

Police Governance and Accountability in Comparative Perspective: Centralism, Localism and Democratic Policing

Friday, 4th November 2011, Royal Society of Edinburgh

Malcolm Anderson, Professor Emeritus, University of Edinburgh

Local control, accountability and arguments about police effectiveness in France

I

My approach to these topics is historical over the last 140 years but feel free to ask about the contemporary state of play. Also, I am simplifying a highly complex history. Since the beginning of the IIIrd Republic in 1870, debates on local control, accountability and police effectiveness have recurred intermittently, often with much the same arguments being used. These debates have been inter-related. It is as well to bear in mind that both police and gendarmerie had a long history prior to the more or less secure establishment of democratic representative institutions in 1870, the gendarmerie tracing its history back to the *maréchaussée* of the middle ages and the police, at least to 1498 when Charles VII appointed two lieutenants of police. This long history of policing under authoritarian regimes carried with it a heavy legacy of practices and assumptions, some of which survived into the constitutional representative regime after 1870.

The introduction from 1870 of constitutional democracy opened up the issue of control and political accountability of the police and, in a different way, of the gendarmerie. I say in a different way because historically the police was the emanation of the justice system, with senior police officials designated as magistrates, whilst the gendarmerie originated as and remained a military force under military discipline although, both in their criminal investigation capacity, were under judicial control. The gendarmerie was, and remains, a national force with competence over the whole territory, but responsible mainly for policing the small towns and the countryside. By contrast, the police down to the collapse of the IIIrd Republic in 1940 (and the setting up of the national police in 1942), was, with important exceptions, a range of municipal forces, raised and paid for by the municipalities although its officer corps, the commissaires, were appointed and assigned to their posts by the central government.

II

The argument about local control

Whether the police should be locally or centrally controlled was, in a broad sense, part of the enduring quarrel between Jacobins and Girondins – those who have believed in the one and indivisible (and therefore centralized) Republic and those who have considered that dispersal or division of power is an essential requirement of liberty. The partisans of national control always had a powerful political appeal across the political spectrum and the arguments used have not much changed in the history of French democracy. First, they have argued that policing like defence is at the core of the notion of state sovereignty, essential to the integrity and independence of the nation; police powers should be exercised by the central government on behalf of the sovereign people and not on behalf of sections of it. Second, only the state could provide equal coverage of the whole territory because local resources to finance services varied considerably. Third, locally controlled police forces risk being dominated by local, political and economic interests and only the state can guarantee equality of treatment between citizens.

None of these arguments is entirely plausible when examined in the light of the evidence but for partisans of the national police they have been regarded as self-evidently true. The counter arguments of the Girondins have not had the same broad appeal. They are essentially the pluralist thesis that only the dispersal of power can ensure liberty, because excessive concentration of power in a central authority leads inevitably to autocratic rule; both democratic accountability of the police and a police responsive to demands of the citizens are much enhanced by local control. Diversity of local societies and practices (anathema to those in the Jacobin tradition but an evident reality) is desirable because local societies differ. In the French context, the Girardin arguments had the committed support only of a minority strand of opinion or those with special interests to defend (for example, the mayors who controlled municipal police forces).

The Jacobin position has often been that of the left wing politicians and historians and is generally regarded as more progressive and more genuinely 'Republican'. However, in practice, positions on the issue have not been stable and there has been no enduring dividing line between right and left. Although parties in government were more likely to favour nationally controlled police, Republicans (the left during the period before the First World War) were responsible for maintaining the municipal police for medium and larger towns during the Third Republic; the right, on the other hand, supported, with reservations, a national police in the 1870s and 1880s. A century later the positions were reversed. The left (Socialists and Communists), both in and out of government, from the 1970s who provided the most vociferous critics of the renewed desire of municipalities to have their own police forces. Pragmatists have been ambivalent, seeing virtue in both a national police and municipal police forces – favouring centrally controlled police for some purposes and locally controlled police for others, provided that the municipal police was subordinate to the national police.

