

THE POLICE AND THE PUBLIC*

– PART I

by Terence Beard

The South African Police have never been more in the public eye than they have been during the past few years. Reports featuring police activities appear daily in newspapers of all political persuasions, and items featuring or involving the police occur regularly in the S.A.B.C. radio and television news reports. South Africans cannot therefore but be aware of the extent to which police activities have increased over the years. Owing to the very nature of police functions and duties, the extent and frequency of their activities are a fairly reliable indicator of the health of a society. The greater the scope and extent of police activities, the greater is the incidence of crime or civil disorder, or both, likely to be. Attempts on the part of governments to curb reports on police activities must therefore be seen as calculated to conceal from the public vital information concerning the health of the societies in which they live and carry on their daily lives. Another effect of such curbs is to partially conceal a corresponding deterioration in the relations between the police and the public, relations which are vital to the health of any society.

Despite the curbs placed upon the reporting of police activities in South Africa, shrouding certain of their activities in secrecy, and allowing in certain circumstances only officially cleared versions of these activities to be reported by the media, the reported incidence of police actions relating to social disturbances and discontent remains notably high. This fact alone suggests that the social and political stability which exists is maintained only at the cost of considerable police intervention. The nature of much of that intervention is well known to the public even if the precise details do not reach them. The South African Government has come to rely increasingly upon riot police and security police in order to maintain stability, which means that correspondingly it has to rely more and more upon the use of physical force and upon political detentions, bannings, and interrogations under duress as well as the punishment of 'political' crimes. Simultaneously the definitions of 'political' crimes have been extended to include *prima facie* innocent actions and activities, which, together with civil disturbances, are the main subjects of secrecy.

It may be stated as a general rule, with few if any exceptions, that the greater the extent to which police activities are shrouded in secrecy, the greater the extent of police powers and the scope and frequency of their activities will be. In countries where the police are most secret they are most active, and in the Soviet Union for example, they permeate every walk of life and every institution, and enjoy almost unlimited powers. It is also true that the more the police are protected by secrecy the less accountable to the public they are, and the less are individuals protected from the arbitrary use and outright abuse of power.

Police forces stand between the powerful and the powerless, the rich and the poor, those with high and those with low social status, as well as between the law-abiding and the law-breakers, for this latter relation is intimately connected in both simple and complex ways with the former relations. The study of the structures and functions of police forces is thus an important aspect, as well as providing an indicator, of the relations which exist between the higher and lower political, economic and social strata of societies. Police forces therefore reflect, to an extent which is seldom appreciated, the general social relations within societies.

In South Africa today it would be hard to find a single individual whose skin is not white who does not regard our police force with fear or dislike, if not hatred. The reasons for this are not hard to find, and **basically** are **not** the fault of the police force itself. When vital laws, laws which determine and affect the very basis of life of the overwhelming majority of people, are disliked and rejected as unjust and discriminatory, those who have the unenviable task of enforcing those laws are placed in an invidious position. The very performance of their duties itself entails unpopularity, and the more unpopular are the laws, the more unpopular is the police force likely to be. In the absence of reform or abolition of the unpopular laws, there will be a consequent need over time to employ ever greater degrees of physical force, embracing ever-growing numbers of people in order to achieve police objectives. Unpopular laws reflect the nature of the power and economic structures and the unequal distribution of material resources, so that confrontations between police and sections of the public are a function of social conditions and cannot but contribute to processes of polarization within society. Thus the 'agitator' theory of social unrest can be seen as naive, for 'agitators' are symptoms rather than the causes of social discontent and instability.

