In chapter one, reference was made to the way in which the Chief Constable has assumed powers through the ages, largely through opportunism rather than parliamentary intention. The genesis of the Chief Constable's growth in power, and a statute that confused the crucial matter of control, was the Municipal Corporations Act of 1835. Critchley contrasts this with the Metropolitan Police Act of 1829 which clearly placed the London force under the Home Secretary's authority. By contrast, the 1835 statute for borough police forces was silent on this matter. It 'made no mention' either of the Home Secretary, Chief Constable, Superintendent or any other ranks who should take charge of the constables (Critchley, 1978, p66). Thus can be seen the germination of the power vacuum into which the Chief Constable was later able to insinuate himself, free from any contrary legislative instructions. Critchley noted that the confusion surrounding this statute resulted in the unanswered question of who controlled the Chief Constables? (Ibid, p67.) A pertinent question that arguably remains unanswered today.

By 1860, the Inspectors of Constabulary's reports revealed that the watch committees still maintained power over their forces whereas in the counties, the Chief Constable was an autocrat over whom the justices had no power other than dismissal. (Ibid, p124.) Critchley stated that in the aftermath of the Municipal Corporations Act of 1877 (which imposed a compulsory check on the formation of new police

forces) the law was still no more informative on the issue of control; 'the inadequate state of the law led to inevitable clashes between watch committees, who regarded their Chief Constables as their servants to carry out orders, and Chief Constables ...' (Ibid, p131.)

Many Chief Constables obviously had more confidence in their own judgement than in those of the justices and watch committees, and preferred to work undirected on their own initiatives. The development of the Chief Constable's powers was not uniform however since their status varied in the latter part of the 19th century between borough and county forces; the county Chief Constables enjoyed supreme command of their men whereas in the boroughs, the watch committees remained influential in the direction of operations. (See Ibid, p143.) The Local Government Act of 1888 also had an important bearing on Chief Constables' powers when it created 'standing joint committees' to oversee police affairs. These were more recognisable forerunners of today's police authorities. The idea was that the management of the police should be the preserve of these committees, that were to consist of county councils and magistrates, and the appointment of the Chief Constable was to be the responsibility of the committee instead of just the magistrates as previously. (Ibid, p134-136.) Critchley comments; 'Already the role of the justices was in eclipse, and that of the local authorities in the ascendant. But who now controlled the Chief Constable? ... the law on the matter was as inadequate as ever, and the Royal Commission on the Police, reporting in 1962, was probably right in concluding that a situation was gradually coming about, 'unregulated and probably unrecognised by parliament, in which Chief Constables, able and intelligent men, growing in professional stature and public esteem', were assuming authority and powers which their predecessors would formerly have sought from justices. For as the justices dropped out of the picture the contenders for power were Chief Constables

and local police authorities; and the county men, with their generally greater social acceptability, wider powers of command over the force and looser subordination to the standing joint committee, slipped easily into a dominating position to which their borough colleagues could scarcely aspire without colliding with the watch committee.'

Again, the historical trend of the Chief Constable benefitting from legal uncertainty rather than positive intent to give him power is evident here. As powers were taken from the justices, and the influence of the latter reduced, it was not clear what they were being replaced with. This provided the Chief Constable with the opportunity to increase his powers through his practical day-to-day running of the force where unrestrained by rules to the contrary. To this subtle acquisition of powers without statutory basis could be added those intended by law. For example, the Police Act 1919 transferred duties of appointment, promotion and discipline of officers to the Chief Constable from his watch committee. Unfortunately, where statutes have tended to delineate clear duties to the Chief Constable such as these, they have been of this kind of uncontroversial administrative nature. On important policy issues concerning limits of power and control, the law has always been and remains today, unhelpful.

The practical impotence of police authorities today when in conflict with their Chief Constable, is in fact not without precedent. In 1957, the Chief Constable of Nottinghamshire, Popkess, was in disagreement with his watch committee. (See Critchley, p270-273.) He had refused to write them a report they had requested on the grounds that enforcing the criminal law was his responsibility not theirs. The committee then suspended him, using a nineteenth century power of theirs on the ground that he was unfit for office. The Home Secretary, however, supported the Chief Constable by finding that he was carrying out his duty to enforce the law and in this capacity was an officer independent of local or central control, and

immune from external influence. The Home Secretary had relied upon the cases of Fisher v Oldham Corporation (1930) and Attorney-General for New South Wales v Perpetual Trustee Comapany (1955) in reaching this decision. (Both of these are examined in Marshall (1965) and Lustgarten (1986).)

Critchley noted (Ibid) how this incident focussed public attention on the inadequacy of the law governing police authorities and Chief Constables, and the relations between them. It was now clear that the Chief Constables had become figures of power, without there being public awareness of the extent of this power. The Royal Commission set up to look into the police that reported in 1962 made recommendations that shifted the balance of power in policing towards central government. However, the Commission recognised that the position of the Chief Constable needed attention, when they reported that 'The problem of controlling the police can be re-stated as the problem of controlling Chief Constables.' The Commission found that 'he is accountable to no-one, and subject to no-one's orders ...' (CMND 1728, 1962, para 89.)

However, the statute that followed this report, the Police Act 1964, appeared not to have heeded this warning nor acted upon the Commission's misgivings, since it appeared to represent the statutory culmination and confirmation, of all the powers that the Chief Constable had gradually been acquiring throughout the preceding decades. Section 5(1) of the Act provided that each police force was to be 'under the direction and control' of its Chief Constable. This gave Chief Constables statutory authority with which to defend their actions, yet inevitably, since the wording of the Act is so vague, it is of more help to the police chief than it is to those who seek to determine the limits of his power. The 1964 Act envisaged the control of the police as being the joint responsibility of the Chief Constable, the local police authority and the Home Office. This 'tripartite structure' and theoretical distribution of power was intended to bring a balanced approach to police governance and ensure

that none of the above elements were to become disproportionately influential in policing. In this it has failed.

The police authorities' powers under the 1964 Act were less far-reaching. Under section 4(1), the police authority is under a duty to secure the maintenance of an 'adequate and efficient' force for their area. It is the task of Her Majesty's Inspectorate of Constabulary to decide whether a force is 'efficient' or not; if it is found to be so, it can receive the exchequer grant that makes up 50% of its funding. If the Inspectorate were to find a force inefficient, they could withhold the grant. This has not yet been done in practice and looks unlikely to be used. However, the existence of this power means that where a police authority disagrees with its Chief Constable and the Home Office, (and holds different beliefs as to what constitutes 'efficiency') it can not risk trying to change things too greatly in case the withdrawal of the grant should result. this would have far-reaching implications, police funding would have to be met locally and so the funding of all other local services and so forth would be thrown into disarray. This has not happened yet, but is a strong disincentive to the police authority trying to assert their favoured policies should these not be agreed to by the Home Office.

The police authority technically have the power to appoint and dismiss Chief Constables, but in reality these are nullified by the Home Secretary. The Police Act 1964 contains many curious provisions; it seems torn between ideas. For example, on the one hand, it seems to give acquiescence to the idea of the police authority having some controls over the Chief Constable and has actually provided for these in the Act (eg in the appointment and dismissal provisions). However, it appears wary of actually giving these powers unconditionally, in that it also provides the Chief Constables with the means to ignore and circumvent

them. Thus, although the Act provides that the police authority is to appoint the Chief Constable and Assistant Chief Constables, (section 41(2)) this can only be done if the Home Secretary approves of their choice. The Home Office are effectively able to veto any one that they do not approve of. As regards the dismissal of a Chief Constable, Lustgarten writes; 'Once entrenched in post, a Chief Constable is almost impossible to remove. Corruption and misconduct aside, a police authority may call upon him to retire on one ground only, 'the interests of efficiency'.' (1986, p75/76.)

This power exists under the Police Act 1964, section 5(4), but as Lustgarten adds, it has never been invoked and the term 'efficiency' has not, in this context, been construed by the courts. Furthermore, as with the power to appoint a Chief Constable, the police authority are not able to act independently here even should they wish to attempt a dismissal on the grounds of inefficiency (which would doubtless be legally tortuous), since the Home Secretary's approval is again needed before a Chief Constable can be dismissed. 'The practical reality is therefore that a Chief Constable can ignore his police authority if he wishes to do so provided he can count on Home Office support.' (Ibid, p77.)

These hollow powers are augmented by a third, theoretically useful, but practically ineffective provision. Section 12(2) enables the police authority to require their Chief Constable to provide a written report on anything relevant to the policing of the area, should they think it desirable or necessary. Thus, if a Chief Constable is pursuing unpopular or controversial policies, or there has been an incident in the area such as policing a disturbance, that the authority wish to have more information on, and further explanation about, they can ask the chief officer for a written report. However, the earlier pattern repeats itself and an escape route is conveniently provided for him, since the Chief

Constable can ignore this request if he judges that any such report would contain information contrary to the public interest or that it is not needed for the fulfillment of the police authority's duties. If this impasse should be reached, the authority can refer the matter to the Home Secretary (section 12(3)), whose judgement will be final. The Home Secretary, will, in all probability, back up the Chief Constable to the frustration of the police authority. In practice, the matter will probably end with the Chief Constable's refusal to provide a report. Knowing the cosy relationship between police chiefs and the Home Office may be enough to dissuade the police authority from appealing. This power of Chief Constables to override a request for information from a police authority is undesirable and undemocratic, particularly if on the grounds that it is not required for the police authority to discharge their duties. This enables the Chief Constable to take a haughty and presumptuous view over what he considers to be the functions of his authority. No matter that the members of the authority may feel their being informed on certain issues is important; if the Chief Constable disagrees and sees it as an irrelevance to their function, they are powerless. Similarly, allowing the Chief Constable to decide what is in the 'public interest' is seriously flawed. This is a concept that has now become discredited by misuse and misapplication, and re-worked so that it frequently betokens the precise opposite of its apparent literal meaning. Nowadays, in an age when the 'public interest' has been expressed as being in the interests of the government of the day, it is clear that it is used as a political instrument, or as a defence mechanism to protect those in power. Because it is an elastic term, incapable of consensual definition, a Chief Constable will always be able to argue that he is withholding information in the public interest, and the vagueness of this defence places him safely beyond effective recall. The net result of these powers of the Chief Constable is to encourage and facilitate

a legal arrogance in his dealings with his police authority. Lustgarten comments; 'The unsatisfactory, indeed somewhat ludicrous, result is that police authorities are entirely dependent on their Chief Constables for information, making their ability to offer effective criticism subject to the co-operation of its primary target.' (1986, p78.)

