

Counter-Terrorism and Police Legitimacy

Annual D.P. Kohli Memorial Lecture to
the Central Bureau of Investigation
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Lord Blair of Boughton QPM

Director Singh, distinguished guests and colleagues, it is an enormous privilege to be invited by the Central Bureau of Investigation to give the annual memorial lecture in honour of the CBI's first director, the late Mr D.P. Kohli.

I believe I am the first non-Indian national to be asked to give this lecture. That is both an honour and a danger. The playwright George Bernard Shaw famously said that Britain and America were two countries divided by a common language and that is also true of India and Britain. I ask that you forgive me if, in the course of these

remarks, I say something which jars in an Indian context. I have no intention of giving offence.

Like Scotland Yard, which I was proud to command, the CBI has a worldwide reputation for the excellence and often fearlessness of its investigations. As has been said earlier, I am currently working in India, teaching and learning from members of the IPS at the S V P National Police Academy in Hyderabad. That also is an enormous privilege.

Your Home Ministry tendered on a world-wide basis for the delivery of three levels of mid-service training and Cambridge University was awarded the contract to work with Inspector Generals and Deputy Inspector Generals from across all of India. I am the Co-Director of the Course, together with Professor Larry Sherman, one of the foremost British criminologists. The Course is run in cooperation with the O.P.Jindal Global University.

We are currently working with our second six week engagement at Hyderabad, where I have left 115 officers engaging with a combination of strategic management thinking and world-wide best practice in policing.

I said it is a privilege. It really is. I visited India only for the first time last year – although I did come twice and my wife, who is here tonight, has been many times – and, like so many Britons before me, I have been captivated and amazed by what I have found: but by almost no aspect more than the quality of the more than 200 officers I have so far encountered from the IPS.

One oddity about the British and policing is that they developed two completely different models during the 19th Century. In Britain itself, the model famously invented by Sir Robert Peel –the Bobbies themselves – were unarmed, lived among the community and had no system for officers to enter directly into higher ranks. Across the Empire, from Canada to India, from the Malay Archipelago to Africa, they produced an armed constabulary, based in barracks and commanded by commissioned officers. Over the intervening years, of course, both systems have changed and developed but the difference over direct officer entry remains. Both systems have their advantages and disadvantages – which have been the subject of fierce debate on these courses – but what is obvious to all of us teaching at

Hyderabad is that the average intellectual and educational standard of the IPS is unequalled in Britain and – because of the fierceness of the initial competition – probably anywhere in the world. Yours is a most impressive organization and, I have no doubt, will be of great service in the modernization of India which is everywhere apparent.

We need sometimes to say more loudly, in the context of that modernization but also of so many more aspects of contemporary society, that policing is important. An effective and impartial police service is a fundamentally necessary underpinning of an effective democracy.

All over the world, the police are the principal agency empowered to use force against the citizens of the nation. Just as in the case of the rule of law, the absence of a properly functioning police service is an indication of a failed state. A police service that serves only one political party or politician is the emblem of dictatorship.

As a great predecessor of mine, Sir Robert Mark, once remarked:-

‘The police are the anvil on which society beats out the problems and abrasions of social inequality, racial prejudice, weak laws and ineffective legislation’.

And, in our time, the greatest of those problems, across the world, is that of terrorism. I am aware that the CBI has, in part, ceded some of its responsibilities in this regard to the newly-formed NIA but tonight I want to speak to you, not only as investigators of terrorism in your own right, but also as both thinkers about policing and citizens.

My thesis is concerned with the interface and connection between, on one hand, the work of police agencies in countering the many different faces of terrorism and, on the other, the potential impact of such work on the very legitimacy of those agencies. I want to emphasize the fragility of that legitimacy from the impact not only of our own conduct but from events outside our control. And I want to emphasize the need constantly to nurture that legitimacy.

During my more than 35 years of service as a police officer, I saw the reputation of Scotland Yard torn to shreds, at different times, by corruption and by racism.

And I have seen that great force haul itself back to legitimacy, as it attempted, slowly but largely successfully, to overcome those two great aberrations. But each generation faces new threats and it has fallen to us, it seems to me, to confront a new twist. Corruption and racism are simply wrong and can have no place in a modern police service. But in our time, we are struggling to contain a monster called terrorism, in a new and terrible guise. I believe that our challenge is that our efforts to overcome terrorism contain within them an element which, unless its toxic nature can be properly treated, can threaten the very legitimacy of the agencies involved in the struggle.