Why was the debate resolved in favour of a national police? Opinion favouring it grew, particularly after the turn of the 20th century and especially in police milieus. Police commissaires were especially concerned by issues such as the influence of the mayors and local élites over the police, the poor quality of local recruits and inadequate training facilities; they also pointed out that rich municipalities could afford adequate police forces and poor municipalities could not provide more than basic cover¹ and some were barely policed at all; in criminal investigations coordination was always problematic and in serious public order crises, the municipal police was totally ineffective. The powerful associations of mayors resisted the introduction of the national police and the exceptional circumstances of war was required to effect the reform. The Vichy regime wanted a national police force so that it could control it but it has survived ever since. Interestingly the maldistribution of police numbers was not resolved by the setting up of a national police force and one 1970s argument advanced in favour of the revival of the municipal police was that if the national police could not provide the level of service which communities wanted, the local authorities should be permitted to raise their own police.

III

What is the relationship of arguments about centralization and effectiveness?

The argument about local or central control has been intertwined with debates about police effectiveness or efficiency in three main ways. The controversy over neighbourhood policing; arguments over the distribution of police resources; and general arguments about how to assess

¹ Larger municipalities were required by law to have a certain size of police establishment

police effectiveness. On neighbourhood policing it was an extremely confused debate partly because the most visible and perhaps the most effective forms of neighbourhood policing, especially down to the Second World War, was done by elements of police most centrally controlled - namely the gendarmerie and the Paris police. The gendarmerie during the IIIrd and IVth Republics was organised in small brigades (usually between 4 and 8), living in barracks or married quarters distributed across the small towns and countryside. Its method of policing was constant patrolling, getting to know people and talking to them so that when a crime or offence was committed, in principle, they had a range of willing informants and minor disturbances of the peace could be easily controlled. The police organisation in Paris was complicated but the streets were policed by patrol men called *ilôtiers*, responsible for clearly defined beats. Both came under severe criticism towards the end of 19th century for roughly the same reasons - there were not much use in crime prevention because their habits were too well known, they were never there when wanted, they always arrived late on the scene of trouble, and faced with anything novel or complicated or a serious crime, they did not know what to do. In other words neighbourhood police were part of the urban décor but served no very useful purpose. Such criticism led to the setting up of regional police criminal investigation units in 1907 with competence in gendarmerie territory and specialised units in the Paris Prefecture of Police. Nonetheless neighbourhood police survived and when this form of policing declined particularly rapidly from the 1960s, the demand for the re-establishment of neighbourhood police, of locally controlled police grew amid calls for “re-inventing the urban police”. The political controversy over neighbourhood policing at the turn of this century raised the same problem - no agreed criteria emerged for assessing the effectiveness of neighbourhood police. Attempts at assessing police effectiveness by using quantitative methods have been very controversial in this and other areas.

IV

What is the relationship between centralization and accountability ?

How did the longstanding argument about centralization versus decentralization impinge on issues of accountability. There is no direct translation of the English term accountability in French, except through the association of the two notions of ‘responsabilité’ and of ‘contrôle’.²

Despite this problem of translation, calling the French police to account has been an accepted principle since the beginning of the IIIrd Republic and its application vigorously, truculently debated. Many members of the public and even the political elite have always been cynical and believed that calling the police to account verges on the impossible. During war and serious political turbulence it was usually true that police and gendarmerie enjoyed *de facto* impunity; in stable conditions legal, administrative and political mechanisms for calling to account existed but believing that they actually worked was widely regarded as naïve. Although issues about accountability were raised again and again, it is only since 1990 that the problem of lack of confidence in arrangements for calling the police to account has been seriously addressed.

Four types of accountability, sometimes in a primitive stage of development, have been in place since 1870; these are, moving along the spectrum of internal to external accountability, managerial, administrative, legal and public or political. I am only going to mention the last of these.