This arrogance manifests itself whenever police authorities request reports that the Chief Constable feels are unnecessary. Often a Chief Constable will view such a request as if it is an impertinence or an insult. Scraton has pointed out that 'Whenever police authorities attempt to call their Chief Constables to account they are portrayed as engaging in an exercise in **control** rather than **accountability.**' (1985, p83, his emphasis.)

Indeed the phrase 'operational independence' of the police is bandied about in this context and used to justify the Chief Constables' autocracy. For example when the Merseyside police committee requested more information on the policing of the Toxteth uprising in 1981, the local Police Federation chairman declared that they should not be involved in operational matters. (Ibid, p84.) Although a report was written about the death of Jimmy Kelly in police custody in Knowsley, Liverpool, the police authority did not see it. (Spencer, 1985, p64.) However, 'the requests for information and the calling for reports by the police committee in both the Knowsley and Toxteth cases were clearly within the letter of the 1964 Police Act. Given the seriousness of the issues and the massive local, community-based concern, it could be argued that had the police committee not intervened and called for reports it would have failed in its statutory duties.' (Scraton, Ibid.) The emphasis the police place upon their maintaining 'operational control' of policy is a crucial element in their resisting attempts to make them more accountable; it is viewed as being sacrosanct. However, this is misplaced - 'operational control' is not being sought by police authorities when they request information on past

actions, and as Lustgarten points out (1986, p78) this term has no legal meaning or delineation anyway. Again, 'operational control and independence' represents another example of a self-constructed concept that has become a power although not specifically provided for by any statute. It has been claimed as a fundamental principle by police chiefs, and used as a bulwark with which to sustain their position and deny information to police authorities.

PRACTICAL IMPOTENCE OF POLICE AUTHORITIES; The miners' strike, plastic bullets and CS gas

The number of police forces in England and Wales slowly dwindled as the nineteenth century proliferation of county and borough forces gave way to fewer, amalgamated forces. This trend crystallised into the current situation when the Local Government Act of 1972 reduced the number of police forces to forty-three. The power and influence of the Chief Constable has consequently grown in inverse proportion to the number of forces. The fewer and larger the remaining forces are, the more powerful the Chief Constables. There has been no growth of police authorities powers commensurate with this. Steve Uglow observes that 'The interpretation placed on their respective statutory duties meant that after 1964, local police authorities generally regarded themselves as quartermasters, overseeing the budget, receiving an annual report, but not taking initiatives in the policing of an area. In practice such an approach increased the Chief Constable's autonomy so that issues of operational policy came to be seen as outside the competence of the police authority.' (1988, p41.)

The police authorities' attention to fiscal matters has, in the 1980's, been augmented by concern at certain policies and tactics of their forces, and their desire for more information about these has led into direct conflict with their Chief Constables. As seen above, Chief Constables have been able to frustrate the demands of their local police

authorities, but not without developing and exacerbating the mutual distrust that frequently exists between them. It is strange that the police hierarchy and Chief Constables should criticise so strongly, those authorities who question their actions. Police authorities and committees have remained relatively silent throughout their recent history. Now, when they are actively attempting to fulfil their proper functions, by questioning and debating a Chief Constable's actions, they find themselves villified by those very same officers. This in itself is not surprising, given the self-defensiveness which is a characteristic of the police as a whole, and their sensitivity to criticism. However, it is ironic that inquisitive police authorities today attract such denigration from the police simply for trying to exercise their legitimate rights. This seems to have been forgotten. Just because many authorities lay compliantly dormant for many years, does not mean that the powers and duties granted to them by the 1964 Act were removed. Non-use does not equal abrogation. Nor must the probing actions of police authorities today be cast as those of politically motivated extremists. Today's police authorities are not particularly extreme, and may only appear so to the police in comparison with their predecessors who were largely passive, uncritical and acquiescent in police activities. It must be borne in mind when Chief Constables criticise and accuse their authorities of interference, that the latter are only 'doing their job'. The fact that Chief Constables in previous years did not have such struggles was because authorities were not fulfilling their functions. Thus the indignation and contempt displayed by some Chief Constables towards their authorities today is misplaced and unintentionally ironic.

Such indignation has been commonplace during the 1980's. Two examples illustrate the struggle between police authorities and Chief Constables well; the arrangements for policing the miners' strike and the argument over the supply of plastic bullets and cs gas. In both these matters,

certain Chief Constables and their authorities were in uncompromising disagreement. It must be stressed that normally, police authorities function supportively in tandem with their force for the benefit of their populace. Any emphasis on discord in this chapter is not intended to paint a general picture of constant disagreement and hostile relations. However, in examining control of the police, attention needs to be paid to what ultimately happens when they are in conflict with their police authority. Although Uglow's earlier description of the authorities as 'quarter-masters' implies an uncontroversial low profile role, it was their financial powers that formed the basis of their attempts to curb the Chief Constables' coercive policies in the 1980's.

Firstly, as regards the supply of plastic bullets and cs gas - obviously their availability has a direct bearing on the police's potential use of coercion. If police authorities did not want these weapons and could have prevented their purchase and deployment, it would have represented a significant development in the control, or constraint, of police coercion. However, the 'tripartite' structure of police governance has proven to be heavily weighted as two-thirds Chief Constable and Home Office against one-third of the police authority.

CS gas was used against citizens at Toxteth, Liverpool, in 1981, for the first time in England or Wales. In taking the unilateral decision to deploy CS gas, Chief Constable, Kenneth Oxford, transgressed Home Office instructions that limited its use to dealing with armed and besieged criminals. (See Scraton, 1985, p76.) This is symptomatic of the confidence Chief Constables have in their own powers. It was announced in February 1982, that 3,000 plastic bullets had been distributed to forces in England and Wales. (Spencer, 1985, p67.) This was without either parliamentary or local debate. The National Council for Civil Liberties then conducted a survey to try and discover which police forces

had plastic bullets and what the role of the police authority had been, if any, in their purchase. NCCL received replies from 23 police authorities out of 43; some of these would not divulge all that was asked, claiming it was an operational matter, others confirmed they possessed stocks, but would not say how many men were trained to use them. (See Spencer, 1985, p67/68, for further details.) Only fourteen authorities had actually discussed the issue, and the NCCL survey itself, prompted its discussion in some areas. Whislt Essex and Lincolnshire police authorities had approved the equipment, others were only 'consulted', and in Merseyside, the equipment had been purchased but the police authority only informed after this 'fait accompli'.

The NCCL survey reveals how the supply of plastic bullets has developed in a piecemeal way without following any coherent national pattern, and re-emphasises the weak position of the police authority.

Some police authorities have tried to assert their views and prevent the purchase of plastic bullets by their forces. By arguing that they need the money for other purposes and invoking their financial powers, the police authorities thought that they had a convincing and legal case. However, this has now been circumvented by Chief Constables and the Home Office. In 1985, following rioting in Handsworth, Birmingham, the Chief Constable of the West Midlands, Geoffrey Dear, proclaimed in his ensuing report to his police authority that if the police had used plastic bullets there, it would have enabled the earlier restoration of order and the possible saving of lives and property. (The Guardian 21.11.85.) This is, of course, pure conjecture that considers none of the disadvantages of plastic bullets. However, the reason they were not deployed in Handsworth was that the West Midlands was one of four Labour-controlled police authorities who had imposed a ban on their purchase, (the others being Greater Manchester and South and West Yorkshire.) The Guardian commented; 'It is essential that

there must be a proper public debate and that includes parliamentary debate too. ... Far too many watershed decisions in policy are being taken unilaterally by Chief Constables, and this is overwhelmingly one that should not be.' (Ibid.) Chief Constable Dear's statement is worrying in that he indicates that plastic bullets certainly would have been used were it not for the police authority's ban. There has been no rioting on a similar scale since then, but their use when next it happens seems assured. This appeared to be a minor triumph for the police authorities, but it was to be limited.

In December 1986, the chairmen of the four authorities met senior Home Office officials and the Chief Inspector of Constabulary, Sir Lawrence Byford, and were told that if they continued to reject plastic baton rounds and CS gas, it would be given to their Chief Constables anyway from a central Home Office store. (The Guardian 6.12.85.) In May 1986, Home Secretary, Douglas Hurd, announced measures implementing this, designed to help Chief Constables who were experiencing problems with their police authorities over obtaining CS gas and plastic bullets. A Chief Constable could then apply to the Chief Inspector of Constabulary for the bullets and gas, and be issued with up to 1,000 baton rounds. New guidelines for their use were also issued; both baton rounds and CS gas must only be used where it is judged that they would reduce the risk of loss of life or injury, warnings must be given and they are only to be used by trained officers. The Home Office was also to pay for training costs if a police force would have had difficulty in financing this. (The Guardian 20.5.86.)

By the end of 1985, thirteen police forces had purchased plastic bullets and 32 had CS gas (Ibid), but these new measures made it possible for all forces to have them, and made the police authorities' views on the matter an irrelevancy. Although this supply is subject to the approval of the Chief Inspector of Constabulary, this is not likely to

prove an obstacle in practice. Indeed in his annual report to the Home Secretary on policing in 1985, Sir Lawrence Byford stated that after the 'stark escalation of violence in this country' 'Reluctantly, therefore, the weapons of last resort, such as baton rounds and CS gas, need to be available to the police if their use may be the only means of dealing with major public disorder which seriously threatens life or property.' (The Guardian 19.6.86.) He added that their use is needed to keep a gap between police and rioters, and thus reduce the likelihood of injuries.