All over the world, liberal democratic states (with India the largest and Britain perhaps the oldest) are struggling with the tension between civil liberties and the first duty of any state - that of protecting its citizens from death and serious harm.

In Britain, that debate is cast as one between those who uphold those fundamental freedoms, to privacy, to a family life and to the right to a fair trial, among others, which are enshrined in the European Convention on

Human Rights, which the British largely wrote and have fully adopted, and those who argue that the overriding right must be to stay alive, free, as far as possible, from the risk of being blown up.

In Britain, as elsewhere, different political parties adopt different and sometimes confusing positions on this issue, with the traditionally right wing British Conservative Party now adopting a more liberal, libertarian position than that of the normally left wing Labour Party. Newspaper commentators proclaim from both positions and the public itself is divided.

I am aware that the position is similar here in India. I am a little uncertain about all the initials but I gather that Acts of Parliament concerned with terrorism here, with titles like TADA, POTA and UAPA have come and gone in recent times, as the significance of civil liberties or concern for security gains the upper hand. I understand that UAPA is still in force and recently amended but has been recently described by the Indian Human Rights Law Network as;-

'particularly vile..{turning} India into virtually a police state.'

The British organization Liberty often says similar things.

Parliamentarians and commentators are not in the position, however, of the police. The police are the anvil. They are at 'the hot gates', as the poet T. S. Eliot once put it, referring to the ancient battle of Thermopylae, where 300 Spartans held the pass against all odds. Thermopylae means hot gates in Greek.

What the police actually do in terms of terrorism and how what they do is circumscribed and described actually matters. And it matters because of this.

In 1984, the Irish Republican terrorist group, the Provisional Irish Republican Army or PIRA tried to kill the then British Prime Minister, Margaret Thatcher, at the annual Conservative Party conference. They failed, although they killed and maimed others. Afterwards, an anonymous spokesman for PIRA said something which, to my mind, has forever defined the essential dilemma of combating terrorism. Admitting the failure to kill the Prime Minister, he said this:-

'You have to be lucky all the time: we only have to be lucky once.'

The debate over liberty and security is not a new one. One of the towering figures of the American Revolution in the late 18th Century, Benjamin Franklin, remarked that:-

“Any society that would give up a little liberty to gain a little security will deserve neither and will lose both”

Nearly a century later, an even greater American, Abraham Lincoln, faced by the dilemmas of the American Civil War, disagreed: he commented that: –

“The dogmas of the quiet past are inadequate to the stormy present. As our case is new, so we must think anew and act anew.”

I am with Lincoln primarily because, while both of our nations have faced terrorism for many years, the gravity of the threat we face at present means that ‘our case is new’ and we must both ‘think and act anew’.

I want to illustrate this by comparing the British experience of combating Irish terrorism during the later decades of the 20th century with the reality being faced today in terms of international terrorism.

There are a number of differences between what were rather quaintly called 'The Troubles' in Northern Ireland, which, despite the name, led to the deaths of more than 3500 people and spilled on to the British mainland, as opposed to the threat currently posed by international terrorism. In my view, they are these:-

1. With rare exceptions, Irish Republican terrorists (and their less effective Loyalist opponents) did not seek to die in the attacks they were planning;
2. They did not normally seek mass casualties, let alone think in terms of chemical, biological, radiological or nuclear material. They only tried to bomb the London Underground once, rather half heartedly.
3. Most of the time, they gave warnings of attack;
4. Especially towards the end of the campaign, their organisation was almost entirely penetrated by British intelligence;
5. A negotiating position, however unpalatable, was available: PIRA were bombing their way to the table, not just blowing it up; and
6. Their quarrel was of almost no interest to anyone else.

This last point is of real significance. To most people outside the areas in which specific nationalist terrorist groups operate the issue at stake is unclear and of little interest. Unless you have connections there, the quarrels of Basque separatists or the arcane distinctions of South Ossetia are opaque and very specific to their locality. So too with the quarrel in Northern Ireland. In 1919, Winston Churchill, writing after the end of the horrors of the First World War, described what then happened, in what was still the whole of Ireland under British rule, in the following terms:-

"But as the deluge subsides and the waters fall short, we see the dreary steeples of Fermanagh and Tyrone emerging once again. The integrity of their quarrel is one of the few institutions that has been unaltered in the cataclysm which has swept the world."

