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# **Democracy and epistocracy reconciled?**

The Scottish Police Authority and police  
governance in Scotland after 2012

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Doctor of Philosophy, University of Edinburgh, 2017



## Declaration

I declare that this thesis has been composed solely by myself and that it has not been submitted, in whole or in part, in any previous application for a degree. Except where stated otherwise by reference or acknowledgment, the work presented is entirely my own.

Ali Malik  
12 August 2017



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My interest in policing dates back to when, as an 18 year old, I attended an open day organised by the West Midlands Police, I would have signed up that day if not for the efforts of my mum and a dear friend Manjaut, who convinced me to get a degree first and then think about joining the police. Fixated on a career in the police I enrolled on the Criminal Justice degree at the University of Wolverhampton. During this time my interest in joining the police developed into an interest in studying the police - for this I owe a huge debt of gratitude to Dr. Neil Olley who taught the policing modules at Wolverhampton and who also supervised my undergraduate dissertation. Countless conversations with Neil about politics and the police helped spark my interest in policing research and fuelled my ambitions to become an academic. It was Neil who advised me to go to Edinburgh if I ever decided to pursue further studies in criminology. After my undergraduate degree, I signed up to become a civil servant

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## Abbreviations and Terminology

ACC	... Assistant Chief Constable
ACPOS	... Association of Chief Police Officers in Scotland*
ASPS	... Association of Scottish Police Superintendents
Ch/Supt	... Chief Superintendent
CoSLA	... Convention of Scottish Local Authorities
CPS	... The Crown Prosecution Service (England and Wales)
DCC	... Deputy Chief Constable
HMIC	... Her Majesty's Inspectorate of Constabulary (England and Wales)
HMICS	... Her Majesty's Inspectorate of Constabulary in Scotland
IPCC	... Independent Police Complaints Commission (England and Wales)
Lab	... Scottish Labour
LibDem	... Scottish Liberal Democrats
LSC	... Local Scrutiny Committees
NIPB	... Northern Ireland Policing Board
PACE	... Police and Criminal Evidence Act 1984
PCCS	... Police Complaints Commissioner for Scotland*
PIRC	... Police Investigations and Review Commissioner
Police Scotland	... the Police Service of Scotland
SCD	... Specialist Crime Division
SCDEA	... Scottish Crime and Drug Enforcement Agency*
SNP	... the Scottish National Party
SOA	... Single Outcome Agreements
SPA	... the Scottish Police Authority
SPB	... Scottish Policing Board*
SPF	... Scottish Police Federation
SPICe	... Scottish Parliament Information Centre
SPPF	... Scottish Policing Performance Framework
SPSA	... the Scottish Police Services Authority*

\* *Defunct following the 2012 Act.*



### 'Tripartism'

Police governance arrangements formalised by the Police (Scotland) Act 1967 under which responsibilities and powers of governance were shared between central government, local government, through the local police authorities, and chief constables.

### 'Central government'

Any references to central government prior to 1998 refer to the Parliament of Great Britain, based in Westminster. Following the Scotland Act 1998, policing and criminal justice became a devolved matter for the Scottish Executive, that became the Scottish Government following the Scottish Parliamentary elections in 2007.





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*Note: The above page numbers specify first mentions only.*

## Abstract

This thesis examines the emergent role of the Scottish Police Authority (SPA) in delivering organisational accountability of the Police Service of Scotland, following reform in 2012. The Police and Fire Reform (Scotland) Act 2012 amalgamated the eight local police forces into a single force, 'Police Scotland', and replaced the concomitant local police authorities, responsible for maintaining and governing those forces, into a national governing body: the SPA. The study draws on a broad range of qualitative data that includes official policy documents, selected minutes of public meetings held by the Justice Committee, and the SPA, inspection reports by HMICS and Audit Scotland, and interviews with a cross-section of stakeholders including a former Minister, senior police officers, members of the SPA, and MSPs.

This study chronicles the inception and early development of the SPA, and critically assesses the SPA's emergent accountability processes in relation to the perennial problems of police governance. *Firstly*, the doctrine of operational independence of chief constables, rooted in the traditional, and to-date "sacrosanct", notion of constabulary independence (Reiner, 2013: 169), makes organisational accountability of the police a complicated and contested matter (Lustgarten, 1986; Walker, 2000; Donnelly and Scott, 2002a; Jones, 2008; Reiner, 2010). *Secondly*, there is a perpetual debate about whether the governance of police should be situated within local government structures, or delivered through central government. There is consensus among policing scholars that the persistent trend towards greater centralisation, coupled with the operational independence doctrine, curtailed the performance of the local police boards and their ability to hold chief constables to account (Walker, 2000; Donnelly and Scott, 2002a; Scott, 2011; Reiner, 2013). Amidst the tussle between central and local political actors for democratic control of the police, the recent policy discourse in Scotland, that led to the reforms and the creation of the SPA, has highlighted that the governance of the police requires expertise, skills and capacities, which the previous local police authorities lacked (Tomkins, 2009; Laing and Fossey, 2011).

In light of the persistent difficulties of democratic governance, and the creation of the SPA as an expert body, the study presents an original conceptual framework outlining an ‘epistocratic and deliberative’ approach to police governance. The framework seeks to reconcile democracy and expertise and offers a prescriptive solution to resolve the underlying problems of police governance. The study applies the notion of *epistocracy* or knowledge-based rule (Estlund, 2003, 2008) to the role of experts in institutional settings (Holst, 2012; Holst and Mollander, 2014). Conceiving the SPA as an institutional epistocracy, it is argued that such an arrangement needs to be underpinned by the right *Composition*, and that it needs *Power*, and *Autonomy* in order to function effectively and independently. It is further argued that principles of *Deliberation*, including reasoning and justification, can further strengthen epistocratic governance arrangements, as well as providing a crucial democratic dimension.