The creation of the central store of these weapons exposes the tripartite structure of police control as a sham, a mere pretence at accountability and one in which the role of the police authority is carefully suppressed. The proposal to supply baton rounds and CS gas without public debate or police authority consultation and approval is profoundly undemocratic, and was challenged in court by the Northumbrian police authority (with the support of the Association of Metropolitan Authorities). They claimed that the Home Secretary was acting beyond the powers granted to him by the 1964 Police Act enabling the central supply of the equipment without police authority approval. The Home Secretary relied upon section 41 of the 1964 Act which states that he 'may provide and maintain or may contribute towards the provision or maintenance of a police college ... (etc) ... and such other organisations and services as he considers necessary and expedient for promoting the efficiency of the police.' (My emphasis.) The Divisional Court held that the Home Secretary had no power to supply this equipment without police authority consent under section 41, but did so under the royal prerogative to keep the peace of the realm.

Under appeal, Lord Justice Croom-Johnson, in the Court of Appeal (R v Home Secretary ex parte Northumbria Police Authority, The Guardian 20.11.87) said that it was not permissible to read words into section 41 such as 'with the consent of the police authority', for this would interfere

with the operational discretion of the Chief Constable. The three Court of Appeal judges therefore upheld the Home Secretary's action in setting up this central store as a statutory right. Furthermore the court reasserted that the Home Secretary would have the power to do this under a royal prerogative to keep the peace and that since the 1964 Act does not give police authorities a monopoly on supplying equipment, it does not restrict the exercise of the prerogative by the Home Secretary. This prerogative was said to be exercisable not only during an existing emergency but wherever there is reason to apprehend outbreaks of riot and serious civil disturbance. (Ibid.) Lord Justice Croom-Johnson said 'The judgement of what is an emergency must be within the operational powers of the Chief Constable unsubjected to any control on the part of the police authority.' (The Guardian 19.11.87.)

This decision constitutes unqualified support for the Home Office and Chief Constables and implicit trust in the judgement of the latter. The reference to the royal prerogative gives the police and Home Secretary massive discretionary powers and effectively provides them with a shield against accountability. Again, the accommodating attitude of the judiciary towards its agents questions its value as a tool of accountability. The result is that an arrogantly undemocratic measure has now been backed both statutorily,and at common law, using an ominously vague authority to do so. Unfortunately, the potential breadth of the royal prerogative and the apparent freedom from regulation of any decision made under its auspices, are only too consistent with the vagueness of the other laws governing the police use of force.

Prior to this decision, when Greater Manchester Police Authority had imposed a ban on plastic bullets, their Chief Constable, James Anderton, had nullified this by obtaining 500 plastic bullets and four guns on permanent loan from Scotland Yard. (The Guardian 6.12.85.) This leads to consideration of the principle that was instrumental in

thwarting the wishes of police authorities during the miners' strike, namely that of providing mutual aid. In fact, this did not thwart the wishes of all police authorities, since many agreed with the principles of mutual aid in the strike, but it did expose the relative powerlessness of those police authorities who disagreed with the Home Office and Chief Constables over the extent of this aid. Section 14(1) of the Police Act 1964 relates to mutual aid and states that a Chief Constable will decide what aid to give when requested by another Chief Constable, although it is up to the two police authorities concerned to determine payments. (Section 14(4).) During the miners' strike, problems arose both for those police forces that provided aid, in that their resources remaining were stretched and policies altered accordingly, and for those that received it. Police authorities (such as South Yorkshire) were presented with massive bills for the services of reinforcements and so forth, (see Spencer, 1985, and Lustgarten, 1986, chapter eight for more detailed accounts) that they could not pay.

Spencer (Ibid, p9) recalls how the president of ACPO had sent a telex to all Chief Constables in March 1984 giving details of a meeting with Home Office officials and advising them that financial considerations should not in any way influence the operational discharge of their duties since the Home Secretary would support their use of additional resources for the strike. However, the police authorities were not initially aware of this (Ibid, p10) and the concern of some authorities to try and force the Home Secretary into providing extra funding led them to propose cuts in their police budgets, which they felt they had to do to try and contain the costs; 'The action which the authorities took has been interpreted as conflict between them and their Chief Constables, but this is not what inspired it. In the principle areas involved - Nottinghamshire, South Yorkshire and Derbyshire - the Chief Constables were in agreement with their authorities that it was necessary to get a larger

contribution from central government, if not with all the steps they took to get it.' (Ibid, p12.)

South Yorkshire police authority proposed to disband its mounted police section and half of its dog section, (which had been involved in the policing of Orgreave coking plant) to cut costs, and Nottinghamshire police authority cut back its regional crime squad. The Home Secretary had threatened to sue to prevent these happening, but eventually relented. It is not clear on what basis any action would have been taken, although it is possible the Home Secretary could have claimed the police authorities were not maintaining an adequate and efficient force as they were charged to do under the 1964 Police Act.

Spencer (1985, p69-70) speculated that this ground could also have been used in relation to plastic bullets and CS gas. She thought that if some forces possessed such equipment, then those that lacked it could conceivably be described as not being at the same level of efficiency. In this case, the Home Secretary would be able to overrule the wishes of the police authority and supply the equipment directly. Spencer also thought that any force lacking in plastic bullets and CS gas would obviously not be in a position to provide these materials as mutual aid if required and so would not be fulfilling their statutory duties in this regard. (Ibid, p69.) However, such theorising was made redundant by the Court of Appeal's decision to allow the royal prerogative to be used by the Home Secretary to by-pass his police authority's wishes.

The practical impotence of police authorities in the struggle over plastic bullets and CS gas was echoed by their roles in the miners' strike. Many police authorities were motivated primarily by very genuine concerns about their budgetary limits rather than, or as well as, police tactics in the strike. It became clear that the decisions and preferred policies of the police authorities would be subject to the approval of the Home Office and Chief Constables. The

so-called tripartite structure of police governance is one in which the voices of police authorities can go unheard. Lustgarten notes that the miners' strike 'exposed almost cruelly the powerlessness of police authorities to carry out their statutory duties.' (1986, p125.)

The ineffectual position of police authorities in the strike was summarised by Spencer; 'The Home Secretary's guidance to Chief Constables, supported by the legal advice sought by police authorities, overturned the role of the police authority in relation to its budget which was thought to exist prior to the dispute. Chief Constables were told that they could spend whatever they considered necessary, if the expenditure was reasonable, regardless of the budget approved by the authority and county council, and regardless of their standing orders. This exposed the inherent conflict between the Chief Constable's duty to direct and control his force and the authority's fiduciary responsibilities for the ratepayers' money. It ... made nonsense of the authorities' accountability for ratepayers' money. The Chief Constable was now, in effect, accountable for the expenditure.' (1985, a, p21.)

Police authorities were unable to influence 'operational' decisions directly, and, neither after the miners' strike, can they do so indirectly, by using their financial powers. The police authority, although representatives of their communities, are sadly unable to influence coercive police policies where they are in disagreement with the Chief Constable. The Chief Constable will often, in practice, overrule his authority, knowing that he can ultimately rely upon Home Office support.

The outspoken Chief Constable

The Chief Constable of Greater Manchester, Mr James Anderton, has a higher public profile than most of his colleagues. This is not due to any particular innovations or successes in his professional capacity however, but to a series of

pronouncements he has made on certain issues. Brief consideration of Anderton's behaviour is relevant here, since his speeches have betrayed a range of unequivocal beliefs, that although doubtless sincerely held, have worrying implications in one who has such extensive power. In chapter five, Anderton's belief in corporal punishment was cited, and his willingness to flog criminals until they begged for mercy. (The Guardian 14.12.87.) This caused consternation at the Home Office; such forthright opinions indicate a willingness to pre-judge suspects and a tendency towards vengeance and punitive summary justice. With these beliefs, can Anderton be trusted to root out illegal police coercion, or is he likely to unwittingly encourage it?

In December 1986, Anderton saw fit to share his opinions on the disease AIDS, describing it as a 'self-inflicted scourge' and talking of the 'obnoxious practices' of homosexuals and of people 'swirling about in a human cesspit of their own making.' (The Guardian 12.12.86.) Publicising his personal prejudices in this way seriously undermines the confidence that many people have in the Manchester police force. Would a homosexual arrested by, or seeking help from the Manchester police after this speech, have felt certain of receiving fair, impartial treatment? What Anderton did in this case was to articulate the stereotyped, prejudiced views of the police subculture, but justified by some tenuous moral claims. Such pronouncements wrongly confuse legal and perceived moral standards and can only detract from principles of equality before the law and neutral law enforcement. If the Chief Constable, with his vast powers, has neither the tolerance or understanding of such differences in society, this bodes ill for his ability to direct his force in sensitive areas.

Anderton remained unrepentant for his remarks and actually exacerbated the controversy by claiming that he believed God may have been using him to speak out on moral issues. (The Independent 19.1.87.) Although Anderton received some

support for these remarks from some religious fundamentalists, he seems not to have considered the consequences for his police force. Manchester policemen complained about the ridicule they had since experienced from members of the public, related to these comments (The Observer 25.1.87) and Mr Tony Judge of the Police Federation said that Anderton had no right to pontificate on AIDS as a police officer; 'In doing so he handed his many political critics yet another stick with which to beat the police force, which can now be labelled as bigoted, intolerant and uncaring in its attitude to AIDS sufferers. ... he dragged the police service into a moral debate that should not be its concern.' (The Guardian 15.1.87.)

Eventually, the clamour of public criticism and local police authority concern led to Anderton being called to the Home Office for urgent discussions in January 1987. The Manchester police authority wanted Anderton to contain his utterances or leave the force. After a second meeting at the Home Office it was eventually agreed that Anderton should be more guarded in his pronouncements and should meet his authority regularly. (The Guardian 28.1.87.) The police authority was to ask the Home Office to discipline Anderton should he break his promise to consult their chairman on controversial issues in future. (The Guardian 31.1.87.) The Anderton incident was notable in that the Home Office was actually involved in the resolution of the problem, and censured him for his behaviour. It is both ironic and significant that this was the last time any Chief Constable has been visibly reprimanded by the Home Office. Ironic, because despite all the contentious policing policies of recent years, these have passed without Home Office comment, whereas Anderton's public pronouncements roused them into confrontation with one of their Chief Constables. Significant, because the Home Office were willing to exercise their disciplinary functions over a matter that was relatively trivial and in which their actions would be

understood and accepted by policemen. In other, more important policy matters, the Home Office will neglect its function as arbiter between police authority and Chief Constable, and side with the police force.