Under conditions of social discontent, of which networks of unpopular and discriminatory laws are almost always a sign, demands for greater police powers multiply, for the greater the powers which are accorded the police, the greater the impunity with which physical force can be employed. And secrecy of police activities is almost invariably an accompaniment of any increase in powers, fostering rumour-mongering, the further decline of police popularity, and a need to employ even greater degrees of physical force to achieve police objectives. Secrecy introduces incentives for the abuse of police powers, particularly where the 'agitator' theory of social unrest is accepted, for when the police arrest 'agitators' they believe they are holding people were it not for whom society would be relatively peaceful and stable. In contexts where already unpopular police have to contend with civil disturbances, only exceptional individuals among the police are likely to be able to resist feelings of antagonism towards disturbers of the peace who are known to harbour feelings of hatred and contempt towards them. The temptation to employ excessive force and to abuse police powers can become not only difficult to withstand but sometimes

* I am particularly indebted to the writings of Charles Reith for many of the thoughts expressed in this article. Many of my own ideas too are developments from those of Reith.

over-riding. Secrecy is therefore not only undemocratic and indicative of contempt for the public, but a disservice to the police themselves, encouraging as it does the upholders of the law to regard themselves as being in some sense above the law and therefore not bound by it.

Increases in police powers involve corresponding decreases in the rights of citizens, police powers being directly related to citizen rights, and foremost among police demands are likely to be the abolition of **habeas corpus** and the introduction of detention without trial. All such demands involve citizens being deprived of protection from the abuse of power, for if they can be held without trial and denied access to lawyers, then possible abuses of power by the police become virtually uncontrollable. Allegations by detained persons against the police, claiming assault, torture, or other abuses of power, are difficult in principle to sustain if only the police themselves have access to detained persons. In the last resort the validity or otherwise of such allegations is likely to depend upon the word of a detained person against the word of the police; and if there is collusion among the police, it can rest upon the word of a single detainee against the words of several policemen. The mere fact that a person has been detained tends to be regarded as a factor vitiating against their veracity or trustworthiness. Miscarriages of justice become not only more possible but more probable under such circumstances, and miscarriages of justice tend to deepen and widen social cleavages and so contribute to processes of social polarization.

Supporters of government will frequently hold to the view that 'there is no smoke without fire' and that the police would not detain anyone without good reason, and that the convicted are without doubt guilty; while opponents will tend to believe that not only is there abuse of power, but that there is no possibility of redress against such abuse.

Among the opponents of the government the courts and the very system of justice itself will come under suspicion and will suffer in reputation for their impartiality. Police secrecy militates not only against justice being done but against it being seen to be done.

In circumstances such as those alluded to above, not only is police accountability to the courts and to the public eroded, but parliamentary accountability is also affected. Police secrecy is not compatible with parliamentary accountability, and as a consequence parliament will be denied information which citizens, let alone legislators, have a basic right to know. Formulae such as "It is not in the public interest . . ." become prefaces to replies to questions relating to police matters. Democratic practices and norms are fundamentally subverted as the whole process of erosion gains impetus and seemingly becomes **sui generis**. By tracing this process in detail one aspect of the slide to the authoritarian police state, together with the process of social polarization of which it is a function, can be documented.

As Brian Chapman writes : " The arbitrary use of police powers, brutality, spying, secrecy, the temptation to act as a law unto itself are characteristics inherent in every police system. They stem from the nature of police work . . ." But he adds: "It can well be remarked that although the potential for police abuse exists in all states, it is characteristic of civilized liberal democratic regimes that this potential, and the abuses, are kept under control. The knowledge of the potential is the key factor in causing common law countries to act with such circumspection whenever police powers are involved." (1)

It is of fundamental importance to distinguish between mili-

tary principles and goals and police principles and goals. Armies are formed and trained with the object of defeating the enemy, and to this end the maximum force is employed in order to achieve this goal in the shortest possible time. Armies are formed to defend states against the attacks of other states, and sometimes even to attack other states, and are not normally intended to be used against a state's own citizens, even though at times they indeed are. From the point of view of the state, civil war is the worst of all evils, for it is essentially an act of self-destruction, involving as it does citizens fighting fellow citizens and kin often fighting kin, destroying the very basis of the social fabric.