² French language is not necessarily impoverished since in English ‘accountability’ has become too broad and vague.² covering ‘control’, ‘being responsible to’ and ‘taking responsibility for’ and reporting (‘giving an account’). English usage has the possible advantage of calling attention to the means, ‘calling to account’, but implies nothing about the ends of the procedure. The French terms carry no implication about the means to achieve the ends of control and responsibility but have the advantage of greater precision.

Public or democratic accountability is an essential feature of French constitutional democracy, and has become more diverse in the course of time – ministers are answerable to parliament, members of parliament ask oral and written questions, can request debates, as well as conduct enquiries (some of which have been of high quality since the 19th century³), reports are made to municipal councils in the case of municipal police, and finally police publishing information about their policies and actions. With the arrival of the internet, the provision and accessibility of information about the police has been substantially improved, including information about how to make complaints. Whether local or central democratic accountability is more effective was inconclusively debated in the 1880s and again in the 1990s prior to the passage of the 1999 Chevènement law on the municipal police.

The main questions posed, in France as in the UK, by systems of accountability are whether they have the effect of reducing police abuses and, if abuses take place, whether they provide effective remedies. Throughout the period the political avenue – a complaint via their member of parliament or directly to the minister of the Interior – was an intermittently effective method provided the complaint was taken seriously, and was regarded as sufficiently important. Some complaints by ordinary, and not especially influential, citizens were investigated thoroughly and have left traces in the archives.⁴ Also, individual complaints were taken up if the behaviour was in public in front of witnesses, and of a particularly outrageous kind.⁵ One of the controllers general of the *Sûreté* – an office set up in 1885⁶ – could investigate complaints and they usually did this without sparing the susceptibilities of the police officials concerned.

After the Second World War the task of investigating complaints was undertaken by the two inspectorates⁷ (members of whom are popularly known in the police as ‘boeuf-carottes’ because of their tactic of letting the suspected police officials ‘stew in their own juice’ in order to produce a more cooperative frame of mind) who reported to the public prosecutor or recommended disciplinary action. When an independent complaints authority the CNDS was set up in 2000, on

³ This has been the case since the parliamentary enquiry into the actions of the government of National Defence which contains important testimony on what the police and gendarmerie were doing in the troubled period 1870-1. *Enquête parlementaire* 1872.

⁴ For example a complaint was made in 1912 without any intermediary or influential support to the director of *Sûreté générale* by a tobacconist of 6th *arrondissement* of Lyon that a *commissaire* had made a search of his premises, without a warrant, and in the tobacconist’s absence. The director requested and received a very full explanation on 16 July 1912. AD Rhône 4M47. This seems exceptional and was probably followed up because the director was personally annoyed by arbitrary behaviour.

⁵ There are a wide range of examples in the files on disciplinary cases, consorting with prostitutes, pederasts and person of low repute, drunkenness, failing to assist persons in danger and a disorderly private life causing scandal. ‘Suspensions and dismissals Lille 1883-1895’ AD Nord M280 76. A series of complaints were made (1899-1904) against the commissariat of Roubaix – some paranoid, barely literate and difficult to take seriously. But some behaviour took place in public before witnesses such as a drunk *gardien de la paix* who, at 9 pm coming out of a bar, attacked a group of 5 people singing the International, knocked on a neighbour’s door shouting ‘sortez donc cochons de flamins’ (come out you Flemish pigs), drew his sabre, and punched a woman twice in the stomach. He was disciplined. AD Nord M208 1.

⁶ The *Inspection générale des services* (IGS) in the Prefecture of Police was created by administrative decision of 16 February 1914.

⁷ The two inspectorates amalgamated in 1986 in the sense that there was one director for both, but the two inspectorates remained distinct. There is a third, very prestigious, inspectorate in the ministry of the Interior – the Inspectorate General of Administration – which traces its origins to Necker’s reforms in the 1780s. It can be requested to inspect any part of the administration, including the police. One Inspector General of Administration, Jean-Marc Erbès, played a key role in the police modernization process in the 1980s.

the basis of evidence presented in cases, it made recommendations, sometimes in very firm language, about changes in police practice. The CNDS covered national police, gendarmerie, municipal police, customs and the prison service but it was amalgamated last year into a general authority for complaints about all public servants. Even in the heyday of the municipal police, no one ever argued that police abuses and malpractice could be adequately dealt with at the local level; these problems required national norms and mechanisms.