CHAPTER TWELVE

LAWS, RULES AND REGULATIONS, EFFECTIVE CONSTRAINTS ON POLICE BEHAVIOUR?

The need for further regulations

A recurrent theme throughout this work has been the scarcity of laws relating to the police and their coercive capacity. This is true of all areas of potential police coercion, whether it be used by an individual or a group, and irrespective of the weapons and equipment being deployed. Where laws pertaining to force do exist (section 3 of the Criminal Law Act 1967 and section 117 of PACE) they are unhelpfully vague - relying on police discretion rather than legislative direction for their enforcement. It is contended that more rules or laws are preferable in this area, whilst simultaneously maintaining an awareness of the limitations of such charges.

Chapter three details several ways in which the law on reasonable force has been found wanting. Its vagueness, its accommodation of subjective opinions and it being geared only to an individual's actions are but a few of its faults. The emphasis on individual responsibility can produce results unfair to the constable in some instances (for example fire-arms cases) whilst admittedly being appropriate in others. That there are vast differences between many commonly occurring incidents in policing is as obvious as it is neglected by the law on coercion. This recognises only the one standard to which all behaviour must be adapted. Earlier chapters have suggested suitable reforms that might be made to the law on 'reasonable force' as it affects individuals; but perhaps the most urgent task should be to rectify the grave omissions in accountability for public order policing. If the situation regarding the individual officer's use of force is unsatisfactory, and the control and complaints mechanisms largely ineffective, then this is emphatically more so in public order policing.

Following the 1986 Public Order Act, the need for checks on police powers is indisputable. The police have the power to impinge upon demonstrators' rights, yet demonstrators have

no parallel means of reply and of proving that the police have acted unlawfully. What is needed is for a government with the political will and courage, to frame legislation for public order policing. If laws can be drafted, and common law pronouncements made, on the number of pickets allowed and the conditions that can be imposed on demonstrations, then there should be similar directives governing the police. These need not compromise police operational independence; tactics could still be formulated by chief police officers as to when to use horses, if and when snatch squads should be deployed and so forth, but if the law clearly forbade horses to canter, as opposed to trotting into a crowd, confined the uses of truncheons to areas other than the head, and stated that riot shields are defensive and not offensive, then there would be a clear set of regulations effecting the reasonable and minimum force doctrines and making real efforts to recognise that the police are not always blameless in violent incidents.

The above type of laws would help redress the balance when blame is distributed after violent incidents. Instead of the demonstrators being automatically held culpable and implicitly criminalised, there would be yardsticks against which the neutrality and legality of the police response could be measured. The miners' strike of 1984-5 showed why such measures would be beneficial. This strike was notable for the nature of the police performance, that relied heavily on mutual inter-force co-operation and technologically co-ordinated deployments, as well as for the harshness and offensive nature of the police tactics. It was also blighted by frequent violent outbursts of varying degress of severity. What was interesting about this violence was the polarity and inflexibility of opinions held about its perpetrators. The government steadfastly refused to acknowledge that the police were responsible for any of the violence, blaming it instead on the miners. Union leaders naturally took the contrary view. Although personal

stubbornness and political expediency doubtless dictated such intransigance to a certain extent, to lay a blanket of blame on any particular side seemed unrealistic, ill-informed and calculated to fuel the conflict. The truth of whether police or miners were mostly to blame for the aggression may never be satisfactorily determined, yet whereas the police could arrest and charge miners in great numbers, and display offensive weapons at press conferences in the glare of the mass media to add weight to their side of the story, the miners lacked such effective channels of communication. Official denials of police misbehaviour were possible and were essential to the government's case; tales of strikers' violence are obviously going to sway public sympathy towards the police force. This would not have been so if the police were seen in the public eye as the violent ones, or at least, as having been equally violent.

In the absence of clear regulations, the miners could complain of brutal police behaviour, but not point to the flouting of any particular laws. However, if the suggestions made earlier were to have existed in 1984, and there had been rules explicitly setting out the police's responsibilities to use minimum force, then the police's behaviour, as well as that of striking miners, could have been scrutinised by the courts, and the conflict recognised for what it often was; the fault not of one side, but of both.

Another possibility that warrants consideration when thinking about measures to control the police, and help redress the balance of powers between police and demonstrators, is that of judicial review. The principle of balancing police powers with safeguards was much vaunted during the passage of the Police and Criminal Evidence Act through parliament, but was not so prominent in the Public Order Act 1986. This statute sought to give the police the additional powers it thought necessary to enable them to control public disturbances but did not address itself to the issue of controlling the police. However, judicial review is

available to demonstrators if they wish to take issue with the police over their imposition of conditions on processions and assemblies. This should be extended to enable review and challenge of controversial police tactics and levels of force.

Will more rules mean tighter control and less coercion?

The creation of more rules is being urged as a desirable step towards the control and deterrence of potentially coercive police situations, although the likely impact of such changes must not be exaggerated. The legislature's current neglect in this area is regrettable to those who feel the police are insufficiently controlled, more so since the recent opportunities to rectify such defects (in PACE 1984 and the Public Order Act 1986) have been passed up. Admittedly, the Police and Criminal Evidence Act made some welcome changes to the system of investigating individual complaints, but neither it, not the 1986 Act gave any thought to controlling the behaviour of groups of policemen in public order situations. In advocating more rules however, it is being assumed that these will have some effects towards achieving their purpose. Will this be so?

The recommendation of further regulations carries the implicit hope, rather than the confident expectation, that they shall have some effect. Reiner notes (1985, p175) that formal rules do have some impact in limiting the police's sub-cultural autonomy, but suggests this is an area that needs further research. The police obviously can not ignore all rules even should they conflict with subcultural norms, but, as seen in chapter four, the latter will often prevail where this happens.

It will be recalled that the PSI identified three different types of rules in their study of policing in London. (PSI, Vol IV, 1983, p171); working, inhibitory and presentational rules. (See chapter four.) Of these, it is the police's working rules that influence them in practice with their actions retrospectively being justified, explained or

defended in terms of wide-ranging presentational rules. When the police behave illegally (whether this be by using excessive coercion, or in other ways) it may often be viewed as a failing of the law (as if the recently-broken law should have deterred and prevented the police behaviour). However, this misunderstands both the functions of many laws, and their influence. As noted in chapter three, the working rules, and police culture, should not really be divorced from the legislative framework since it is the threadbare nature of the latter that enables a strong police culture to thrive. Indeed, complaining about the inadequate legal constraints on police misconduct in the interest of efficient policing betrays a misunderstanding of how important a malleable legal code is to the practical working of the criminal justice process.

One commentator notes how 'The entire control apparatus has become characterized by individualization, which means that a wide range of rules can be used to justify any particular disposition an official deems appropriate for his organizational interests. ... Legal rules, as well as other organizational rules, enable an enormous range of practices. The rules are **for** police deviance. ... much of what might at first appear to be informal or extra-legal practice is actually built into the legal rules.' (Ericson, 1981, p85/86, his emphasis.) Although written about Canada it is equally valid in the UK.

Thus our perception of rules needs to be reassessed. Whereas the public might naturally assume that laws and rules are there to constrain and limit behaviour, to the police they can be 'creatively enforced' and so will be viewed not with trepidation and as objects of wary respect, but as useful legal cover for much that is illegal. Even frequent use of the term 'illegal' here unwittingly helps to perpetuate the difference of attitudes to law between police and public. Because the police are professionally orientated to finding and dealing with people who have 'broken the law',

they are inevitably associated with acting legally, and the extent to which they behave illegally may be forgotten or disbelieved. In any case the police will not view factually illegal conduct as such, if it achieves a result. The essential fact is that law makers and agents of the criminal justice system are aware that the police need to behave illegally to fulfill their tasks and that illegitimate police behaviour can nevertheless serve legitimate organisational objectives.

Police misconduct is like a coin in which the two heads comprising the same thing are viewed very differently by the different parties of police and public. One side represents the police view that lax statutory laws and internal rules are helpful, and that breaking laws is not necessarily a bad thing, whilst the other side of the coin sees vague laws and any resultant police illegality as wrong. Shearing's analysis of the place of deviance in the reproduction of order is instructive here. He notes (1981, p37) how some sociologists of the 1930's-1950's equated deviance with disorder and conformity. A system of rewards was thought to be a good way of instilling these values, but such a perspective failed to take into account what is now widely accepted, namely, that deviance can contribute to social order and that 'Organizations do not simply respond to deviance by discouraging it, but facilitate its use in the fulfilment of organizational requirements. Once the possibility of functional deviance as a **routine** feature of the reproduction of social order and deviance with disorder can no longer be sustained.' (Shearing, 1981, p37.) In other words deviance, including use of excessive coercion by the police is only to be expected as part of the police function, and is used to achieve legal objectives. The disparity between public perceptions of the police's methods and functions and the practicalities, has produced the current situation whereby the true nature of much police coercion in society is denied. Indeed, it is largely ignored

or only commented upon when clearly excessive. The everyday occasions when force is used normally pass without critical public notice. Unfortunately, the public may wish to 'have their cake and eat it' regardless of the socio-legal indigestion that militates against this. That is, the public (and judiciary) are willing beneficiaries of many products of illegal police coercion whilst remaining unaware of the true means used for their attainment, (such as the punishment of those adjudged guilty of crimes, those whose admission of guilt has been influenced by coercion, and the subduing of some unruly and violent elements in society). The public may appreciate the end results of police coercion (where they are advantageous) whilst simultaneously being deceived about the process used to achieve them. The propaganda surrounding police work has made this confusion possible; the portrayal of the police as largely scrupulous law enforcers prevails, even where their use of force does not, and can not, tally with such an image. The fact that much police coercion is illegal is lost under the weight of the orthodox explanations of policing and pro-police propaganda.