The analysis of the SPA provides a strong empirical basis for the framework. The study shows that while the SPA was created as a professional body of experts, it was unable to resolve the underlying problems of police governance in its first three years. This was due to inadequacies in its composition resulting from insufficient expertise and a lack of training for new board members, differing interpretations of its role and statutory powers, and external pressures and impositions resulting in a lack of autonomy. Looking to recent developments, the study suggests that deliberative principles are now implicit in the SPA’s approach to more proactive scrutiny, which has started to serve to alleviate some shortcomings and problems it encountered in its formative years. However, the study concludes that further strengthening of the SPA’s composition, clarity around its role and powers, greater autonomy, and explicit focus on deliberative principles is needed.

## Prologue

*“This is a movable feast, I can provide an answer but it probably wouldn’t be relevant six months from now, and that’s not a criticism, it’s a reflection of the very rapid sort of change that we’ve accounted for here and the fact that in the grand scheme of things we’re less than two years old and we’re still a fledgling organisation, and the authority [the SPA] had a cold start from nothing”* - (Interview: Deputy Chief Constable, Police Scotland).

*“A lot of remarkable credit goes down to the police officers and police staff who delivered significant change in a short period of time... All my inclination is that the current structures are roughly right. Some of it is down to personalities, some of it is just down to the period of time in which we are in, and that will change... so I think it has got to be allowed to develop and evolve over time... the SPA has to be allowed to blossom, you don’t create a culture for an organisation overnight”* - (Interview: Former Minister).

This study took place in a dynamic, and a rapidly evolving landscape. The research takes into account the developments leading up to the 2012 Act, through the inception of the SPA and Police Scotland, to the SPA’s Governance Review submitted to the Cabinet Secretary for Justice in March 2016. The SPA was created as a new organisation, and unsurprisingly there have been developments in its organisational structure and its approach to police governance and accountability since 2016. Whilst the analysis of the post-2016 developments are outside the scope of the study, where appropriate, any pertinent changes have been noted either in the main text or in footnotes.



## Chapter 1 - Introduction

The Police and Fire Reform (Scotland) Act 2012 (*henceforth*, the 2012 Act) introduced extensive changes to the policing landscape of Scotland. The eight local police forces (Central Scotland, Dumfries and Galloway, Fife, Grampian, Lothian and Borders, Northern Constabulary, Strathclyde, and Tayside) were amalgamated into a single Police Service of Scotland (Police Scotland). The concomitant local police authorities<sup>1</sup>, responsible for governing and maintaining the local police forces were abolished, and the governance of Police Scotland was placed under a centralised body; the Scottish Police Authority (the SPA). This PhD charts the incipient role of the SPA in managing and delivering police<sup>2</sup> organisational accountability in the new landscape of police governance in Scotland. In addition, through the empirical analysis of the SPA, this study puts forward a framework for envisioning the role of experts in delivering and enhancing democratic governance of the police.

### 1.1 - Research aims and Contribution

This study is underpinned by the following research aims:

- i. Explore and analyse the role of the SPA in managing and delivering police organisational accountability in the new governance landscape. And,
- ii. To what extent, if at all, has the creation of the SPA, as an expert body, resolved, or exacerbated, the perennial problems of police governance?

This study is important in three significant ways. *Firstly*, several scholars have argued that policing in Scotland has traditionally been neglected (Walker, 2000; Barrie, 2008),

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<sup>1</sup> Prior to the reforms there were eight local police authorities in Scotland. Six of the regional forces including Central Scotland, Grampian, Lothian and Borders, Northern, Strathclyde and Tayside represented more than one local authority area and they were maintained by Joint Police Boards, whereas, Dumfries and Galloway and Fife police had a unitary local police authority.

<sup>2</sup> Throughout this thesis, the focus is on the governance and accountability of the public police, paid for and maintained by the public purse. It is understood that there has been a proliferation of private policing and security industry and that the public police do not have a monopoly over policing functions or the maintenance of order (see for example Loader and Walker, 2007; Crawford, 2008; Reiner, 2010).



and the studies on ‘British’ policing largely focus on England and Wales<sup>3</sup>. Similarly, while there is a substantive body of literature on police governance and accountability focusing on the constitutional arrangements and structures in England and Wales (seminal contributions include Marshall, 1965; Lustgarten, 1986; Day and Klein, 1987; Reiner and Spencer, 1993; Jones, Newburn and Smith, 1994; Walker, 2000; Jones, 2008; Reiner, 2010; Lister, 2013; Lister and Rowe, 2015), there is a dearth of scholarly research into the Scottish police governance and accountability arrangements (except notable contributions from Walker, 2000; Donnelly and Scott, 2002a,2002b,2008,2010). This gulf was recognised by Scott and Wilkie as they argued that: *“policing remains one of the least-explored areas of Scottish public life. A good deal more research is needed into Scottish policing, which is under-researched compared to England!”* (Scott and Wilkie, 2001: 66-67). Although the recent trend has seen an increase in independent academic research on policing in Scotland (see for example, Etherson, 2013; Harkin, 2014; Murray, 2014a; and the myriad published and ongoing research projects through the Scottish Institute for Policing Research<sup>4</sup>), this study is the first independent academic study exploring the new governance and accountability arrangements introduced by the 2012 Act. The study focuses on the role of the SPA, which occupies a central position in the new governance landscape, charting its evolution, from inception, following the 2012 Act, to the first governance review submitted to the Scottish Parliament by the SPA Chair Andrew Flanagan in March 2016<sup>5</sup>.

*Secondly*, this research critically assesses the SPA’s processes and mechanisms of accountability in relation to the perennial problems of police governance. Police governance scholars have routinely highlighted that the previous governance

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<sup>3</sup> For instance, Reiner’s (1985, 2000, 2010) historical and sociological oeuvres repeatedly mention ‘the British police’, but only focuses on the police in England and Wales.

<sup>4</sup> SIPR is a consortium of thirteen Scottish universities. It works collaboratively with Police Scotland and the SPA, and provides a single platform for policing researchers across Scotland to undertake and share independent research, engage in knowledge exchange, and disseminate widely to academics and practitioners involved and interested in policing in Scotland and abroad.

