

AN 'EPISTOCRATIC' APPROACH TO POLICE GOVERNANCE

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Summary: The Police and Fire Reform (Scotland) Act 2012 has created a multi-faceted approach to police governance. Despite the multitude of actors, the Scottish Police Authority with complete oversight of policing and a statutory duty to hold the chief constable to account occupies a central role in the new governance landscape and merits in-depth empirical analysis. This paper outlines the conceptual framework that is being developed as part of an independent PhD study exploring the landscape of police governance and accountability in Scotland, with a particular focus on the role of the Scottish Police Authority. The current arrangements, in particular the composition of the Scottish Police Authority as a body of experts, present an ideal opportunity to shift away from the traditional focus on democratic governance and explore the contemporary debates on the role of Epistocracies in public service governance and administration.

Context

Epistocracy is defined as “rule of the knowers” or knowledge-based rule, referring to the Greek word *episteme* that means knowledge (Estlund, 2003: 53). Ever since Plato propagated the rule of philosopher kings in *The Republic*, the notion that the wiser among us or those with more knowledge should have a greater share of political authority has been widely debated within the realms of political theory. John Stuart Mill, for instance, called for those with better education to have more than one vote (Mill, 1987). Yet, Epistocracy as a substitute to democracy is resisted on the grounds that such an arrangement will not be generally acceptable to everyone and it would be considered as elitist and exclusionist (Estlund, 2003; 2009). It is essential to note, however, that Epistocracy is not limited to scientific or academic knowledge, neither is it a substitute for technical knowledge or *technocracy* (Holst, 2011: 2). Epistocracy includes all variations of knowledge, including technical knowledge and “whether epistocratic arrangements are justified or unjustified normatively speaking, depends on the more specific characteristics of these arrangements” (Holst, 2012: 52). In other words, any Epistocratic arrangement will be based upon the specific knowledge demands of a given field. Due to its broad application, the notion of Epistocracy allows for a conceptual framework that can be helpful in understanding and empirically testing knowledge based governance arrangements in contemporary societies.

This paper explores what an Epistocratic arrangement may look like in terms of policing, how it could lay a claim to legitimacy and deliver governance and accountability in a contemporary setting. By drawing on Holst (2012; 2014), and the role of Epistocracies within the EU-context, this paper proposes a formalised institutional Epistocracy, that draws its authority from legislation, situated within a democratic order, and held accountable by democratic bodies (referred as Epistocracy by democratic delegation by Holst and Mollander, 2014: 13-31). However, as Manning (2010: 3) has argued “policing is viewed in democratic terms because it often rests on the notions of trust, equality and legitimacy”. An Epistocratic arrangement with powers of governance over the police would also have to be considered legitimate by those it seeks to govern. Whilst knowledge and professional expertise are inherent qualities of an Epistocratic arrangement, no one can claim perfect knowledge of everything. ‘Epistocrats’ would be appointed on the basis of pre-determined skills and competencies and further claims to legitimacy could be strengthened through deliberation and responsiveness.

Governance and accountability under such an arrangement would be achieved through justifying decisions and claims and counter-claims to expert knowledge rather than through coercion or subordination.

Re-thinking Governance and Accountability

In contemporary societies, governance is increasingly viewed in non-hierarchical terms and involves “networks of actors, both public and private, determining policy through negotiation, bargaining and participation” (Weale, 2011: 58). Contrastingly, accountability is defined by Bovens (2007: 467) as ‘a relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgment, and the actor may face consequences’. This does point to a hierarchical relationship, however, hierarchical accountability too is becoming “obsolete” (Eriksen, 2011: 1178). Accountability is both a ‘virtue’ and a ‘mechanism’ (Bovens, 2010) and along with ‘clarity’, ‘transparency’, and ‘responsibility’, it consists of ‘involvement’, ‘deliberation’, and ‘participation’ (Bovens, 2010: 949).

As part of this change in governance and accountability paradigm contemporary governments are actively looking towards new forms of governance with an emphasis on developing networks of collegiate bodies, and delegating regulatory powers to independent, impartial (in a non-partisan sense) and autonomous authorities (Rosenvallon, 2011). There has been a growth of independent regulatory bodies across the world particularly within the EU context in areas such as environmental protection, occupational health and safety, public procurement and the administration of public services such as health and education (Weale, 2011: 60).

This rise of independent regulatory authorities has coincided with a growing dependence of democratic institutions on experts and evidence-based policy. The reliance on experts is not limited to technical or factual issues, the policies developed following expert advice and consultation have the capacity to influence moral and ethical dimensions (Holst, 2012: 47). Therefore, the relevance of knowledge and expertise in the governance of any public body, including the police, cannot be excluded without careful consideration. In fact, as it is explained below, an Epistocratic arrangement might be more conducive to delivering mechanisms of governance and accountability that are based on the principles of deliberation, reciprocity, reasoning, claims and counter claims to expert knowledge, bargaining, negotiation and active participation of all stakeholders.

Why Epistocracy in Police Governance?