The ability of the police force to behave coercively in certain ways without publicly admitting it, is enhanced by what has been termed the information control principle of 'plausible deniability' (Turk, 1981, p113.) Turk explains that this provides the police hierarchy with an answer to the problem of their knowledge about police deviance, where the responsibility of knowing can be politically costly. The principle of plausible deniability is one '... in which persons or agencies construct procedural mazes sustaining the appearance of ignorance but the reality of knowledge ... When deviance can be plausibly denied by insiders, and even more when denial is politically useful to powerful outsiders, substantiation of reported deviance becomes virtually impossible.' (Ibid, p113/114.) Plausible deniability is in turn, facilitated by presentational rules.

In asking for more laws to govern police coercion it is

important that they will not merely be presentational, but will instead be inhibitory and will influence police working practices. Simply increasing the amount of laws is no guarantee of improvements in the control and accountability of police behaviour. Brodeur (1981, p130-131) outlines the paradox that any control of police deviance that is not grounded in law is bound to be ineffective, whereas the law, far from providing grounds for control, has provided legitimacy to police behaviour that is either deviant or conducive to deviance. He further contends that a basic function of the criminal law is to legitimate activities for law enforcers that are legally prohibited to citizens, and that the present legal formulation of the police mandate is a source of police deviance. (Ibid, p131.) The truth of these claims has been seen - the vagueness of the law encourages the police to use extra-legal methods where they can and then to explain it as something else. Brodeur adds that expanding the number of rules to control police deviance implies one basic assumption - that it is possible for the police to enforce the criminal law without breaking it. (Ibid, p146.) This may not, of course, be the case.

It must be remembered that the form of police deviance under examination here is the excessive use of coercion and the misapplication of force. This can be distinguished from other types of police deviance and is arguably more amenable to legislative control. For example, police deviance is an all-encompassing term that covers fraud, corruption, violence, non-conformity to regulations, wrongful arrest, unjustified harassment and any other number of unlawful activities stemming from abuse of wide discretionary powers but that do not involve force. Extending the criminal law to cover the other forms of police deviance would indeed be no guarantee of influencing such behaviour, yet where police coercion is concerned, the matter is surely more clear-cut. The current 'reasonable force' provisions offer little guidance, but in those areas (firearms, public order,

treatment of suspects in the station, etc) where regulations could be enforced, law **could** influence police behaviour, since certain pre-agreed levels of force could be laid down, the transgression of which would be similar to committing an offence of strict liability. The police are going to use force anyway - this is fact, what is needed is to have certain standards already in place against which this coercion can be judged. This would mean that the coercion can not then be retrospectively justified as 'reasonable', but would be assessed as being either a straight legal or illegal matter. Reasonableness would not come into the equation.

Towards a workable alternative

As stressed earlier, legal changes along these lines could only be effected for particular circumstances. This would mean the fragmentation of the legal system for controlling police coercion, with the 'reasonable force' provisions being retained in many areas, whilst being replaced and augmented be fresh measures in others. However, a diversified but effective law would be preferable to its consistently toothless predecessor. Examples of where this approach could work are, in firearms control, aspects of public order policing and in police behaviour in the station. To take the last as a model; once a suspect is in police custody in a cell, then no matter how obnoxious his conduct, there can be no legal justification to use violence against him. It should be possible for officers to restrain him without beating him up, and the inconvenience of a raucous prisoner is less of a wrong than any force used to quieten him. In drafting rules to cover police coercion in the station (when most suspects, disarmed, will have ceased to be a 'threat' to officers), the legislature need to consult police, lawyers and other interested groups. The police can list the most frequently occurring types of case when force is used, and these must be noted, whilst simultaneously acknowledging the impossibility

of legislating for all circumstances. If it is not possible to describe precisely the amount of coercion the police are permitted to use, it is certainly possible to list what is prohibited, such actions to be recognised as excessive by police spokesmen. In this way, punching a raucous or drunk suspect in the station can be expressly forbidden as being excessive force; such conduct having been previously agreed in the negotiations with senior officers, as illegal. Any officer who had done this would not be able to plead his actions as 'reasonable' in response to the prisoner's behaviour, since the reasonableness of such actions would have already been taken into account in the drafting of the legislation.

In the same way, in a public order context, what can be called the 'negative notation' approach may be useful in declaring certain types of behaviour unacceptable. Consultation with the police in the law making process is again essential, but there seems to be no reason why the police should not agree to translate their training standards into law. For example, if the police teach their recruits and officers that truncheons are to be used only against the body and never the head, then this should be enshrined in law. This listing of what the police **may not do** will help to inform any subsequent assessment of what is reasonable force. Thus, any officer who strikes a demonstrator on the head to restrain him, will be immediately guilty of unreasonable force.

These suggestions relate only to the principle of re-structuring the legal framework on coercion along these lines. It is not pretended that this would be easy, quite the reverse - not the least of the problems encountered would be how to deal with the defences the police would be likely to raise. Self-defence, as has been seen throughout, is a particularly potent legal weapon for police officers, its successful pleading allowing a range of conduct that would unquestionably be illegal if used for other purposes.

Assuming that changes to effect police coercion were to be made (either of the type suggested above or otherwise), what form should they take? The choice is essentially between statutory legal obligations or disciplinary regulations. The PSI wanted to close the gap between the police's working rules and the inhibitory rules of the law, yet Baldwin and Kinsey point out a potential danger of doing this at law, namely that police practices can be legalised as has happened with PACE 1984. (Baldwin and Kinsey, 1985, p91.) They feel that PACE has merely legalised previous police practices with the only difference being that written records of what goes on in the station and the streets, are now required. The government and police claimed that the emphasis on making records for all their actions would ensure the police did not abuse their powers. Failure to observe PACE's provisions may lay the officer open to disciplinary action, but in practice, the police can circumvent supposed disciplinary restrictions. They have proven themselves adept at boycotting measures that they disapprove of. (For example, although the 1984 Act made racially discriminatory behaviour a disciplinary offence for policemen, it has yet to be used.) The plethora of rules and regulations surrounding policing, and increased by PACE, should not be regarded as automatically providing increased supervision over the police because this may not necessarily be so. In addition, any supervision that is provided may not be personal, but a review of paperwork. Baldwin and Kinsey note that 'there has been a retreat from legal control to internal discipline and supervision.' Talking of PACE 1984, they note 'that rather than increase legal control where potentially effective, the Act has signalled a wholesale retreat of the law - all faith being placed in managerial control and internal disciplinary and supervisory systems. In the absence of any complementary legal and political controls, these measures ... are completely out of balance, and destined to exacerbate escalating police malpractices.' (1985, p98.)

Currently, faith is placed in police management and disciplinary systems to control police coercion. This has manifestly failed, and serves as a warning that future regulations controlling force ought to be statutory, not internal and disciplinary. As seen above, however, there are shortcomings with both disciplinary and statutory regulations and reliance on them both in the past has been ineffective. The danger in creating more laws is that more statutes could mean more freedom for police improvisation whilst creating the illusion of tighter control, whereas disciplinary regulations may be ignored and half-heartedly enforced. Awareness of these problems militates in favour of any future legislation being successful, since past failings can be borne in mind. In any case, police use of coercion is an area of police deviance that would be receptive to more specific legislative direction; the line between legal and illegal conduct is easier to define than in other areas of deviant conduct. But, a note of caution; even if new laws were to be introduced, and even if they did cater for police culture and attempt to combat it, the likelihood of far-reaching changes in the police use of coercion is low. Reiner observes that 'the prime problem in controlling police deviations from legality is not the permissiveness of law but conflicts of evidence about whether malpractices have occurred in fact. In such arguments the suspect is usually at a structural disadvantage.' (1985, p177.) This will remain true. Even should there be clearer legal enunciation of circumstances in which force would be unreasonable and illegal, if it takes place in a low visibility situation, the evidential difficulties are likely to frustrate both the statutory reform and the complainant, and to aid the errant officer.

Excessive force and the legal approach in the USA

In the USA, more detailed judicial thought has been given to the police use of force, but it would appear that ultimately

the law is heading in the same direction as that of Britain. The US example demonstrates a similar tendency in their judges to back up the police side of a case, and also acts as a warning that more law does not mean more control but can mean quite the opposite where it legitimates a broader range of forceful police conduct. (This section relies upon Campbell, 1986, for its factual basis.)

In the USA, there are two constitutional amendments that have a bearing on the use of force, and these have resulted in the development of different standards of acceptable force in different circumstances. The fourth amendment provides that the right of the people to be secure against unreasonable searches and seizures, shall not be violated. The fourteenth amendment holds that no state shall deprive any person of life, liberty or property without due process of law. Because these amendments are used in different situations, the fourth to govern arrests, and the fourteenth in the context of pre-trial detainment, there has been an 'anomlous disparity' (Campbell, Ibid, p1369) between the permissible limits of police force allowed in these different areas.

Unfortunately, the due process standard in the USA has turned out to be weighted very heavily in the police's favour. A 1950's Supreme Court decision in Rochin v California (342 US 165, 1952) held that the due process clause protects criminal suspects from police conduct that 'shocks the conscience'. Such a broad formulation will be of more comfort and protection to the police; if they use unreasonable but unshocking force, presumably they will not have violated the 14th amendment. How is behaviour that 'shocks the conscience' to be ascertained? It is certainly more favourable to the police than the suspect.

