

Watching the Watchers: Democratic Oversight

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Like Bob Rae, I too think that we face genuine threats from terrorism. But unlike certain others who have spoken at this conference, I have much more doubt about the need for some of the antiterrorist legislation. However, that is for another time. The question now is: where do we go from here?

In view of the new powers that the antiterrorist measures have given to the police, Canadians are probably more vulnerable than ever to infringements of their civil liberties. It is, therefore, more important than ever to develop devices that can deter, detect, and correct whatever improprieties the police may perpetrate. The existing devices are woefully inadequate. Apart from a few narrow exceptions, it is very difficult in this country to get an independent, publicly-subsidized investigation of police abuse allegations. (The investigative stage of the process is, of course, critical to what happens afterwards.)

For the most part, the investigations are handled by the very police force against which the complaint has been filed. This means that the investigating officers will have collegial relations to maintain and departmental interests to protect. In Canada, this is called a conflict of interest. In short, the system is, may I create a new pun, “cop heavy.” What we need, therefore, in every jurisdiction in this country, is a system for independent investigation and review of civilian complaints against the police. This is my first recommendation.

But, as has been properly pointed out by speakers before me, that is not good enough. Anyone who has lived in the real world for longer than an hour knows that lots of people who have grievances against the police are very reluctant to come forward. Thus, a complaints-driven

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system is not adequate. Indeed, I suspect that there are all kinds of policing issues that nobody knows about. I often wonder how the police decide, and on what basis they decide, what they do all day. Where does this come from? Who chooses their priorities and how are they chosen? For the most part, the public is in the dark and it is only by happenstance that something might surface that would shed light on these questions. In the current era, this is particularly unacceptable.

The Canadian Civil Liberties Association has been advocating for many years a system of independently auditing police practices and policies. Independent agencies armed with ongoing access to police records, facilities, and personnel should be empowered to conduct self-initiated probes into what is going on. These agencies should not have decision-making power. They should simply disclose and propose, but not decide. The decision-making should remain where it is, but the decision-makers should have to operate under the impact of the publicity generated by these kinds of audits.

The Security Intelligence Review Committee (SIRC), the independent agency that monitors Canada's national security operations, might be appropriate for this purpose. There may well be other alternatives; I am not wedded to the format, only to the principle. A system of independent audits, then, is my second recommendation.

The third recommendation involves re-thinking the relationship between the government—the civilian masters—and the police. There is a rather peculiar situation in this country. In the province of Ontario, for example, the law explicitly provides that police services boards shall not give the police directions for their operational decisions. But, even where the legislation is less explicit, this is usually the practice. In this regard, I remember well the words of Prime Minister Trudeau during the time of the RCMP scandals. He said that the minister of the day should not have a right to know what the police are constantly doing in their daily activities. This hands-off approach is largely designed to avoid politicizing the police. Without question, a proper concern. But how in the world are you going to have civilian accountability for the police unless the civilian authority has some kind of power to give direction to the police?

We have concocted a distinction in this country between policies and operations. The civilian authorities can give direction on policy, but not on operations. In practice, however, this distinction has often fallen by the boards. Let me remind you about what happened in Ipperwash, Ontario. The Ontario Provincial Police (OPP) stormed into the park at

Ipperwash to remove a group of Aboriginal protesters who were involved in an allegedly unlawful occupation there. In doing this, the OPP abandoned its traditional policy of restraint in these matters. The occupation was only about one day old. The park was closed for the season and not slated to reopen for months. One wonders why there was such a rush. And in the *mêlée*, an unarmed occupier was shot dead.

What is significant, for our purposes here, is what the cabinet ministers in charge said in the legislature when they were being pummeled by opposition questions. The then Attorney General said there was no political interference with the police. He declared that such interference would have been “highly inappropriate”. The then Premier of the province, Mike Harris, said, “We knew nothing of the OPP build-up. It was not our business.” Not their business? Of course, these remarks triggered quite a controversy. The Premier was accused of not telling the truth. If indeed he was not telling the truth, this would be pretty awful. But I suggest to you that, if he was telling the truth, it might even be worse. He was, in effect, saying an operation of such magnitude is no business of the government.

How are you supposed to have accountability if the government—the civilian masters—can have no involvement or even knowledge of something so important? Suppose one country decided to do battle with a numerically-comparable group from a foreign nation? Who would suggest for a moment that anybody but the political authority should make that decision? Why should it be so different, then, if we are battling our own citizens? Imagine former US Attorney General Janet Reno saying that the FBI seizure of Elian Gonzalez was not her business. Yet this is official doctrine in much of Canada. It requires some serious re-thinking. My third recommendation is that the political authorities should have more “say” regarding police operations.

As for the risk of politicizing the police, a system of independent auditing could be very helpful there too. If we had such a system, I would imagine that, upon receiving instructions from their civilian masters, chiefs of police would say “put it in writing”. In that way, such instructions would be amenable to audit. In those circumstances, improper instructions would very likely come to light.

To summarize these recommendations: First, independent investigation and review of civilian complaints against the police. Second, independent auditing of police policies and practices. Third, greater direct supervision of the police by their political and civilian masters.

I do not make these recommendations because I think the police are more evil than the rest of us. I make them because I think that the police are no less human than the rest of us.