Policing the Police

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Over the last few weeks, an aspect of policing that raises a number of political, legal and ethical dilemmas has come to the fore, namely: how do we police the police when they are accused of wrongdoing?

It is imperative that we have trust and confidence in the police force, as illustrated by the fact that Andrew Mitchell resigned from the position of Chief Whip on 19 October 2012, not for (allegedly) calling two police officers "plebs", but because he had the audacity to question the honesty and integrity of the officers involved. However, this is not to say that the public has blind faith in the police. The findings of the Hillsborough Independent Panel in September confirmed that, on occasion, the police not only make mistakes, but also attempt to cover-up these mistakes. One of the many revelations of the Panel's Report was the "black propaganda" campaign orchestrated by senior South Yorkshire police officers in the aftermath of the disaster, which involved altering the statements given by junior officers so as to hide any evidence of police failings, and to exaggerate the extent to which the victims were to blame for their own deaths and injuries.

The Attorney-General has recently announced a new inquest into the deaths of the 96 at Hillsborough, alongside an inquiry by the Independent Police Complaints Commission into the actions and inactions of the police following the disaster. The Crown Prosecution Service will also likely initiate criminal prosecutions.

A number of high profile lawyers and activists are now seeking to have the inquest into the Hillsborough cover-up extended to include events that occurred five years before, in 1984 at Orgreave during a miner's strike. 95 men were prosecuted for rioting and unlawful assembly, with the offence of rioting at the time punishable by a life sentence. The case collapsed when it was revealed that the detectives involved had fabricated the evidence required to establish the existence of a riot. As at Hillsborough, junior officers' statements were altered so that those arrested appeared to be engaging in a riot. The police force in question? South Yorkshire police force.

These events raise at least two questions. First, could the disaster at Hillsborough have been averted had the scandal at Orgreave been thoroughly investigated and dealt with promptly? Second, how exactly are we supposed to deal with incidents of police malpractice, while simultaneously maintaining public confidence in the integrity of the police?

We will never know the answer to the first question, but it is arguable that the police at Hillsborough would have thought very differently about their actions had they been held to account for the events at Orgreave. With regards to the second question, we will have to wait and see whether the impending inquiries, inquests and prosecutions have the desired effect of securing justice while maintaining confidence in the police. However, observers of complaints against the police will not be holding their breath, since convictions for police misconduct are exceptionally rare. No officer, for example, was successfully prosecuted following the Birmingham Six case, yet it is widely known that the police used violence to coerce false confessions, and then went to extreme lengths to pervert the course of justice, while the six victims spent 16 years in prison for a crime that they did not commit.

If inquiries and prosecutions have faltered so spectacularly in the past, we clearly need to change the way in which we deal with allegations of police malpractice. It would appear that the police can act with impunity because of a reluctance to prosecute "one of their own", but there are two further means of holding the police to account for wrongdoing that would not necessarily require the institution to prosecute itself. The first is to introduce an element of democracy into the police force. The power of politicians is kept in check through periodic elections – they know that if they misbehave, they will be voted out of office. On November 15, voters will go to the polls to elect local Police and Crime Commissioners, and it is hoped that by having an elected person in charge, there will be greater accountability for police misconduct. There are drawbacks to having Police and Crime Commissioners, though. Perhaps first and foremost, it is likely that the elected Commissioners will themselves be former police officers, and the Hillsborough Independent Panel's Report makes it clear that we should be cautious about letting state authorities investigate themselves when they are accused of wrongdoing.

The second option is to establish an independent Truth Commission to investigate future cases of abuse of power by state institutions such as the police. An independent Commission would perhaps have a similar make-up to the Hillsborough Panel – a local religious leader, a medical expert, and so on. To ensure that it is free from corruption, its members would change periodically, and it would be entitled to all the relevant documents so that a full inquiry can be carried out in a timely manner. There is an argument that such Truth Commissions are unnecessary, since incidents of police misconduct are few and far between. The scandals of Orgreave and Hillsborough, one might say, are isolated, historical blips, attributable to just one police force. We should remember, though, that it was only in 2005 that the police mistakenly shot dead Jean Charles de Menezes at Stockwell tube station and then concocted a story about Menezes running away from police officers, leaping over a ticket turnstile in the process. More recently, the death of Ian Tomlinson in 2009 at the hands of PC Simon Harwood during the protests at the G20 summit in London brought with it a false story about protestors preventing the emergency services from giving aid to Tomlinson. On both these occasions, there were enough witnesses to come forward to challenge the police's account of events, and social media accompanied by 24 hour news broadcasts ensured that the truth emerged quickly.

But what would happen if the public did not know what the police had said about these events during legal challenges to the authorities? How would the truth emerge if the investigations into the deaths of the 96, and of Menezes and Tomlinson, had taken place behind closed doors, with no reports in the media of what the police or other authorities were saying? This scenario will be a very real possibility if the Government's proposed Justice and Security Bill is passed. This Bill has been introduced in order to ensure that allegations against state agencies such as the police can be heard in secret courts, away from public scrutiny. The Hillsborough Independent Panel's Report, though, has surely demonstrated that open justice is fundamental to a democracy. We can hardly call ourselves a democratic society when state agencies are able to hide misconduct from the public – that is, from the very people that those agencies are supposed to serve.

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