The case of Johnson v Glick (481, F, 2d, 1028, 2d cir 1973) gave further guidance as to the use of force during pre-trial detainment. Judge Friendly declared that 'not every push or shove' violates constitutional rights and in determining

whether the constitutional line has been crossed, the court must consider factors such as the need for the application of force, the relationship between the need and amount of force used, the extent of injury inflicted, and whether the force was applied in good faith, or maliciously and sadistically in order to cause harm. Following from this, a three-pronged test has been derived by which to appraise excessive force claims; '... to implicate due process rights, the force used by police must (1) cause severe injury (2) be disproportionate to the need presented, and (3) be motivated by malice rather than official zealousness.' (Campbell, Ibid, p1373.) Whether Judge Friendly intended his standard to be an absolute one is unclear, but it is certainly undesirable to limit the factors to be examined, where undue force is alleged, to these three considerations. Problems are immediately apparent. What is severe injury? Are due process rights not violated if a 'non-severe' injury is inflicted? Where does the exertion of mental pressure and force fit into this definition, if at all? Campbell notes that the due process standard articulated in Glick is an 'unlikely means of effecting a judicial approach to hamstring the police' and that it can be argued 'that the due process tests simply function as labels for what is objectively unreasonable conduct.' (Ibid, p1383, 1382.)

By contrast, the fourth amendment relating to force in the context of arrests is not as wide. The leading case of Tennessee v Garner (471 US 1 1985) 'compels police reasonableness not only as to whether a particular seizure should be made, but also as to how the seizure is carried out.' (Campbell, p1377.) Furthermore, the amount of force permissible in arrest must be evaluated by balancing the nature and quality of the intrusion on the individual's fourth amendment protection, against the importance of the government's interests alleged to justify the intrusion. This basically links the amount of force used to the crime that the suspect has committed or is going to commit, and

whether or not the suspect is behaving violently.

What is of concern with the two standards governing police use of force in the USA, is their potential area of overlap. Campbell describes (Ibid, p1385) how the due process standard may affect the fourth amendment 'reasonableness' test; if a judge finds that police behaviour under the fourth amendment does not 'shock his conscience', he may feel it is not unreasonable. Indeed, a problem in the USA has been the encroachment of the due process standard to cases of arrest that should normally be judged according to the fourth amendment. Because the two standards are different, they are going to produce inconsistent enforcement of the law and a variety in the protection that the constitution affords to the citizen.

Campbell argues that the fourth amendment test should be made the exclusive standard in arrest cases, and, because it is stricter than the due process test, the latter should not be used at all in this context. 'If the fourth amendment prohibits the lesser intrusion, it surely prohibits the greater; conduct that 'shocks the conscience' or 'affords brutality the cloak of law' surely cannot be reasonable under the fourth amendment.' (Ibid, p1385.) Campbell points out that logically the fourth amendment standard should be applied before the due process clause is violated anyway, since 'shocking' behaviour should always be deemed unreasonable. That is, if the police conduct is going to be questioned as 'shocking to the conscience', perhaps by definition it will have already transcended reasonableness and have triggered the fourth amendment protection. However, even should a clear distinction be made in US law between force used to arrest someone, and that used in the pre-trial detainment stage, this remains an unsatisfactory position. 'One must ask further why suspects during arrest are protected (by the fourth amendment) against 'unreasonable' conduct, while detainees receive protection only against 'malicious' or 'shocking' conduct under the due process test.

... The exigencies of arrest and the need to defer to an officer's judgement in a quickly developing situation are indisputably diminished in the detainment context; there is no apparent reason for affording the officer **greater** discretion in that context.' (Campbell, 1986, p1389, his emphasis.)

Therefore, although there have been legislative attempts in the USA to clarify the police's powers to use force, these have not been entirely successful. This must be borne in mind when advocating legal changes here. In particular, the simultaneous co-existence of different standards of force for different parts of the criminal justice process has been seen to be potentially troublesome and unjust. The problems of inconsistent law enforcement that are a hazard of the US approach could be avoided in Britain. Assuming that extra laws relating to coercion were to be enacted in England and Wales (in a similar fashion to those suggested in earlier chapters), then even though there would be more laws dealing with different situations, it is unlikely that they would permit wildly differing levels of force. This is because the starting point for new legislation would remain the maxim of 'reasonable force'. The extra regulations would merely be used to clarify, inform and limit what action and behaviour is covered by this, and who should be responsible. It is hoped that fresh laws will help to interpret the idea of 'reasonable force' more clearly in different circumstances and aid the consistent enforcement of the law. In the USA, the difference in laws led to the paradoxes in its enforcement, here in Britain, such paradoxes and inconsistencies in law enforcement exist with the present law. The US situation should be distinguished, because it is likely that more laws relating to police coercion in this country would be beneficial and would not necessarily lead to greater freedom and licence for the police to use excessive force.

The need for more laws governing police coercion has been identified and suggestions as to how they might prove

effective, made. The difficulty in ensuring that laws and regulations are adhered to is at the same time, readily admitted. It must be remembered that even should new laws be enacted, and prove effective, they will still not be enough to control the police force. As Baldwin and Kinsey note 'Where legal certainty runs out, the need for alternative control over the police begins for example with local police committees setting policy and priorities for policing and law enforcement in line with local needs.' (1985, p92.) Furthermore, there is a need to 'examine the use made of complementary control systems which exist as alternatives to law - namely internal systems of management, supervision and discipline, and most important, the role of external review and accountability. It is essential to recognise that no controls can or will be effective in isolation.' (Ibid.)

As regards the police use of coercion, the current need for reform and clarification of police powers is undeniable. Control mechanisms have proved to be impotent. There are many factors in the violent policeman's favour that militate against him being reprimanded judicially, or even disciplinarily. The judiciary's partiality towards the police makes them particularly ineffective as a constraint where public order is policed coercively. In such a situation, there is insufficient statutory guidance as to what areas of forceful policing are legal or not. In the absence of this, Chief Constables and police authorities should theoretically constitute a check on their force's behaviour. Unfortunately, Chief Constables are entirely supportive of coercive policies and thus can not be relied upon to restrain their men, whereas police authorities have proven to be similarly ineffective as a constraint, but for different reasons. Thus has this circumstantial cocktail left the police largely, and worryingly free from regulation, control and accountability when coercion is employed.

CHAPTER THIRTEEN

CONCLUSION

This examination of the police and their use of coercion reveals much that is of concern to those interested in the responsible exercise of power and authority. In a democratic and free society, the ability to use coercion against citizens without their consent is a power that ought to be carefully delegated and carefully regulated. Sadly, as regards England and Wales at the moment, this is not the case. The lack of law in this area, and its accommodating vagueness where it does exist, basically means that police officers are free to creatively enforce the law using coercion where their discretion sees fit. Many abuses of power and unfortunate consequences have resulted from this, some of which have been documented in earlier chapters. However, the idea here has not been to simply list instances of excessive police coercion or violence and it was recognised in the introduction that force is used by the police comparatively rarely in proportion to their activities as a whole. Yet although this is a fact, it should not then be used to play down the seriousness of illegal police coercion. It is not satisfactory to state that proportionately the number of times the police behave violently or with excessive force are few. This implies that such behaviour ought to be tolerated because there is not a widescale problem with police use of force.

The problem of police and coercion

Ascertaining exactly what the 'problem' is, (as regards police use of coercion) can be a difficult task in itself. Doubtless the police would claim that there is no problem and that they generally use coercion properly and judiciously, even allowing for the odd occasion when this is patently not so. However, this is a complacent viewpoint that can not be sided with here. As remarked upon in earlier chapters, any 'problem' arising from the police use of coercion can not be viewed in purely numerical terms either. It is unwise to base a critique of police coercion on claims that the numbers

of times the police use force and violence are increasing. This should not be the central tenet of any analysis of police use of coercion since it ignores the philosophical, sociological, moral and legal aspects of the subject. Also, it can not be clearly established due to the manipulative use of crime statistics and the fact that most police coercion will be in low visibility situations and remain unreported anyway.

How then, can the problem of police use of coercion be framed? The approach taken here was to present the tension between legality and police ideology (with special reference to coercion) and to show how the latter takes practical precedence over the former. This is so whether it be an individual constable, a group of police officers or a police force as a whole, who are employing coercion. What has emerged from this is that frequently, when the police use coercion, they are unlikely to be influenced by any legal considerations and unlikely to be constrained by legal limitations. Ironically, what is arguably the police's most important power, is then, enforced with total freedom by police forces who can comfortably disregard the relevant law. The laws on 'reasonable force' are wide and presentational; this means that although they will be invoked afterwards to justify the police action, no thought need be given to them at the time. That the police can in practice, largely use whatever degree of coercion they see fit, irrespective of the law, and be confident in any case, of judicial support if challenged, is surely a 'problem'.

There may be those, critical of the police, who feel that in the light of this, the police, in using coercion, are often 'out of control'. This is an easy phrase to use although whether its meaning is fully understood is less certain. If it is used in a purely legal context, then yes, it can be agreed that the police sometimes are 'out of control' in that their use of coercion is unfettered by existing legal considerations, and clearly exceeds them. In

another sense however, the police may be very much under control. This type of control is not a strictly legal control, but the control of senior officers or the control of the police cultural ideals, (obviously there will be exceptions when the police, either individually or collectively, behave without any deference or attention to any authority or orders). In other words the police, (as at Orgreave, for example) follow instructions and orders even though the resultant behaviour may not be legal. Their use of coercion will achieve results however, and enable them to attain their objective. So, although the police may sometimes appear to be out of control legally, they will be effective practically. They are well aware of what they are doing. At Orgreave, the pickets were dispersed by dubious tactics, but the police achieved their objective. Likewise with the policing of the demonstration against Leon Brittan at Manchester University in 1985. The police cleared an entrance to the building for him, which was their aim, even though it was done using inappropriate and illegal violence. In the same way individual officers may use illegal coercion to quieten suspects, effect arrests, intimidate people or elicit confessions. Criticising the police for being out of legal control overlooks the short-term utility of police coercion. The unwholesome truth is, of course, that police coercion or violence is effective. It achieves results in many cases. This is recognised by the police hierarchy and by the legislature who have not attempted to control it.

To return to the question of the problem of police coercion, the fact that it is difficult to evaluate the amount of police coercion numerically does not mean that it remains at a stable level. But even if instances of police coercion are not increasing, there are still certain sections of the community who are more likely to encounter it. For example, police use of force is more likely in poorer communities and areas, against young people than older, and against racial minorities. There can be no comfort for such

victims of police coercion and harassment in claiming that nationwide police coercion is not a problem. Environmental and situational factors will clearly make it so in certain localities.