No one else cared, except the Irish diaspora abroad and the British who did not know how to answer the agony for more than a century. But what we all face now is very different from this, something not seen in the long history of terrorism, and then not on such a scale, since

the anarchist movements of the early 19th century. We face a global, nihilist threat.

For instance, central Al Quaida has suffered many reverses, one very recently: its leaders are in hiding, those that survive, but its inspiration and its message remain vibrant and universal. Its message resonates across an interconnected world, across continents and through national borders. It can reach not only its adherents, not only those criminally attracted to extremism and violence, but also some of the lonely and the unbalanced, using new methods of communication, outlining new causes for anger and despair, suggesting new dreams of fulfilment and offering new tools of attack.

And AQ is an inspiration not only to its subsidiaries, such as Al-Shabab in Somalia but also to those sometimes affiliated and sometimes opposed groups like Lashkar-e-Taiba and the Taliban and, indeed, to those groups who share none of its ideology but deeply admire the cruelty and violence.

A month after the bombings of July 2005 in London, the then British Prime Minister, Tony Blair, remarked that

‘the rules of the game have changed’. That view would have been echoed in Madrid and Bali, Casablanca, Istanbul and Mumbai, even before the awful events of November 2001 and even more strongly thereafter. All over the world, democratic governments have tried to strengthen their defences against terrorism, both in terms of new and adapted laws and in the increase in the capabilities and indeed numbers of agencies designed to defend their citizens.

But all of their efforts took place under the shadow of the ‘War on Terror’ announced by the then US President, George Bush. In the immediate aftermath of the attacks on the twin towers, that did not look unreasonable.

I spent 9/11 in the command centre of the British Government, known as COBR, with the Prime Minister and other senior ministers and officials. While in that room, I saw the towers collapse and it looked like war to me, in our time and our watch.

But the wars in Iraq and Afghanistan that followed outraged many, not only in the Islamic world. Rightly or wrongly, a pervasive sense has developed in the West of citizens being misled on the route to wars, which

themselves are not capable of successful closure. In the Middle East and here on the Indian sub-continent, the voices of dismay are much louder. It should never have been described as a war. Such a war would never really end and would involve fighting one's own people.

Terrorists are criminals, not soldiers.

But as a result of terror being defined through the prism of war, particularly an unpopular war, everything that we as police do to combat those who would attack our public is seen by many in a much wider context, as aiding an attack on Islam or, at the very least, as unnecessarily giving up long cherished and hard fought for liberties and therefore helping the terrorists to degrade our democracies.

I will not try to unpack further the reasons for those views but now consider the impact of them on the police, which I see like this. While we see ourselves as trying desperately to defend the public, the public are not sure. Certainly in Britain, and I would suggest elsewhere, the police's very legitimacy is under question because of public scepticism over the tactics the police believe they

need to use and the changes in law which they have supported.

And the terrible problem is that what is involved here is not the kind of extreme repressive response to terror, which all terrorists hope to provoke from governments. This is not about responses including arbitrary and unlimited detention without trial, the authorized or accepted use of torture, the use of government death squads and the setting aside of the rule of law. These are ostensibly well thought through measures being put forward by democratic governments yet widely regarded as illegitimate by a considerable proportion of the public and intelligentsia. The key is found in an examination of the nature of police legitimacy.

Dr Justice Tankebe from Ghana is an expert on post-colonial policing, now working at Cambridge University. He is teaching with us at the NPA. His work makes clear that the legitimacy of the police is not based solely on their adherence to laws but on a delicate balance between police behaviour and public acceptance. Drawing on the work of Jean Marc Coicaud, currently

Director of the United Nations University in New York, Tankebe puts forward the view that:-

‘Police legitimacy is the recognition of the moral rightness of the police’s claim to authority’

He further argues that that recognition by the public is always conditional and can be either nourished or squandered. It is nourished both by conformity to rules of procedure and by the justifiability of the rules, in terms of shared beliefs between police and public. His lectures have been acclaimed by your colleagues at the Police Academy.

Perhaps the most striking validation of his proposition is supported by two studies in 2001 in New York by Sunshine and Tyler. Their first research, conducted in the early part of the year, found that trust in the worthiness of what police were doing was almost entirely controlled by a belief by the public that the police followed the rules and that the rules were fair. Then 9/11 happened, so the researchers repeated the study in the following months and, fascinatingly, found no difference.