<sup>5</sup> In September 2015, the Scottish Government announced that the new SPA Chair will undertake a review of the governance and accountability arrangements in Scotland. The Governance Review was submitted in the Scottish Parliament in March 2016, marking the three years of the new arrangements, providing for a natural time-period of focus for this study.

arrangements, particularly the local police boards, were not effective in delivering organisational accountability of the police due to the operational independence of chief constables and the perpetual tussle between local and central political stakeholders for democratic control over the police (Lustgarten, 1986; Walker, 2000; Reiner, 2010; Donnelly and Scott, 2002a; Jones, 2008). The notion of operational independence of chief constables, whilst ensuring that policing remained insulated from undue partisan influence, made the implementation of organisational accountability a complicated and contentious affair (Lustgarten, 1986; Walker, 2000). Further, policing in Scotland developed through local government structures (Gordon, 1980; Barrie, 2008), however, there has been a consistent trend towards greater centralisation. The 2012 Act represents the pinnacle of this trend. I argue that these problems identified in the police governance literature are ‘perennial’ problems and they have resulted in tensions at different times between all participants of the previous tripartite governance arrangements. This research engages with these perennial problems, exploring whether the 2012 Act, and the creation of the SPA, has resolved, or even exacerbated them. Further, an original conceptual framework is put forward, strengthened by the empirical analysis of the SPA, as a prescriptive solution to resolve these problems.

*Thirdly*, the SPA was envisioned as to bring greater expert capacity into police governance. By drawing on the notion of *epistocracy* (Estlund, 2003, 2008), I put forward an original conceptual and analytical framework. The framework allows for an understanding of how an epistocracy could be conceived and institutionalised (Holst, 2012, 2014; Holst and Mollander, 2014) in the context of police governance. Further, the inclusion of deliberation (Dryzek, 2000; Landemore, 2013a, 2013b; Escobar, 2014a, 2014b), adds a crucial democratic dimension to an epistocratic arrangement, making an original contribution to the existing canon of literature on police governance and democratic policing (Lustgarten, 1986; Jones, Newburn and Smith, 1996; Walker, 2000; Jones, 2008; Manning, 2010; Reiner, 2010; Aitchison and Blaustein, 2013; Harkin, 2015).

## 1.2 - Research Focus and Rationale

The subject of police governance and accountability is as complex as the role of the police itself (Bittner, 1974). It poses distinct challenges that are deeply political (Lustgarten, 1986; Reiner, 2010) and require democratic direction (Jones *et al.*, 1994, 1996), legal safeguards (Marshall, 1965; Lustgarten, 1986; Walker, 2000), and to add to the existing body of literature, moral and ethical considerations, particularly where police policies comply with ‘legal’ demands but are nevertheless contentious (Murray, 2015b; Lennon and Murray, 2016). Those charged with the overall control of shaping or scrutinising policing policy also require knowledge of local needs and national objectives (Tomkins, 2009), professional and financial expertise (Laing and Fossey, 2011) and quite often just pragmatism, in a literal sense.

Policing scholars have acknowledged the difference between individual and organisational accountability (Jones, 2008; Reiner, 2010). Individual accountability has nominally been achieved through legal safeguards, or through direct complaint mechanisms<sup>6</sup>, or indeed historically through what Reiner calls a “mystical process of identification with the British people, not the state” (2010: 74). The emphasis of organisational accountability, since the market-based reforms in 1993, has been on financial checks-and balances and key performance indicators (Reiner and Spencer, 1993; Walker, 2000; Donnelly and Scott, 2002b). Yet it has long been recognised that the governance of police is not just concerned with financial management and efficiency, crucial as it may be in the current financial climate. There are other considerations such as operational policies, the strategic direction of police forces, the style of policing, matters that have traditionally been the domain of chief constables, which come under the scope of organisational accountability and democratic oversight (Marshall, 1965, 1978; Lustgarten, 1986; Reiner, 2010). It is indeed the elected representatives who decide whether the police should have a broad social welfare role, or a narrow crime prevention one (see for instance the discourse in England and Wales: Home Office, 2010). There are other matters that also require democratic input, such

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<sup>6</sup> The Independent Police Complaints Commission (IPCC) in England and Wales, and the Police Complaints Commissioner for Scotland (PCCS), which has been replaced by the Police Investigations and Review Commissioner (PIRC), following the 2012 Act.

as police priorities (Lustgarten, 1986; Walker, 2000; Millie, 2013). For instance, should police resources be effectively used by deploying more officers on the streets or whether public funds should be spent on better technology and intelligence, and evidence-led policing techniques? Should police officers wear body-worn cameras or carry firearms on routine patrols? Is stop and search a viable tactic for crime prevention and order maintenance? Should there be more front counter provision or call handling staff? How should the specialist departments, such as roads policing, serious crime detection, and armed response units, be distributed and shared across the country? These are just some of the issues that require careful consideration and a balancing of competing interests, public demands, policing doctrines and operational expertise, financial constraints, and political agendas. The focus of this thesis, therefore, is on police organisational accountability of operational policies, within the broader contours of police governance and accountability. There is an abundance of literature and ethnographic research on the role of the police in Britain, primarily focusing on England, and driven by the tumultuous relationship of the Metropolitan Police with London's black and minority ethnic (BME) communities (Smith and Gray, 1985; Keith, 1993; Foster, Newburn and Souhami, 2005; Souhami, 2012). The two major reviews, since the Royal Commission (1962), into the police use of powers led by Lord Scarman (1981) and Sir William Macpherson (1999) drew attention to organisational accountability and institutional culture, but the scope of their reviews and recommendations was limited to police forces in England and Wales, and Scotland remained largely overlooked. Of the studies focusing on organisational accountability of police in Scotland, Walker (2000) and Donnelly and Scott (2002a, 2002b) provide sufficiently in-depth analyses of the tripartite arrangements and other emergent forms of accountability (such as market-based approaches) through the lens of constitutional law. However, there has been a dearth of *qualitative* research into the previous governance and accountability arrangements in Scotland.

My approach explicitly tackles the perennial problems of police governance raised in these earlier studies and offers a prescriptive framework, strengthened by the empirical analysis of the SPA, to resolve these problems. Further, the *qualitative* nature of this study captures the first three, and perhaps the most turbulent years of the SPA and

Police Scotland, making an original and timely contribution to the body of knowledge on police governance and accountability in Scotland following the 2012 Act.