The police's capacity to use coercion is also problematic. This has definitely increased in recent years. The para-military training and equipping of police forces in England and Wales has given them the capability to exert great, and dangerous force against opponents. Such a build-up has not been accompanied however by commensurate control or accountability mechanisms nor by open discussion and debate. The responsibility for the exercise of this increased capacity will ultimately lie with one man, who is beyond democratic and community control; Chief Constable. This is deeply unsatisfactory.

The increasing militarisation of the police

It has been found that the police are becoming increasingly militarised, as witnessed in their tactics in the miners' strike and the equipment that they possess, ostensibly to deal with riots. Northam notes that 'The drift into a para-military role is already a fact of life. Three elements are discernible at each step down this slope; the police have edged themselves into acting like soldiers, there has been a shift of political control towards Whitehall and away from town halls; and public debate has been minimised, either by presenting these fundamental changes in a misleading light or by keeping them secret.' (The Guardian 19.9.88.)

The recent repressive trends in public order policing must not be seen as isolated responses by the police to individual events as and when they occur. They are part of a gradual process of increasing repression of alternative views and behaviour that has been legitimated by recent governments. The police methods can not, and must not, be divorced from the prevailing political climate. The government's fuelling of moral panic and indignation, and the perpetuation of

mythical and exaggerated images in the media, has enabled the build-up of police power to go effectively unchallenged. Any policies that seek to assert that the police have been re-equipped unnecessarily or excessively, and attempt to reverse the trend of increasing coercion thus have little chance of success unless they can counter and reverse the reactionary media perceptions of the last twenty years, and unless the police are de-politicised to the extent that they become not always the guardians of the established order, but also the guarantors of the right to protest and demonstrate.

Political complicity with recent examples of illegal forceful policing, coupled with the lack of effective accountability mechanisms means that the erosion of freedoms and rights by the police will go unnoticed or at least, noticed but remain effectively unchallenged. This (without suggesting it is the case in Britain) is one of the first steps towards authoritarianism, or at the very least, a move towards the creation of the conditions in which it would flourish. The political element of policing has been acknowledged, but is not accepted by all. It must be remembered though that the denials that policing is political will always be stronger from those who benefit most politically from it.

The police's ruthless tactics during the miners' strike, at Manchester University, at Stonehenge and policing the industrial dispute at the News International plant in Wapping, are all examples of coercive public order policing in the late 1980's. It was shown in chapter one that coercive policing in itself is nothing new, and that throughout history the police have not hesitated to suppress disorder using force, yet in all the incidents listed above, the police themselves have played a prominent role in the escalation of the conflict.

A major question in the public order policing is whether or not the police opt for a policy of containment or repression, and behave defensively or aggressively? Technically, the

police will always claim that it is the former. A recent advert in the press for the Metropolitan Police depicted an officer in full riot apparel. The accompanying commentary read; 'you might well ask if we have turned our back on the policy of using 'minimum force' to achieve our task of preserving the peace. The answer is that only by equipping and training our people to contend with violent public disorder can we hope to maintain this principle.' (The Guardian 27.5.88.) Whilst not disagreeing with the need to train officers thoroughly, the statement that violent public disorder can only be dealt with by equipping (with the latest riot gear, by implication) is more contentious. It has been seen that such a policy leads to an eventual circularity of violence. Unfortunately, even if the police's riot gear is ordered in good faith for defensive purposes, the evidence suggests that it is soon deployed in an aggressive attacking capacity. Officers equipped with helmets, short shields, padding and truncheon are used offensively as snatch squads or to form flying wedges into crowds. There needs to be more stringent control over the deployment of officers dressed in such clothing. Their extra protection has in fact led to them being used attackingly and has enabled the police to mount more coercive policies, whereas perhaps previously they would have tried to defuse difficult situations in other ways. In this way, at demonstrations and so forth, the police have often been responsible for increases in violence between them and the crowds.

Recent police crowd control policies have borne no resemblance to policies of 'reasonable' or minimum force. The stocking up with CS gas and rubber bullets or plastic baton rounds is likewise not consistent with such principles. The police have such a military style capacity that some people have suggested that Britain should have a specialised and separate force of public order riot police, as do some other European countries. However, the circumstances in countries such as France and Germany, that have such forces,

can be distinguished from those of England and Wales where such a development would be anathema to policing traditions, and unnecessary. In any case, the involvement of such forces is no guarantee of a less forceful solving of public disturbances.

What do currently exist in British police forces are specialist units that are particularly trained to deal with problem situations where force will be necessary. Although it is preferable to develop specialists within regular forces rather than to set up an entirely separate public order force, supervision of such units must be vigilant. The group ethos and mentality, and the reputation and self-perception of the officers as 'troubleshooters' may lead to a taste for the exciting things in policework, (the use of force qualifies as such). There may be a propensity to act hastily and coercively, if accustomed to being deployed in situations that call for the use of coercion. This must be guarded against by the police themselves.

Police coercion and reasonable force; A depressing outlook

After thorough scrutiny of the police and coercion, the general picture that emerges is not encouraging as regards the control and reduction of their actual use, or capacity to use, force. In both individual and group policing, the working rules of the police culture have dominated over laws and internal regulations where they are in conflict. The legal framework for 'reasonable force' is so vague and wide that it allows the discretion that is necessary in all areas of policing, to be influenced by the values of the police culture where coercion is concerned. Thus the real reasons why a police officer might use force may be quite illegal (for example to try and instil some respect in a suspect, for retribution or vengeance and so forth) yet can be concealed, and his actions portrayed later as reasonable.

Basically, individual officers (and those when policing public disturbances) can use force with impunity if they are

careful. Congruence of police aims with those of the criminal justice process, plus the propensity of magistrates, and the judiciary to support the police, makes any complaint about polic coercion unlikely to succeed. The fact is, that any complaint that actually gets as far as a court is highly unusual in that there are obstacles to its progress from its initiation. Foremost amongst these is the difficulty in obtaining evidence against a police officer. Most acts of petty coercion will take place in low visibility situations, be unwitnessed and thus boil down to the suspect's word against the officer's. Often if witnessed, it will only be by fellow officers, yet the dictates of cultural police solidarity strongly discourage testifying against a colleague, and the chances of this are very slim.

The individual officer benefits from the lax legal framework on force, and the ineffectiveness of the accountability system. Police forces as a whole are even less likely to be castigated for violent policies and behaviour. Their democratically elected authorities are impotent control mechanisms able to be overruled by the Chief Constables, who enjoy virtually unassailable, autocratic positions. These men have been able to order CS gas and plastic bullets despite local opposition and without recourse to any usual democratic channel. The role of the Home Office and the gradual centralisation of forces is a supportive factor here.

As with riot equipment, the use of guns is now widespread in the British police, although quite how widespread is unknown due to the secrecy that pervades police firearm use. What does seem certain is that they are frequently issued in circumstances where their use is superfluous, and that increases in police firearms use throughout the country can not be fully justified by reference to rises in armed crime. The police use of firearms also highlights the danger in blurring military and police standards where force is concerned.

As the situation currently stands, despite 1984's Police

and Criminal Evidence Act, with its promises of safeguards for all police powers, the circumstances favour the police being able to use coercion illegally, in varying degrees, without being held accountable afterwards either by their superiors, or politically. Whatever pronouncements are made by the police hierarchy with regard to controlling police coercion (should they ever admit it has been misued) will be presentational, and although condemnatory of illegal police conduct, will hide a more accommodating private view that sees force as a necessary implement in the police job.

Police coercion; grounds for optimism

At the moment, the depressing scenario portrayed above is operative for policing and coercion. Despite the wide discretion to use force and few accompanying legal restraints on officers, it is not regarded as a problem that warrants widescale and urgent change. It is only when someone is accidentally shot, a demonstration is harshly policed, or a suspect alleges brutal treatment and so forth, that the problem of unregulated police coercion comes into media focus again and commands the public attention. As with so many matters, it often takes one unforeseen incident to reawaken dormant concerns or to bring fresh clamours for changes in policy. Unfortunately, separate areas of policing and coercion may come under scrutiny, and recommendations for change be made, at different times in response to particular happenings. For example, after the Shorthouse and Lovelock shootings there was public concern about police and firearms. Thus when different aspects and implications of the police use of coercion are considered, it is usually as separate subjects rather than as parts of a whole. What is needed is for the law relating to police and reasonable force in general to be overhauled and clarified, but with an awareness of differences in the sort of force used in various circumstances, (eg in policing public order and when guns are used). The fact that worries about coercive policing

surface periodically after certain incidents indicate that this is an area with the potential for change. However, piecemeal change is unlikely to affect and influence police practices in the same way that wholesale legal changes would. That policing and coercion is amenable to change and stricter regulation is a cause for optimism, although this is tempered by the knowledge that in the current political climate it is unlikely to be initiated.

A retreat from paramilitarism?

The present paramilitary trappings and policies of the police have been noted with trepidation and concern. They are developments that have many unpleasant ramifications and are likely to be associated not with more defensive and safer policing, but with increased coercion, and aggressive strategies. The build-up of police powers (both legal and technical) has developed a momentum that, appears to show no signs of stopping. However, although the police now rely upon a greatly increased coercive capacity, there is again a slim cause for future optimism (and a reduction in force) that is ironically, grounded in the past.

In the late nineteenth and early twentieth centuries, the police took over the policing of industrial disputes and public disturbances from the military, and resorted to progressively less forceful tactics. This was a deliberate retreat from the previous crowd control policies that had openly relied on coercion. The military and their methods were becoming quite unacceptable and their gradual replacement by the police was intended to both reduce the amount of coercion employed and to regain public confidence and consent. This did not mean in practice that the police never used force, but their deployment in preference to the army was symbolically important. In this context the baton charges of 1910 were less forceful than the use of military gun fire and bayonet charges. An important principle is established here, namely that public order incidents had been

policed in an overtly repressive and unnecessarily forceful way, and a retreat was made from this.