If that is not enough proof, then it should be noted that nine years later, in 2010, Tyler and others repeated the study again, this time with Muslim New Yorkers, long years after the 'War on Terror' was unleashed with all its consequences, and again found no difference in respondents' views. The key to police legitimacy and therefore to our effectiveness clearly seems to be a set of shared beliefs between police and public.

In Britain, in the face of the London bombings, which themselves were both preceded by and followed by a series of other plots, including failed suicide bombings, an attempt to use the deadly poison ricin, a conspiracy to kidnap and behead a British Muslim soldier on leave from Afghanistan and then post a recording of the beheading on the internet, and a further plot to blow up simultaneously a number of American transatlantic airliners with the potential of causing many thousands of deaths, the British police were reeling at the magnitude of the threat. They publicly made clear that they were pleased when the Government of the day brought forward legislation to extend the length of police detention of terrorist suspects and other measures,

including the introduction of stop and search powers without direct suspicion to deter terrorists from reconnaissance.

But a considerable group of the public saw all of this as being part of an unwanted and inappropriate war. The opposition sensed this and condemned such measures. Tony Blair took a 90 day period of pre-charge detention forward into Parliament in November 2005 and lost his first vote after eight years in office.

By chance, one of a regular series of meetings of senior members of the British Cabinet with police chiefs and the heads of the security services happened to be scheduled for the next day. As usual, the meeting began with an assessment of the terrorist threat from the British Security Service, the BSS. Quite simply, ladies and gentlemen, this was the bleakest summary of a threatening situation I had ever heard, made worse by the clear acknowledgement by the BSS that this was unlikely to be the whole picture and there were almost certainly further plots which had not yet been detected. The Prime Minister asked, perhaps partly to himself, “How can we persuade people of the seriousness of the

situation?” The Home Secretary – equivalent to the Home Minister in India – looked him and said: “Perhaps we could broadcast that briefing?”

I tell that anecdote only to illustrate one of the ways out of the dilemma I am describing. Not that I am suggesting that we should broadcast intelligence briefings but that the provision of information to the public is the fundamental clue to helping the police retain a compact with the public about what measures are necessary in the face of an unprecedented threat of mass casualty terrorism, together, of course, with scrupulous fairness in carrying them through.

But in Britain it proved extremely difficult to get such messages across. The police have been a traditionally silent service and all this had become a very political and media driven argument. I am known as an outspoken police chief: as the British phrase has it, no shrinking violet, but I was very surprised by the ferocity of the attacks on me and other colleagues when we attempted to put forward the case for strengthening the legal provisions about terrorism. The intellectual case was

clear. We were no longer facing the IRA. We were facing a threat many times worse.

In relation to periods of extended pre-charge detention, others and I thought we were presenting a clear-cut, operational and balanced case, which went something like this. On discovering a suspected plot, because of what we knew from earlier cases about the dreadful gravity of the terrorists' intentions, police had to act earlier than we might have wished in terms of gathering evidence. We could not risk waiting: the airliners plot I mentioned earlier was a case exactly in point. What this meant, however, was that we had to arrest everybody who seemed to be involved rather than being able to concentrate on the ringleaders: we therefore had to sort out who was really involved and who was not. We faced difficulties with languages, often dialects, and we faced encrypted computers that had to be broken and we needed to make international enquiries in every case. We needed more time.

It proved impossible to make that case and those opposed to the measures denounced the police in the most strident and often partisan terms. In many other

times, I think the general public and media view would have been in support but, in the aftermath of the Iraq invasion, these were no ordinary times. I have no doubt that this controversy damaged the reputation of the British police for fairness, especially among the Muslim population. Our very attempts to protect the citizenry were alienating them. There was a strain in the shared belief between police and public.

I have told this tale at length because it is the dilemma of our times for our profession and I would only urge on you the desperate need to understand the delicacy of the legitimacy of our work and to do what you can, whenever you can, to provide the most detailed rationales for the way you work and especially for any changes in legislation and practice you believe necessary to tackle terrorism in our midst.

I should add that, facing these difficulties, Scotland Yard's next response was to return to our roots and massively expand our community policing endeavours, in order to demonstrate our support to all communities, including Muslim communities who saw themselves as being unfairly under collective suspicion. That would be

another lecture but, like the effort again and again to explain what we sought to do to strengthen our defences against terrorism, it is an attempt to get alongside the public. After all, Sir Robert Peel said that:-

'the police are the public and the public are the police'

And he has to be right, doesn't he?

Thank you very much.