### 1.3 - Summary of Thesis Argument

This thesis is about the SPA's emergent role in delivering organisational accountability of police operational policies after the 2012 Act. In cognisance of the SPA's model as a body composed of members with professional expertise and skills, I draw on the notion of *epistocracy*, i.e. knowledge-based governance (Estlund, 2003, 2008; Holst, 2011, 2012, 2014) and develop an original conceptual framework that seeks to reconcile democracy and epistocracy and provides a conceptual solution to the 'perennial' problems of police governance, - i.e. the operational independence doctrine and the perpetual tussle between the local and the central for control over the police. The analysis of the SPA provides a strong empirical basis for the framework.

Through the analysis of the official policy agenda in the lead-up to the 2012 Act, I establish that whilst austerity became a strong catalyst for change, the reforms were also driven by weaknesses in the tripartite governance arrangements. In particular, the policy discourse identified that the local police authorities were often unable to provide oversight over how police resources were being spent to deliver local policing priorities and national objectives (Justice Committee, 2008; Tomkins, 2009). It was also identified by HMICS inspections that the local police authorities lacked expertise, capacities and skills to effectively govern their respective police forces (Tomkins, 2009; Laing and Fossey, 2011). The creation of the SPA as a body of professional members, located centrally, explicitly sought to resolve these problems (Scottish Government, 2011c). Crucially, however, the official policy discourse did not address the operational independence doctrine, failing to recognise the need for robust organisational accountability mechanisms for police operational policies. The perpetual tussle between the local and the central was seemingly settled, with the SPA given wide ranging powers to govern Police Scotland and to hold the chief constable to account for the policing of Scotland, and the inclusion of 'local policing' within the statutory framework, placing the duty of local scrutiny upon local authorities (Henry, Malik and Aitchison, 2016). However, the subsequent legislative framework left the

implementation of the new arrangements to negotiated agreement between the stakeholders. In effect, the 2012 Act, that replaced tripartism, created two complex tripartite relationships between the Scottish Government, the SPA and Police Scotland, and between the local scrutiny committees, the SPA and Police Scotland. Consequently, while the new legislative arrangements were being negotiated and settled into practice, the perennial problems that predated the 2012 Act, manifested after the reforms in the most abrasive fashion.

Kath Murray's PhD found that Police Scotland's use of stop and search powers disproportionately targeted young people. Whilst the bulk of the data looked at the stop and search rates before the reforms, Murray's research showed that the use of non-statutory stop and search had increased markedly under the newly centralised Police Scotland (Murray, 2014a). Further, as soon as the new arrangements came into effect, the former Chief Constable issued a Standing Firearms Authority, allowing armed police officers, attached to the Armed Response Vehicles, to be deployed on routine patrols across Scotland. The deployment of armed officers caused considerable controversy, particularly in areas with traditionally low levels of crime. This 'operational policy' came into effect without prior consultation or engagement with the SPA, or indeed the local scrutiny committees (Henry *et al.*, 2016). Other 'operational' decisions such as the removal of traffic warden support, closures of front counter provisions and the raids on Edinburgh's previously tolerated sex-for-sale saunas, all in the first year of the new arrangements, without prior consultations with the local authorities of affected areas, or the SPA, raised question marks about the effectiveness of the new police governance and accountability arrangements (Scott, 2014; Murray, 2015b; Terpstra and Fyfe, 2015). All of these decisions were vigorously defended as within the 'operational' domain of the Chief Constable, and exacerbated the tensions between the local and the central. I argue that at least in its formative years, the SPA did not just replace the local police authorities but also inherited the same problems that marred the previous tripartite governance arrangements.

Despite the continuation of the 'perennial' problems of police governance, and the apparent weaknesses in the new accountability arrangements, the 2012 Act has

introduced a multifaceted approach to police governance. In addition to the SPA and the local scrutiny committees, there are other key stakeholders such as the Scottish Government and the Scottish Parliament's Justice Sub-Committee on Policing providing direct democratic oversight, the Police Investigations and Review Commissioner (PIRC) responsible for handling complaints and investigating serious incidents involving the police, and HMICS and Audit Scotland charged with powers of inspections and financial audits of both Police Scotland and the SPA. This network-based governance approach resembles broader developments elsewhere in public service administration (Rhodes, 1996; Bevir, 2010, 2012). I argue that the SPA's model as a body composed of members appointed on the basis of specific skills and expertise represents a dimension of *epistocracy* (Estlund, 2003, 2008) or knowledge-based governance (Holst, 2011, 2012, 2014) within the broader landscape of police governance. Due to police claims to professionalism (Lustgarten, 1986; Ericsson, 1994; Jones, 2008; Reiner, 2010; Fyfe, 2013) and inherent dangers of direct forms of democratic governance, such as majoritarianism and partisanship (Lustgarten, 1986; Jones *et al.*, 1996; Walker, 2000), I argue that an epistocracy may not only be justified, but it may in fact be desirable if such an arrangement can encapsulate key principles of democratic governance.

Following a conceptual justification for an epistocracy I propose a conceptual framework to show, - a) how an epistocracy could be institutionalised in the context of police governance, b) how an institutional epistocracy could provide robust mechanisms for police organisational accountability, whilst enhancing key principles of democratic governance, c) how the proposed epistocratic arrangement could resolve the perennial problems of police governance.

Specifically, I draw on Holst and Mollander's (2014: 13-36) notion of epistocracy by democratic delegation, Boven's restricted definition of accountability as a *mechanism* (2010), and the principles of democratic governance proposed by Jones, Newburn and Smith (1996) to sketch out the key components of the framework, i.e. *Broad Composition, Power, Autonomy, and Deliberation* as a necessary democratic check on an epistocratic arrangement.