Armies are thus inherently unsuited to the role of keeping the peace within societies, and their **successful** use in this regard has in practice been restricted almost entirely to totalitarian societies where they have been employed, without regard for life or limb of citizens, in conjunction with totalitarian police apparatuses. Leaving the totalitarian case aside for the moment, the use of troops to quell riots and civil disturbances has been notoriously counter-productive. The spilling of blood, while perhaps restoring the peace temporarily, inflames passions and builds up resentment. Armies are not suited to the restricted role of restoring order, and it is possible to cite cases where troops have over-reacted, and limited peace-restoring exercises have escalated into the unbridled use of military force and brutality, where mobs have been dispersed but the flames of discontent have been fanned rather than quenched. Thus in England in the late eighteenth and early nineteenth centuries, the stage was on occasion reached where "even the sight of troops on the occasion of a riot was the pouring of oil on flames." (2)

Police forces, on the other hand, are specifically designed to prevent crime and to keep the peace within the state, and generally are to be seen as functioning in support of the community. Consequently police forces, in contrast to the military, generally have the aim of employing the minimum amount of physical force necessary to achieve these objectives. Civil disturbances thus pose a special problem, for neither the military nor the police are designed to cope with them. (This explains the formation of 'third forces' — riot-police or para-military police — in many countries). The military is unsuited because dealing with riots necessitates the use of unmilitary strategies and tactics, while police forces are unsuited **insofar as** the control and quelling of riots are perceived by the public as actions against rather than in support of the community.

Where the police enjoy popular public support riots can often be dissolved with a minimum of trouble and the use of very little force. This was exemplified in the Vietnam demonstration in London in October 1968 when demonstrators besieged the American Embassy, when what could easily have been a very ugly situation was dealt with by the Metropolitan Police, and ended with demonstrators and police linking arms together and singing **Auld Lang Syne**. The Washington Post commented "What did not happen, quite simply, was something which has occurred in every other major western country this year, a truly violent confrontation between angry students and sadistic police . . . British experience in building up a non-violent relatively gentle society seems of paramount importance to a world beset by police brutality and student nihilism." (3) The really important factor was rather the fact that the police were still regarded by the overwhelming majority of Londoners as servants of the community acting in support of the community, a crucial factor in determining police attitudes towards the public and enabling them to maintain public support and co-operation.

Where a close rapport between the police and the public does not exist, and where the police do not enjoy wide public support, the control of civil disturbances presents a real problem, for the use of force serves only to widen the gulf between the police and the public and civil disturbances may spread. It is to this kind of problem that we now turn.

When police forces have to function in conditions where basic laws do not enjoy popular support, and where public disaffection grows and with it the frequency of civil disturbances and riots, the governments in question are faced with dilemmas of fundamental importance. This is not of course to say that governments are always aware of the nature of the choices facing them, for very frequently they are not. But broadly speaking there are three **main** choices facing governments under these circumstances.

- 1) To approach police problems on an **ad hoc** basis, which will involve regular increases in police powers, greater secrecy, and the formation of 'Third Forces' such as riot-police squads or other para-military type police formations. The ever greater employment of physical force will be necessary as polarization of the community and popular discontent increase.
- 2) To develop a totalitarian police system under which order is achieved through the unbridled use of military force, and thereafter maintained by means of police terror supported by the military whenever necessary.
- 3) To introduce reform by eliminating unpopular laws and changing those political, economic and social conditions which underlie the disaffection and which the unpopular laws were established to maintain, and to accompany these changes by reform of the police system itself.