V

What is the connection between accountability and effectiveness?

Improving police effectiveness and adapting the police to new requirements has a venerable history, commencing under the *ancien regime* before 1789. Since 1870 one methods to improve the police policies and practices used was these inspectorates just mentioned. This was true from the days of the *Contrôleurs généraux* from the late 19th century, who in drawing up their reports, made recommendations and very much later this was formalised. An administrative regulation (*arrêté*) of 23 February 1973 listed a variety of other tasks for the IGPN: particularly, the quality control of police services by studies and enquiries with the objective of improving the performance of the police.⁸ Recently, these inspectorates have been much in demand in other European countries because of their expertise in police organisation and methods.

In the IIIrd Republic modernization became the watchword of improving effectiveness - this meant making police action effective through a programme of measures and a sustained reforming drive.⁹ The main periods of 'modernization' when there was, were the 'belle époque' (roughly from the 1890s to 1914 when it was associated with the notion of professionalization), and from the 1980s until 2002, during which periods the priorities were technical modernization, better organization and coordination of police services, improvements in training, opening the police and especially the education of the police to outside milieu and improvement in police-public relations.¹⁰

The complex debates over modernisation impinged on the question of political accountability in two ways. First, in terms of police relations with the public. In the two great periods of modernization, but particularly the more recent one, accountability was taken to mean that police should meet the expectations of the public to a much greater degree than had previously been the case and greater efforts should be made to explain to the public what the police were doing and why. In the last quarter of the twentieth century, the debate included many issues about involving local communities in crime control but the discussion became very complicated because of the bringing together of discussions about inter-agency approaches to crime control, decentralisation of internal security coordination, neighbourhood policing, associating all providers of security including private security services and the municipal authorities in local security plans. In both periods some progress was made but there was regression after the reforming drive became exhausted. Second, how to improve the methods of public control over what the police were doing became more urgent and more difficult as a result of modernisation. Professionalization (or greater

⁸ The Council of State has given definitions of control and inspection – control is the mechanism by which a superior authority verifies that instructions have been correctly carried out and that the results correspond to the objectives; inspection is to ensure that the methods of internal control are well organized and that the information transmitted upwards by these methods is accurate.

⁹ Yves Guyot argued, in his prolix polemic on the police, published at the beginning of the 1880s, 'public authorities have refused and continue to refuse to make any serious examination of the police.' Guyot (1882) *Etudes de physiologie sociale: la police* 16.

¹⁰ The first sustained drive towards professionalization took place, as Dominique Monjardet pointed out, at the turn of the 20th century. Demonque (1983) 128.

professionalization) of the police implied a degree of autonomy appropriate to a profession, that is to say in control of promotions, police training, operational decisions and other matters the profession should not be subject to intrusive outside interference. However, public control of some aspects became an issue in the two great waves of modernisation and some became acute in the most recent period - this was particularly the case of control the police made of computerisation and data storage.

VI

In conclusion

I have embarked on this brief account of the debates about accountability, efficiency and local control and the overlap between them because they illustrate three general points which I have not had time to make fully explicit. First to show that to embark on a reform of the police an overall strategy and a series of measures are required because if you go ahead and attack one aspect of the police system this will inevitably have knock on effects on other major aspects. Second to illustrate that they are well-founded counter-arguments to almost any course of action and decisions have to be taken on which course is the lesser evil. Third - and this is a vast subject on which I have only mentioned indirectly - calls for police reform and reorganisation have been frequent in France in the usually vain hope that they will resolve problems acute problems of public order and criminality but in a country which has been wracked by political social and economic crises, only marginal improvements in police performance are possible because the causes of the major problems are outside police control.