I argue that the knowledge credentials of an institutionalised epistocracy would be reflected in a *broad composition*, which also explicitly addresses the demographic objection to epistocracy (Estlund, 2008). An epistocracy situated within a democratic order will also need delegated powers, creating a division of labour between experts and democrats, enabling its members to carry out their duties within the prescribed legislative framework, and to perform specific functions as required by the democratic state (Holst and Mollander, 2014). In the context of police governance, *power* also relates to the overall capacity of an epistocratic arrangement to establish processes and mechanisms of organisational accountability. Further, I argue that it is imperative that the proposed epistocratic arrangement is non-partisan and serves as an intermediary between the local and the central. Therefore, it will need a degree of *autonomy* in order to balance various competing interests. The inclusion of *deliberation* within the institutional design of an epistocracy allows it to operationalise accountability *mechanisms* (Bovens, 2010), whilst also encapsulating certain key principles of democratic governance (Jones *et al.*, 1996).

Utilising the framework for the analysis of the SPA, in its formative and perhaps most turbulent years, I found that while the SPA's *composition* reflected a broad range of expertise and competencies, it was insufficient for the purposes of police governance and accountability. The non-executive board members of the SPA acknowledged that they lacked knowledge of operational policing and did not feel confident to scrutinise and challenge the information provided by the police. Late appointments and an emphasis on financial accountability and strategic oversight meant that board members did not receive sufficient training specifically in relation to police operational policies, and most members felt that they had to 'learn on the job'. The *powers* of the SPA, and its specific role in police governance was also subject to contestations and differing interpretations in the first year of the new arrangements. The initial period, in particular, was marred by a turf-war between the former Chief Constable and the former Chair of the SPA, with the Justice Minister interfering, often in favour of the Chief Constable. This meant that the SPA could not establish itself as an independent and *autonomous* body (within the confines of its legislative powers), and it was largely



perceived as an extension of the Scottish Government, exacerbating the tensions between the local and the central. The culmination of these shortcomings meant that in the first three years since its inception, the SPA was unable to establish effective mechanisms of police organisational accountability.

Looking to recent developments, particularly since the high-profile cases of stop and search and armed policing, I found that *deliberative* principles have become implicit in the SPA's approach to governance and accountability, and this has helped alleviate some of the problems the SPA encountered in its formative years. As the new governance arrangements have evolved and settled, the SPA has gradually established an accountability relationship that encompasses proactive scrutiny as well as retrospective accountability, and it is underpinned by deliberative principles of justification and reasoning. The analysis of the SPA has also shown that through horizontal deliberation with other stakeholders such as the Scottish Parliament's Justice Sub-Committee on Policing, HMICS, PIRC, Audit Scotland, the Scottish Government, and the senior leadership of Police Scotland, the SPA has regained some of the influence that it ceded after the initial turf-war. In the absence of a clear hierarchical power relationship, through deliberation, the SPA has managed to develop mechanisms of accountability under the 'shadow of hierarchy'. This has also resulted in an improved provision of information from the police. In addition, deliberation with external stakeholders such as the Scottish Institute for Policing Research has also enabled the SPA to shore up weaknesses in its knowledge composition, enhancing its own epistocratic credentials.

I conclude by arguing that despite weaknesses in its composition, a lack of clarity in its powers, and impositions resulting in a lack of autonomy, the SPA's approach to police governance and accountability is evolving and encapsulating the ideals of an 'epistocratic and deliberative' approach to police governance. These developments have enabled the SPA to proactively scrutinise police operational policies, and to increase its influence over the future strategic direction of the police, as exemplified by the publication of the *Policing 2026* strategic plan. This 'epistocratic and deliberative' approach to police governance has the potential to resolve the

‘operational independence’ doctrine, or at least render it dormant, until invoked once again by an overzealous chief constable. By engaging in horizontal deliberation with other stakeholders in the broader landscape of police governance, and by drawing on external and internal knowledge and expertise to scrutinise policing policies proactively, the SPA is also strengthening its position as an intermediary, to provide a balance between the local and the central. However, the perpetual tussle between the local and the central may not be resolved until the SPA is able to establish some distance from the Scottish Government.

#### 1.4 - Thesis Structure

This chapter outlined the key research aims, the rationale and the main argument of this thesis.

Chapter 2 situates the focus of this study on police organisational accountability within the broader context of police governance. Two recurring trends in police governance literature, - i.e. the notion of operational independence of chief constables and the perpetual tussle between the local and the central for control over the police are examined (Marshall, 1965, 1978; Gordon, 1980; Lustgarten, 1986; Reiner and Spencer, 1993; Reiner, 2000, 2010, 2013; Walker, 2000; Scott and Wilkie, 2001; Donnelly and Scott, 2002a, 2002b; Jones, 2008; Scott, 2011). I argue that these trends are ‘perennial’ problems that have historically complicated the implementation of police organisational accountability. These problems are cast as ‘the research problem’ for the ensuing discussions and analysis of the SPA in the post-2012 Act governance arrangements.

In Chapter 3, I map out the powers and responsibilities of the key actors involved in the post-2012 Act governance arrangements and critically assess the policy discourse to identify the rationale for the creation of the SPA. I argue that while austerity provided a strong impetus for the reforms, the official policy agenda also sought to strengthen police governance in relation to the allocation of resources, local service delivery, and national policing requirements. The policy discourse also highlighted the need for expertise in police governance, providing a strong rationale for the creation

of the SPA. However, the official policy agenda neglected the need for police governance arrangements to provide stringent mechanisms for organisational accountability of police operational policies. Whilst it may appear that the perpetual tussle between the local and the central was settled with the creation of the SPA and a statutory requirement for local policing and local scrutiny, the implementation of the new arrangements were left to negotiated agreement creating complex relationships between the new stakeholders. Further, the 2012 Act, left the notion of ‘operational independence’ undefined. In effect, the perennial problems that predated the 2012 Act, were left unresolved following the reforms.