The dependency on experts in criminal justice policy making is by no means a novel concept. In the mid-twentieth century the so-called “Platonic guardians”, that predominantly came through the ranks of Oxbridge, were committed to producing expert knowledge and were instrumental in actively formulating crime and penal policy in England and Wales (Loader, 2006: 563). Pre-devolution Scotland was also not entirely insulated from the influence of experts. The Scottish Office comprised its own network of expert policy makers, which included social workers, members of the judiciary and academics, responsible for the implementation of crime and justice policies (McAra, 2008: 494).

Police organisations too through greater autonomy of senior police officers and market-based reforms (see Jones, 2008: 702), have become complex professional corporate bodies. The demands of preventative policing, led by expert evidence and intelligence, and the pressures on the police organisation, both internally and externally, to record and provide information has meant that police organisations are “experts” and “knowledge brokers” in their field (Ericson, 1994: 151). Faced with constant reductions in force budgets and regular drives to maximize efficiency and service delivery police organisations routinely engage with academics and researchers from around the world to inform policing policies.

The emphasis on ‘what works?’ means that police studies have become ‘for the police rather than of the police’ (Manning, 2010: 106). Take Scotland for instance, the Scottish Institute for Policing Research is a key partner and collaborator for Police Scotland and routinely contributes research to inform policing policy and practice. The Scottish Centre for Crime and Justice and the Howard League Scotland are other Scottish networks that are composed of academics and practitioners experts in their respective fields, contributing to the crime and justice debate in Scotland.

In light of the current security threats, the demands on sharing of intelligence and expertise between the public police and other national and international security organisations has also increased. Throughout the EU, there

has been a growing emphasis on a comprehensive security strategy informed by expert knowledge and evidence resulting in a blurring of institutional and legal boundaries, raising serious concerns about direct forms of democratic governance and accountability of security agencies (Eriksen, 2011).

In an environment where policing and security at home and abroad is constantly evolving and shaping as a result of expert evidence, it is even more pertinent to ensure that policing does not appear as a “closed and self-corroborating bureaucratic system, opaque and unresponsive to its wider public environment” (Loader and Walker, 2001: 27). Whilst the police may make strong claims about their own technical expertise - policing has “many publics” (Smith 1987 in Jones 2008: 695) and there is no specific “technical” knowledge or expertise that would serve as a pre-requisite for policing. Police policies and operations can have great implications on the rights of citizens, it is essential that any governance and accountability arrangement is able to understand, question and counterbalance police expertise and subsequently provide assurances to the democratic government and the electorate that the policing policies are not based on skewed information. Recent examples of Stop and Search and Standing Firearms Authority in Scotland have highlighted the fact that police policies, based on self-referential expertise, can potentially have far-reaching consequences on the wider populace.

The problem with democratic governance has been the constant debate about who will govern the police? As Neil Walker has argued “democratic control itself is a fiercely contested prize between local and central stakeholders”, further complicating the business of police governance (2000: 34). In Scotland, local mechanisms of governance and accountability have traditionally been hampered by a threat of partisan control over policing with chief constables regularly calling upon their operational independence and professional expertise to distance themselves from local police boards (Scott and Wilkie, 2001). Local police boards also suffered from a general lack of expertise, capacity and capability (see HMICS reports particularly Tomkins, 2009 and Laing and Fossey, 2011). Local and central police officers at senior levels too have often been left frustrated by a lack of direction from local police boards as the questions asked are not always relevant to policing or do not sufficiently reflect an understanding of the information provided by the police.

So in terms of an Epistocratic approach to police governance, the more pertinent question is who is an expert. In simplest terms, an expert is someone who knows a specific area more than others (Holst and Mollander, 2014: 19). There is “no definitive list of competencies” to ensure adequate governance over policing (Laing and Fossey, 2011: 15). Since there is no consensus on what expertise is necessarily required for police governance, an Epistocratic governance arrangement would reflect a range of “professional and organisational skills, technical and professional knowledge, legal and policy expertise, business acumen and directorship experience” (Laing and Fossey, 2011: 5-6). As Epistocracy includes all variations of knowledge, knowledge of local areas, of policing, experience of partnership working, negotiation and bargaining should also not be excluded. There is no ideal composition or a prescribed criteria, it would be down to the democratic representatives to ensure an Epistocratic arrangement consists of a broad range of skills and competencies. It is reiterated that the experts would represent a range of backgrounds and not just consist of academic elites, but could also include practitioners, social workers, members of the civil society, independent analysts etc. bringing in knowledge and expertise outwith the police.

Whatever the composition of an Epistocratic governance arrangement may look like, it would be impossible for Epistocrats to have knowledge of everything, of every locality, every single community, and every aspect of policing. This is where an Epistocracy will work together with other stakeholders within the broader landscape of governance. Any gaps in knowledge and information will have to be addressed through meaningful deliberation and engagement with partners including the police and any subsequent decisions would have to be justified to those who are bound by them. This exchange of knowledge and expertise will further enhance the ability of an epistocratic arrangement to deliver governance and accountability through deliberation rather than subordination or coercion.