Appendix

Internal or managerial is the form of accountability most consistently present in the everyday experience of ordinary police officials and gendarmes throughout the period. Responsibilities, disciplinary rules and standards of behaviour are defined by codes of practice, regulations and, more recently, action plans. Subordinates are accountable to their superiors for conformity to the standards or benchmarks in these documents. This hierarchical form of accountability has been supplemented by inspectorates - and this has been seen, within the police and the gendarmerie and by ministers, although rarely by the general public, as the most effective way of ensuring abuses are investigated and actions monitored. The inspectorates are concerned to maintain hierarchical authority, securing obedience to rules, improving the efficiency of the organization, investigating abuses rather than reassuring the public that complaints are properly investigated and appropriate action taken.

Disciplinary procedures come under the heading of administrative accountability. The gendarmerie has the deserved reputation of being better disciplined than the police; the military status and tradition of the arm ensures that gendarmes are subject to a stricter, more authoritarian disciplinary regime. The disciplinary record, however, shows that gendarmes committed much the same kind of offence as police officials¹¹ and the offences were not confined to the lower ranks.¹² One form of

¹¹ In the cases of the late 1940s, contained in SHD 2007 ZM1 191244, 1912245, 1912246, 1912247, 1912248, 1912249, much the same kind of offences are recorded as those fifty years previously - excessive drinking, consorting with persons of ill-repute, causing public scandal, slapping civilians, eccentric behaviour on official occasions, blatant extramarital affairs, failure to guard prisoners, petty corruption (punished very severely), theft, negligent dress and neglecting duties. One common offence was fomenting tension and disputes in brigades, sometimes going as far as exchange of blows. It was sometimes hard to pinpoint the exact cause; this was the case in a late 1947 incident involving three gendarmes in the brigade of Thuir (Pyrénées-Orientales) about one of whom it was said 'his very qualities can cause offence'. ZM1 191248. More recent disciplinary records are unavailable but there has almost certainly been a diminution of some kinds of misbehaviour attributable to improving educational standards and standard of living, and better management methods.

inappropriate behaviour, superiors covering their subordinates for faults, has left traces in police records but not those of the gendarmerie.¹³

Legal accountability takes a variety of forms and I am again just dealing in broad outlines. Police agencies are given mandates by legislation – usually in the case of the police and gendarmerie by executive legislation – decrees, *ordonnances*, *arrêtés* and ministerial instructions. If they contravene this mandate a case can be brought against them in the administrative courts. Police officials and gendarmes are subject to the criminal law and criminal courts for unlawful acts unless specific exceptions are made and immunities granted (for example, in the case of telephone tapping). In some circumstances gendarmes are also subject to military law and regulations.¹⁴ Absence of a clear legal framework, as in the case of prostitution, led to police abuses which were difficult to repress. During the IIIrd Republic, the main way of calling officials individually to account was legal redress – but citizens were reluctant, unless they had secure social status and financial resources, to make a formal complaint to the public prosecutor because they thought that either the prosecutor would side with the police or be over-dependent on police evidence.

¹² A 1962 report of the Inspectorate General concerned the behaviour of a colonel, commander of the 9th Legion in Marseille, accused of using official vehicles, personnel and materials, the property of the state, to construct a private villa. The first two were proven, the third not and sanctions taken. SHD 4/PO 20 November 1962.

¹³ One recent case was in an inspection of the commissariat of Sarcelles (Val d'Oise) in 1979, a case taken up by the *Canard enchaîné*. The *commissaire* concerned was given the benefit of the doubt. CAC 19900597 7.

¹⁴ The law of 10 September 1935, states (for the first time, unequivocally) that any crime or offence committed by a gendarme in the course of administrative or judicial policing duties is a matter for the ordinary criminal courts. When gendarmes act in a judicial police capacity they are under the authority of the public prosecutor or the examining magistrate.