Chapter 4 provides conceptual clarifications for the terms ‘governance’, ‘accountability’ and ‘epistocracy’. I adopt the restricted definition of accountability as a *mechanism* (Bovens, 2010) for this thesis, and chart the developments in police governance and accountability mechanisms in Scotland (Marshall, 1965, 1978; Reiner and Spencer, 1993; Walker, 2000; Donnelly and Scott, 2002b). I then draw on the notion of *epistocracy* (Estlund, 2003, 2008; Holst, 2011, 2012, 2014) and argue that in the context of police governance, an epistocracy can not only be justified, but it may in fact be desirable. The premise of my argument rests on the rise of police professionalism (Ericson 1994; Jones, 2008; Fyfe, 2013) solidifying the operational independence doctrine, and the underlying weaknesses and unintended risks of direct democratic control such as majoritarianism and partisanship.

In Chapter 5, I put forward an original conceptual framework to show how an epistocracy could be institutionalised in the context of police governance. I argue that *knowledge* is the defining characteristic of epistocracy and it would be reflected in its *composition*, that needs to be sufficiently *broad* in order to counter the demographic objection (Estlund, 2008). By drawing on Holst and Mollander (2014), I argue that an institutional epistocracy will also need delegated *powers* to perform its functions. Further, I argue that it is pertinent that the proposed arrangement is non-partisan, and serves as an intermediary between the police and local and central political actors, therefore it will need sufficient *autonomy* within the confines of its powers (Jones *et al.*, 1996; Rosenvallon, 2011). Finally, the inclusion of *deliberation* within the

institutional design of an epistocracy allows it to operationalise accountability *mechanisms* (Bovens, 2010), whilst also encapsulating certain key principles of democratic governance (Jones *et al.*, 1996). The framework is then adapted for the later analysis of the SPA.

Chapter 6 outlines the research design, methods and the rationale for my analytical approach and provides an overview of the key research questions in relation to the framework that I will address in the findings chapters.

The findings are presented in Chapters 7-9. Chapter 7 deals with the primary research aim: *to what extent, if at all, has the SPA resolved the perennial problems of police governance?* I argue that the perennial problems of police governance, i.e. the operational independence doctrine, and the tussle between the local and the central manifested in the most abrasive fashion following the 2012 Act. A series of scandals and high profile cases highlighted shortcomings in the new governance arrangements. I analyse how these problems manifested at a time when the SPA was developing as an organisation, contributing to the SPA's inability to deliver effective mechanisms of police accountability in its formative years. I specifically draw on the perceptions of the stakeholders involved in the current police governance landscape and aim to establish the status of the long unresolved notion of 'operational independence' doctrine in the post-2012 Act landscape.

In Chapter 8, I analyse the SPA's credentials as an institutional epistocracy, focusing on its *composition, power* and *autonomy*. The analysis provides a strong basis for my framework, as I show that the SPA's inability to deliver effective mechanisms of accountability, in its first three years, were compounded due to weaknesses in its *composition*, differing interpretations of its role and *powers*, and external impositions resulting in a lack of *autonomy*.

In Chapter 9, I focus on *deliberation*, and looking to recent developments I argue that deliberative principles have become implicit in the SPA's approach to police governance and accountability. This has resulted in better provision of information

from the police, and enhanced mechanisms of proactive scrutiny of police operational policies. These developments have the tendency to finally bypass the traditional notion of ‘operational independence’. Further, I argue that through deliberative principles, and engagement with the stakeholders, the SPA is better situated to serve as an intermediary to ensure that policing policies strike a balance between local priorities and central objectives.

Chapter 10 provides a brief conclusion drawing together the key findings from the thesis.

## **PART I – THE CONTEXT: LITERATURE AND POLICY REVIEW**

### **Chapter 2 - Police Governance and Accountability: ‘The Problem’**

This chapter situates the focus of this study on police organisational accountability within the broader context of police governance. By drawing on the literature on police governance and accountability in Britain (for e.g. Marshall, 1965, 1978; Lustgarten, 1986; Reiner and Spencer, 1993; Reiner, 2000, 2010, 2013; Walker, 2000; Jones, 2008) and, specifically, through the analysis of the historical developments of the tripartite governance arrangements in Scotland (Gordon, 1980; Walker, 2000; Scott and Wilkie, 2001; Donnelly and Scott, 2002a, 2002b, 2010; Barrie, 2008), two recurring trends, i.e. the notion of operational independence of chief constables and the perpetual tussle between local and central democratic control of the police are examined. I argue that these trends, solidified and exacerbated by the previous tripartite arrangements, are *perennial* problems and could be considered as, using Walker’s terminology (2000: 4-5), part of the “regulatory puzzle” or the “paradoxes of police governance”. Both problems have often resulted in tensions in the previous tripartite governance arrangements in Scotland, making organisational accountability of the police a complicated and contentious matter. This chapter casts these problems as ‘the research problem’, providing a foundation for the ensuing discussions throughout the thesis and, particularly the conceptual framework (Chapter 5) and the subsequent analysis of the SPA (Chapters 7, 8 and 9) in the post-2012 police governance landscape.

#### **2.1 - Situating Police Organisational Accountability**

Before the problems of police governance are considered, there is a need to situate police organisational accountability within the broader contours of police governance and accountability, and in relation to what is it that the police do. The task of determining the role of the police becomes ever more complex because of its many functions and myriad responsibilities (Bittner, 1970). Very little of what the police do is concerned with crime-fighting (Banton, 1964). The public police can simultaneously

be involved in peace-keeping (Banton, 1964; Bittner, 1974; Reiner, 2010), protection and maintenance of 'specific' and 'general' order (Marenin, 1982), and act as social workers through their interactions with the public in different circumstances on a day-to-day basis (Punch, 1979). When things go wrong, the police are viewed as the "stand-in authorities" (Cohen, 1985: 37). As Walker elaborates, the police "fill an 'authority vacuum' where other specific authority figures, such as parents, teachers, social workers, and doctors, cannot or will not act" (Walker, 1996: 56). The public police are also an instrument of the state apparatus. Due to the considerable discretion at the lowest levels of hierarchy, a police constable has an "infinite range of legal possibilities to act within" (Lustgarten, 1986: 10). One of those legal possibilities may involve legitimate use of force and coercion (Bittner, 1970: 46). It is this monopoly to use legitimate force that makes the public police the "bedrock of state's power" (Reiner, 1993: 1). Although the use of force may not be a substantial part of the police role and rarely used in routine police work (Bittner, 1970: 41; also, Terpstra, 2011), a "benign bobby ... still brings to the situation a uniform, a truncheon, and a battery of resource charges which can be employed when appeasement fails" (Punch, 1979: 116). Bayley (1985: 8) argues that while the public police may not be the only state actor authorised to use force, they are distinct from the military because of their legitimate authority to use power within a state, even when the military is called in for internal order maintenance it is deemed to be acting as the police.