There is little doubt that the first alternative stands little chance of success. As has already been said, military force, or para-military force, may suffice to quell riots but serves to inflame passions and to foster and build up discontent and is one of the surest means of provoking further rioting. While para-military police formations may differ from the military in being specialists in riot control, they are equally susceptible to over-reaction and to unnecessarily excessive use of physical force, and thus suffer from the same defects as the military itself. The use of para-military police is counter-productive except in the short-term sense of restoring order, but as in the case of troops, a para-military unit "... can temporarily repress breach of law, but is powerless to provide, by itself alone, sustained observance of laws." (4) Para-military riot squads have been employed in countries such as France to quell student riots and have been successful only because they have had to deal with minority groups, and their employment even then has left in its wake bitterness and rancour which have still not been forgotten.

Where there is majority discontent the first alternative is almost certainly doomed to fail, and each and every time the para-military police succeed in restoring order, they succeed also in alienating and disaffecting more people. Thus disturbances are likely to become more frequent and more wide-spread. At the same time rioters and other disturbers of the peace become more intrepid and more violent. The scale of violence is therefore likely to escalate as both rioters and police increase their use of physical force. The result is a chain reaction which may either rapidly or gradually and sporadically gain momentum until the social fabric is irreparably damaged, and the stage eventually reached where the government no longer has firm control of the situation. Once this stage is reached conditions will have become so unstable that it is anybody's guess as to what might ensue, and the

cliché of a future "too ghastly to contemplate" might well become a reality.

The second and totalitarian alternative, of rule through fear and terror, pre-supposes complete unscrupulousness and a total disregard for human life, for it necessitates in the first place the use of military force to beat the populace into submission by indiscriminately destroying communities in which there are civil disturbances or, sometimes, even signs of opposition and resistance. This strategy is employed until it comes generally to be believed that the only alternatives to submission and compliance are death or transportation to a labour camp or its equivalent. Such a strategy, according to news reports, is at present being employed by the Russian military forces in Afghanistan. It was employed by Stalin in Russia itself, notably against the Kulaks, and later by the Russians in Hungary and Czechoslovakia, successfully in all three cases. Once the military have achieved their objectives and eliminated opposition, the rule of the police and the secret police is established permeating every nook and cranny of society and ensuring that no-one even gives an appearance of putting a foot wrong. And behind the police in all their manifestations stands the army ready to employ maximum force in the rather unlikely event that they might again be called upon to do so.

It is arguable that the totalitarian strategy is incompatible with the continuance of the system of private enterprise in cases where the disaffected sections of the community comprise a majority of the population as a whole, for not only is the task of subduing and rendering the populace compliant and docile likely to have crippling effects, but the system of control which will have to be imposed will place the market economy under severe strain. However that may be, should such a strategy be adopted by South Africa whose **apartheid** policies are under continual international scrutiny and attack, and whose regime is considered unrepresentative by most countries of the world, it would have dangerous repercussions. South Africa would become more isolated and even more of a pariah state, and would almost certainly have to face international sanctions. Under such conditions the difficulties of establishing a totalitarian regime over a large alienated and discontented majority and **maintaining** that control would be likely to prove insuperable. The indications are that the South African government is well aware of this and that it has adopted a complex strategy embodying elements of both the **ad hoc** and the totalitarian alternatives, for certain restraints are imperative if the limited and qualified support of the Western democracies, particularly the United States, is to be retained.

The third alternative is one in which democracy becomes the main goal, and with it the introduction of a democratic police force. The concept of a democratic police force is an interesting and relatively novel perspective from which to examine the notion of a democratic society.

The first condition for the continued existence of a democratic police force is that the bulk of the more important laws enjoy the support of the vast majority of the population. For this to be so it is essential, as a minimum requirement, that the legislators be responsible to the vast majority of the population, which in turn implies that the vast bulk of the population be enfranchised. For a democratic police force is possible only either in a democracy or, in the short term, under conditions where democracy is seen to be the pursued goal of government and a goal which citizens are reasonably confident of achieving fairly rapidly. Popular support for the government, or at least for its goals, would be essential, for

unless this were so a democratic police force would be unable to endure.