Similarly today, the police are talking on ever more equipment, and relying upon increasingly rehearsed tactics and so forth, becoming more militarised. Is the public order situation turning full circle? Will the police be as lethal as the military that they replaced once were? Are they already? Hopefully, the community's tolerance of modern public order policies will eventually run out and the police will be forced into reconsidering whether they have chosen the correct control options. History has proved that less repressive means to police disorders could be used **without corresponding increases in social violence, or damage to the police.** It is probable that a similar reversal in current police tactics would also succeed on this count. Could a de-scaling of police hardware be achieved without risking the safety of police officers? It is likely that it could, although whether it will be given a chance to is another matter. Following historical precedent in the belief that reducing coercive policies will not unduly compromise either society or the police's safety, (despite acknowledged differences between the policing of the 1980's and 1900's) is perhaps unlikely to happen in the immediate future. Yet it should be remembered and considered as a potential step away from paramilitarism and towards a police system that respects the ideas of 'reasonable force'.

There are other, smaller ways in which the police could strive to implement ideas of 'reasonable force'. For example, more women should be used throughout all areas of policework as well as in delicate situations to see if their approach will make the use of force against and by the police, less likely. Riot gear should not be issued as frequently, only where it is genuinely needed for self-defence and there is an immediate danger (as opposed to a future possibility) of injury to police or public otherwise. The appearance of police in riot gear is uncompromising and

threatening, but even the normal police uniform can have the same effect. Peel consciously clothed the early police so as to make them distinct from the army - he clearly recognised the importance of uniform. Nowadays, the British police uniform could arguably be described as too stern and symbolically authoritarian. Perhaps consideration ought to be given to replacing their helmets and dark blue serge with more comforting looking and casual clothes. This will not automatically make policemen non-coercive but may psychologically and thereafter practically, affect the way the public view the police and encourage friendlier social interactions between them, by breaking down the de-personalised police image.

Policing and coercion; long overdue legal change

The law refers to the amount of coercion allowed by the police as that which is 'reasonable in the circumstances'. Thus, reasonable force has been referred to throughout as a standard, against which police actions are measured. However in practice, 'reasonable force' is more of a label which is applied (like a renowned food manufacturer) to what could well be fifty-seven or more varieties. If such a label were to be used to describe a good or a food, it would probably be rejected for failure to disclose particular ingredients or additives. Yet, such is the law of England and Wales. This indefensible vagueness in the law relating to such an important matter, has been criticised throughout. The statutes of the Criminal Law Act and Police and Criminal Evidence Act enable the police to retrospectively apply the reasonable force label to actions that may have been far from it. The supportive attitude of the judiciary has done nothing to discourage police cocercion and the legislators have passed up recent opportunities in the 1984 Act and the 1986 Public Order Act, to rectify these legal deficiencies.

The recent decision of the Court of Appeal, (in relation to the supply of CS gas and plastic bullets) to invoke the Royal

prerogative, is disturbing. The police use of the royal prerogative to keep the peace of the realm, even when not in a period of emergency, and to justify purchasing such equipment, is a frighteningly vague development. Admittedly, it is entirely consistent with the vagueness of the existing laws, but one would have thought that their breadth would have made its invocation unnecessary. This really does give the police the freedom to circumvent any laws, should they (unusually) prove to be obstructive to them, and so its use can not be welcomed.

It has been contended that legal changes **could** have an impact upon police practices and coercion, and many areas have been suggested where this is so. In particular, the law of self-defence, where pleaded by officers accused of excessive force, needs to be applied with care and impartiality. It is in danger of becoming an established escape route for such officers. Whether the force used was objectively or subjectively reasonable should be clear, as should the distinction between force used preventively and that used to apprehend, or reactively.

In advocating legal change, there is an awareness of two things. Firstly, the functional utility for the police, of vague laws, and secondly, that such change alone will not be enough to radically affect police use of coercion. It must be accompanied by widespread attitudes in the working attitudes that underpin policing. One reason for the analysis in chapters four and five of the different factors that contribute towards police coercion, was to demonstrate that all these must change if progress is to be made. The major hope in seeking to constrain police coercion is by passing laws and enforcing regulations that confront the police subculture; such laws will have a greater chance of success.

Throughout this work, the different (as well as the similar) influences on coercion used by individual officers and the police as a group, have been remarked upon. As

regards individuals, it is less likely that laws can effectively confront the policing conditions (such as discretion), that enable the use of force. However, for public order policing, any new laws would have a greater chance of succeeding. For both sets of circumstances, the negative notation approach ought to be used in any new laws. The value of listing things that are **not** permitted by a law, or not acceptable behaviour under it, has a precedent in PACE's 'Code of Practice for the Exercise by Police Officers of Statutory Powers of Stop and Search'. Annex B paragraph three gives details of a person's colour, dress, hairstyle, previous convictions and so forth. These are things that may not be used may not be used as the basis for a search. Similarly, regularly occurring situations in police stations and in the police's dealing with citizens ought to be familiar to legislators. They should therefore, be able to list behaviour that is unacceptable, and circumstances in which force is not appropriate. This list could be compiled on the basis of past experience and would help to clarify and restrict the occasions when force could be used without effecting its 'reasonableness'.

Public order laws at the moment simply pay no attention to control of the police. There is a greater chance of legal change being effective in the control of public order policing than in everyday policing; more laws would probably succeed. Collective responsibility, if vigilantly introduced, could improve the control and accountability of the police in this sphere. Instead of enabling individual actions to go unchecked and unnoticed under the collective responsibility umbrella, it could rather, make officers aware of their colleagues' actions. The threat of being punished themselves (for other officers' behaviour) would be a disincentive to keeping quiet. Thus the major problem of police solidarity would be tackled by mobilising the instincts of self-interest and self-preservation that each constable surely has. In public order policing, there is a

clearer chain of command, and responsibility for misconduct could be traced to someone. This holds true as well, for when the police use guns.

The failure of accountability

The view that the current system of accountability (after coercive acts by the police) has failed, and that a new system is needed, carries several connotations. Firstly, defining the 'failure' of the system may prove difficult. However, if one of the functions of making the police accountable is to demonstrate legal superiority over police cultural norms by identifying and punishing police wrongdoers then it must be assumed that there is a deterrent element in this process. That is, by disciplining policemen for excessive coercion, the police institution is publicly reiterating that such behaviour is unacceptable and will be punished, and clearly intend this to be a warning to other constables not to behave in a similar fashion. If deterrence is a yardstick of the efficient workings of the accountability system, then it has undoubtedly failed since allegations and proven cases of brutal police misconduct still frequently occur. Past experience and disciplining of officers have not prevented this. The police complaints procedures at present do not influence or regulate police misbehaviour as much as they perhaps should.

Another important function of the accountability system is that it should win and retain public confidence in the police. This is indissolubly linked to the 'deterrence' aspect, since if the system did actually succeed in deterring officers and reducing incidents of misconduct, then public confidence would automatically be boosted. That the police have been unable to do so quite publicly, for example in cases such as the death of Blair Peach, the Holloway Road beatings (notwithstanding the eventual unmasking of the culprits), and the harassment of Steven Shaw, inevitably reflects poorly upon them and demonstrates to the community,

the ineffectiveness of the complaints system.

The accountability and disciplinary system then has neither influenced police behaviour significantly, or helped in the maintenance of public confidence. It may be that expecting disciplinary procedure to fulfill these functions is optimistic and unrealistic in any case, yet they must be assumed to be goals of the present system.

Acknowledging the failure of the present system as enunciated above, and in the way in which it deals reactively with individuals once misconduct has occurred, as opposed to tackling the underlying conditions and factors that facilitate such misconduct, leads to the conclusion that some other system is preferable. Ultimately, however, developing a new system to break down the police cultural influences on misconduct would constitute recognition of the practical impotence of many current laws and regulations, and would be relying upon internal police values to create an alternative policy. In effect, this would be 'giving in' to the police, admitting that their close-knit social and occupational world has developed a code of behaviour that the law and police regulations can make little impact upon when the two are in conflict. Consequently, the thrust of any fresh laws and system would have to be based upon tackling police cultural solidarity rather than on legal principle, since the police have already proved that they can circumvent the latter. The power of police culture would thus be 'setting the agenda' for any change, and laws or regulations would have to specifically counter this.

Attempting to change police practices and so forth, in order to undermine the power of the police culture, would be a lengthy and extremely difficult process, but would be a welcome step in approaching the problem of police use of coercion from a different perspective. However, by bowing to the strength of police culture, the notion of the superiority of law could obviously not be sustained. This would prove gravely problematic and obstructive for those political

elements who gain much propaganda and media attention by constantly proclaiming how 'law and order' must be upheld and that 'the rule of law' is paramount and must always be respected. In a sense, a quandary would have been created in which the upholders of the rule of law, the police would be seen to have flouted it to such an extent that their whole system of accountability was being revamped, with police values, rather than legal ones, determining the new system. Thus, the credibility of the 'rule of law' as a potential concept and as one of the primary means by which society is regulated would surely be undermined if it had failed to regulate the police themselves.

Police use of coercion is not the work of 'rotten apples' in the policing barrel, but is far more widespread and deep-rooted. If law and society are content to have a police force that uses varying amounts of force routinely and unregulated, then all well and good, but this should be openly acknowledged, not denied, as at present. Such a system has been aided by the lack of legal controls on the police where they use force, enabling the ideals of the police ideology to take precedence over legal norms.

Police use of coercion has hitherto managed to escape the pressure for long overdue wholesale changes. But, as an area suitable for reforms and regulations (which would not hamper policework) it is to be hoped that improvements in the situation will be made in the future. The upward spiral in police coercive capacity and the attacking use of defensive equipment are worrying developments that need to be reversed before they become too entrenched. It must be ensured wherever possible, that police coercion is not used offensively and illegally, but only where it is necessary.

The principle of 'reasonable force' is sensible but currently discredited. It needs to be reclaimed.

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