In the context of police governance and accountability, Reiner differentiates the role of the police between general policy decisions and the exercise of legal powers (Reiner, 1993: 6). Drawing on Reiner's broad typology (Reiner, 1993: 10-12), general policies may involve housekeeping such as the purchasing of land, vehicles and acquirement of resources. Exercise of legal powers may involve policy decisions specific to law enforcement, such as personnel management, deployment of resources, and policing priorities, styles and tactics. On the other hand, the use of legal powers of individual officers may refer to specific operations such as powers of arrest, detention, and stop and search, more narrowly relating to the role and function of the police constables. This distinction is important, in the context of my arguments in this chapter (see below, 2.4), and the rest of the thesis, particularly when considering where

democratic representatives and accountability bodies can legitimately intervene, or ask questions *ex post facto*.

Based on Reiner's distinction above, the mechanisms of police accountability can also refer to both organisational and individual accountability (Jones, 2008: 694). The former, often termed more broadly as police governance (see Chapter 4), is concerned with the legal framework within which the powers of the police are situated (Lustgarten, 1986; Walker, 2000). The legal framework may also stipulate the processes and mechanisms for democratic oversight and control, particularly in relation to resource allocation and strategic objectives and priorities (Jones, 2008; Reiner, 2010; Millie, 2013). Individual accountability mechanisms could include statutory standards and limits on police powers, such as the Police and Criminal Evidence<sup>7</sup> (PACE) codes of practice in England and Wales, other legal safeguards from individual abuses of power, corruption and bribery, and direct complaint mechanisms against individual officers and police forces (Jones, 2008: 694; Reiner, 2010: Chapter 7). The former requires formal or informal structures and mechanisms of accountability, whereas the latter can refer to accountability to law. It is argued that "police cultures are resistant to legal rules and can, and do, subvert them" (Lennon and Murray, 2016: 8). Further, whilst legal powers are useful tools "for controlling the behaviour" of public servants, they are not sufficient for holding them to account (Mulgan, 2000: 564). Yet individual accountability of the police to law, has never been a matter of contention (Reiner, 1993: 13; also, see Reiner, 2010: 74, Chapter 7). Even in areas such as the detection and investigation of crimes, where police officers have traditionally enjoyed considerable discretion under the common law, recent cases<sup>8</sup> in England and Wales, have underlined increased accountability through contemporary legal developments such as the Human Rights Act 1998, superseding the apparent common law "immunity in the investigation and detection of crime" (Arnell, 2014: 111). Conversely, organisational accountability of the police has long been a matter of contention, as I argue in the ensuing sections. However, whilst the distinction between organisational and individual accountability is useful for situating the analytical focus

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<sup>7</sup> As enacted in statute under the Police and Criminal Evidence Act 1984

<sup>8</sup> For instance, *DSD v Commissioner of Police for the Metropolis* [2014] EWHC 436 (QB).



of this thesis, in practice, actions of individual officers can also reflect organisational decision-making (Reiner, 1993: 8, also Jones, 2008; Reiner, 2010).

There are several points where individual and organisational accountability mechanisms would converge. Particularly whilst actions of police officers, deemed to be excessive or in breach of legal safeguards, may be subjected to appropriate legal action, the principles of organisational accountability would mean that the organisational policies of their respective forces, are also subject to review and sanction retrospectively by political or non-political external agencies, as defined by the legislative framework. For instance, following the shooting of Jean Charles De Menezes in London, in July 2005, the two officers involved in the shooting were not charged with a criminal offence, however, the Crown Prosecution Service (CPS) charged the Office of the Commissioner of the Metropolitan Police for breaching the Health and Safety at Work Act 1974. Whilst the jury returned a 'guilty' verdict, none of the senior officers of the Metropolitan Police, who led the operation, were held personally culpable (IPCC, 2007: 6). Whilst the shooting of De Menezes may point to individual action in the first instance, the Independent Police Complaints Commission's (IPCC) recommendations, following the legal trial, focused on organisational decision-making, particularly operational policies in relation to surveillance, firearm response, command and control, communications infrastructure, training, and post-incident management (IPCC, 2007: 161-168). The exceptional case of De Menezes' shooting, and other seminal cases, for instance the inquiries led by Scarman (1981) and Macpherson (1999), underline that police accountability to law alone is insufficient. There needs to be a holistic approach to police governance and accountability that includes legal safeguards, direct complaint mechanisms, inspections, and mechanisms of organisational accountability that may involve proactive and retrospective scrutiny of police operational policies and tactics, deployment of resources, and policing priorities. It is the latter that the rest of my arguments in this chapter focus on, particularly because in the historical context of

police governance in Scotland, as in the rest of Britain<sup>9</sup>, this aspect of police accountability has been a complicated and contentious matter.

## 2.2 - The problems of police governance

The different dimensions of police governance and accountability outlined above form part of the “regulatory puzzle” for the democratic state, or the “paradox of police governance”, as conceived by Walker (2000: 4). For Walker, on the one hand, the state empowers the police to act on its behalf, sets out the legal boundaries for police organisations to operate within, allocates public funds and resources to buy land, property, equipment, and to employ staff, and sets national policing objectives and priorities. On the other hand, the state seeks to restrict the same powers to ensure policing conforms to core democratic values such as fairness and equity, to maximise efficient use of public resources, to ensure policing is responsive to shifting public concerns (such as concerns about hate crimes following a major terror incident, or cases of historical child sexual abuse), monitor police performance against national and local policing objectives, and to seek an explanation on how public resources have been spent, particularly where policing has failed to deliver on agreed objectives (Walker, 2000: 4-6). In addition to this, and paradoxically, the state also has to ensure its own influence in day-to-day policing is limited, so that policing remains free from partisanship and competing party political rhetoric (Walker, 2000: 54-55; also, see below, 2.4.1).