Epistocratic Governance with a Deliberative Ideal

The primary justifying argument for an Epistocratic arrangement would be its ability to govern by drawing on knowledge. Boswell (2009) has argued that increasing reliance of democratic bodies on expert knowledge in public administration has resulted in pursuit of better policies and creating confidence in the decision making process. Policy makers routinely call upon expert knowledge and evidence to legitimise and substantiate their decisions to both internal audiences and external actors (Boswell, 2009: 7).

Even if the powers of police governance are delegated to an Epistocratic body, the realities of implementation often mean that what happens in practice depends upon negotiated agreement among key stakeholders (Weale, 2011: 60; Terpstra and Fyfe, 2015). Legislative authority and claims to knowledge and expertise alone will not be sufficient to implement any meaningful governance and accountability arrangements, and there will remain the underlying question of whether such an arrangement is considered legitimate by those who are bound by them. Any such deficits could be usefully addressed through what Dryzek calls the processes of democratisation (2000: 29) that would entail 'involving the effective participation of autonomous and competent actors'. This participation in decision making could be achieved through meaningful deliberation.

An important characteristic of deliberation is its "reason-giving" requirement (Gutmann and Thompson, 2004: 3), it is more than consultation or engagement, the buzz words used in current policy circles. Applying this idea to the governance of a public body, such as the police, "those who are being governed should not be treated as passive subjects, but as autonomous agents, who take part in the governance" (Ibid.), reiterating the earlier point about accountability being a virtue. The notion of policing by consent rests on the legitimacy of the police, if the police are perceived as accountable, the public undoubtedly will have more confidence. This is where the process of deliberation becomes an exchange of knowledge and reasoning between those involved in an Epistocratic arrangement and the police. The contestations around claims of superior expertise and knowledge would ensure that those involved in deliberations are open to changing their judgements, preferences, and views during the course of their interactions (Dryzek, 2000; Lafont, 2015).

An Epistocratic arrangement will also need to be able to draw on the needs of the local communities. Knowledge of the local areas and responsiveness to the local demands is an essential element for police governance particularly as policing policies can have a direct impact on local communities. Kuper developed the concept of responsiveness which was subsequently applied to democratic policing by Aitchison and Blaustein (2013). They argued that Vertical responsiveness covers the way in which the police are more or less directly responsive to the public. Horizontal responsiveness recognises that the police are responsive to a range of other institutions and organisations.

The same principle of responsiveness could be expanded and applied to an Epistocratic governance arrangement. Vertical responsiveness would then involve members of an Epistocratic arrangement engaging in meaningful deliberations with members of the public and civil society. Deliberations do not require mass participation but instead should focus on developing ways of communication at a local, micro and macro level (Lafont, 2015) making it easy for the public to help shape policing policy. Horizontal responsiveness, in turn would include deliberations with the police itself, recognising its role as a partner, and other stakeholders such as local and central representatives. Through horizontal responsiveness, relationships with the police can be developed in such a way that accountability can be pursued not only through formal structures and processes but also through informal interpersonal dynamics (Romzek, 2014: 308). Through responsiveness, an Epistocratic arrangement can enhance its legitimacy because it can not only boast expert and professional knowledge but also the knowledge of the communities' desires, adjusting and reacting to the broader environment (see Boswell 2009: 49).

Conclusion

The study of police governance has traditionally been viewed in democratic terms but there is a need to re-think governance as a broader landscape consisting of a network of actors and stakeholders and accountability as a process that requires participation, involvement and deliberation. An Epistocratic arrangement within the landscape of police governance can counterbalance police expertise through knowledge and expertise and deliver accountability through deliberation, reasoning and through justifying decisions to the police – recognising them as partners and stakeholders. The police in turn can take part in the governance and accountability by actively submitting relevant information and by justifying policy decisions through the force of the better argument without having to worry about party political affiliation of the members and general rhetoric. Traditionally, police have often been left frustrated on the basis that political representatives lacked the expertise and the capacity to understand the police work, under an Epistocratic arrangement, the deliberations can take place in a more collegiate environment with mutual respect and reciprocity, responsive to the wider landscape of stakeholders including the public. Thus providing the normative justification for an Epistocratic and deliberative approach to police governance.

FUTURE WORK

This conceptual framework is being developed as part of the ongoing PhD study on the landscape of police governance and accountability in Scotland. The framework of Epistocracy helps to conceptualise the role and composition of Scottish Police Authority as an expert body, with delegated powers of governance and accountability, answerable to the democratic representatives. There are other oversight bodies within the broader governance landscape including HMICS, Audit Scotland, PIRC, local and central representatives and the general public. An empirical analysis of the SPA will not only allow a deeper understanding of how, if at all, the SPA corresponds to an Epistocratic arrangement but also inform whether it carries out its duties of governance and accountability through deliberation and responsiveness. As this is a novel approach to thinking about police governance, the study of the SPA will also serve to highlight some of the strengths and limitations of an Epistocratic approach when applied in practice, contributing towards an empirical critique of the framework.

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