If it is assumed that one of the above two conditions obtains, the principles upon which a democratic police force would have to be based can appropriately be considered. Firstly such a force would be viable only with public approval, respect and support. The willing co-operation of the public is a **sine qua non** for the successful operation of such a force. Public co-operation is possible only if there is public support and respect for the laws, and if the public regard the police as an essential part of the community working on behalf, and for the general good, of the community.

For the police to maintain public respect and co-operation it is necessary that they demonstrate constantly their **absolutely impartial service to law, in complete independence of policy**, for once they are regarded as partial by any section of the community their position will have been compromised and the willing co-operation of that section forfeited.

It is essential that the police use physical force only when it is absolutely necessary, when persuasion fails, and even then only the minimum degree of physical force necessary to achieve a police objective. The main object of an efficient democratic police force is **the prevention of crime and disorder**, as an alternative to their repression by military force and severity of legal punishment, and it is obvious that this can only be achieved where there is general public support and approval both of the police and their functions. If the police are given this support and approval it becomes possible to entertain the idea of the police being **unarmed**, this being the ultimate test of both a stable and relatively contented community and of a democratic police force. **Only democratic police forces are able to go unarmed.** To send out unarmed policemen into communities which reject them would be rather like sending them defenceless into a lion's den. When the Metropolitan police in England were first formed, policemen were regularly assaulted and even kicked to death on the pavements, and only sheer persistence and dogged adherence to democratic principles enabled them eventually to earn public sympathy and ultimate success.

It is of the utmost importance that a democratic police force does not exceed its proper functions and that it does not even seem to be usurping the functions of the courts. It is not for the police to judge guilt or innocence or to mete out punishment, and impartiality and fairness are essential charac-

teristics of good police forces. The test of a good and efficient police force is the absence of crime and disorder and not, as is often assumed, the number of successful prosecutions.

Public support and favour cannot be maintained when a veil of secrecy is drawn between the police and the public. The police should not only be accountable to the public for their actions but they must be seen to be accountable. A good and efficient police force cannot exist without public scrutiny, for secrecy and malpractices go hand in hand.

Police forces which do not have public support are seen by the public as acting **against** the public rather than **with** the public **for** the public and **in the public interest**. This is perhaps the key to the whole question of police forces, for it involves the choice as to whether a police force is to constitute a barrier between the holders of power and those over whom they wield that power, a kind of body-guard for the ruling elite or the ruling class, or whether it is to constitute no more than a paid section of the public who give their "full-time attention to duties which are incumbent on every citizen in the interests of the community welfare and existence." (5)

The right to protest is a vital right in any democratic society, and a democratic police force will welcome and defend the right to protest. For as Richard Clutterbuck has put it "Protest is necessary to maintain a fair rate of change in the face of entrenched interests in any society — both to further the will of the majority and to attain equity for minorities. If peaceful protest for either of these is forbidden, or if it never achieves results, violence is in the end certain to ensue, and **moral justification will be claimed for it.**" (6) And "The biggest single contribution to keeping protests peaceful is the existence of an unarmed police force, but in a potential riot situation an isolated unarmed policeman can only function if he is confident that the public accept responsibility for his safety as much as he accepts responsibility for theirs." (7)

And yet again: "Few experienced British policemen would wish to see protests and demonstrations stifled, not so much for idealistic reasons but rather because they are the most important safety valve in a democratic society. The police would rather see dissent expressed by public demonstration than have it build up into a more dangerous form of conspiracy or violence." (8)

(to be continued)

REFERENCES

- | | |
|-------------------------------|-----------------------------|
| 1) Brian Chapman, p93 | 5) Charles Reith, p163 |
| 2) Charles Reith, p53 | 6) Richard Clutterbuck, p11 |
| 3) Richard Clutterbuck, p28-9 | 7) Richard Clutterbuck, p24 |
| 4) Charles Reith, p19 | 8) Richard Clutterbuck, p25 |

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