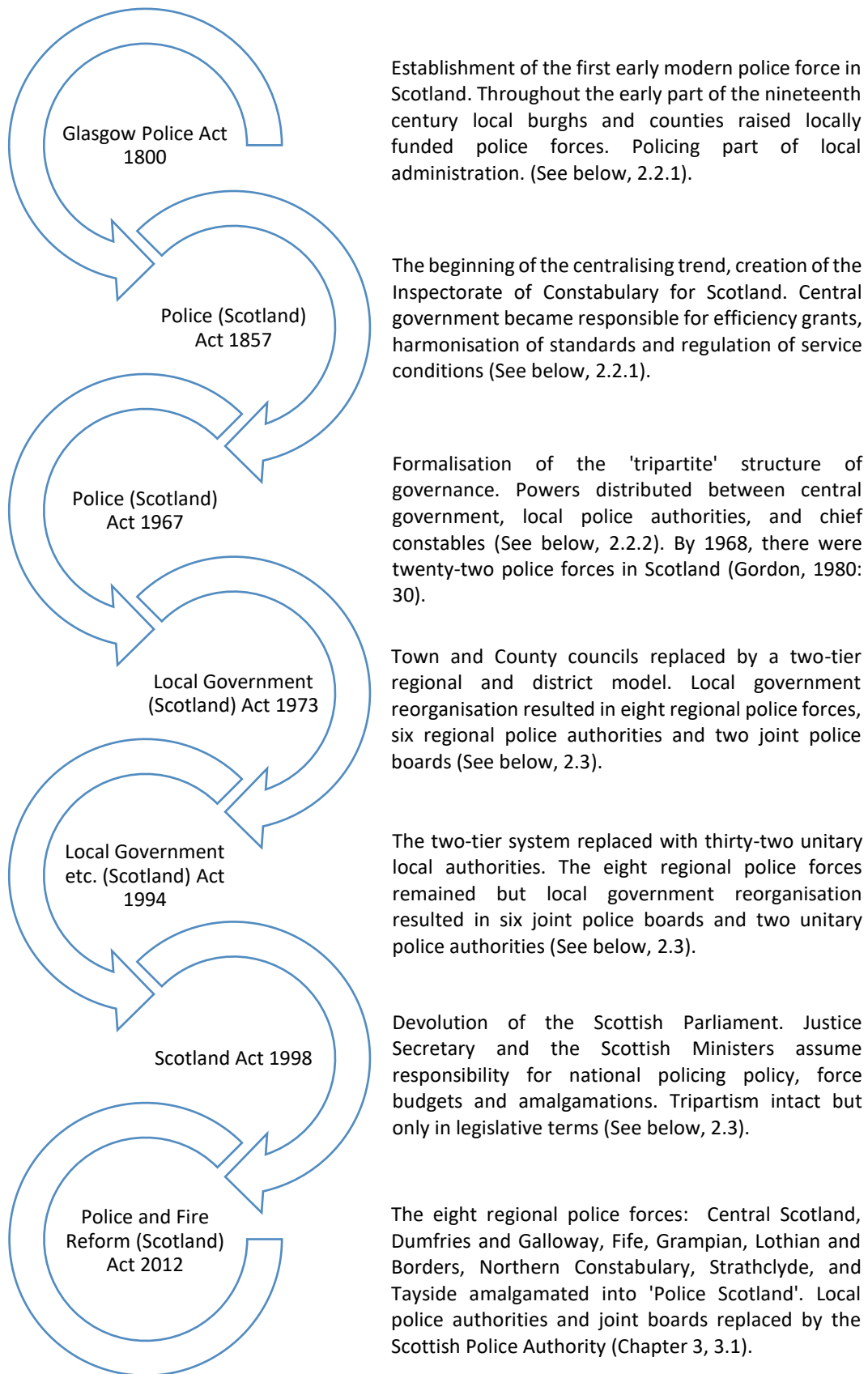
Taking Walker’s argument as a conceptual premise, I argue that the implementation of police organisational accountability mechanisms (the various mechanisms are examined in Chapter 4) has traditionally been hampered by competing demands and interests, giving rise to two perennial problems that form part of the regulatory puzzle – two further paradoxes within the original paradox of police governance, as conceived by Walker (see above). *Firstly*, while it is accepted that the democratic state needs to seek to limit the powers of the police and set out the structures, processes and

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<sup>9</sup> The developments in Scotland did not take place in a vacuum, these problems have also existed in England and Wales during tripartism and continue to be discussed (for instance, see Walker, 2000; Jones, 2008; Newburn and Peay, 2012; Reiner, 2010, 2013; Lister, 2013).

mechanisms for police organisational accountability, where exactly those powers reside is a matter of contention. Early modern police forces in Scotland developed at the behest of local administrations, however, there has been a steady tide towards greater centralised control in the interests of uniformity, harmonisation and efficiency (Gordon, 1980; Walker, 2000; Dinsmor and Goldsmith, 2005; Barrie, 2008, 2012; Emsley, 2008; Davidson, Jackson and Smale, 2016). Yet, large part of policing was, and continues to be delivered locally and there is a consistent demand and appetite for local democratic accountability, as it will be explored further in Chapter 3 in the context of the 2012 Act. While local political representatives may have a legitimate interest in the oversight of policing in relation to local priorities, central government too has a national mandate and concerns around national objectives such as counter-terrorism, organised crime, and the expenditure of public resources. These competing demands require a balancing of local and central interests, and a governance framework that gives due regard to national strategic objectives (one of the stated rationales for the 2012 Act, see Chapter 3), as well as local priorities and service delivery. However, the previous tripartite governance arrangements were unable to balance these competing interests (see below, 2.3; also, Chapter 3, 3.3.2). *Secondly*, the doctrine of constabulary independence, while ensuring that local and central political representatives could not interfere in day-to-day policing, evolved into a much broader notion of ‘operational’ independence during tripartism (Lustgarten, 1986; Walker, 2000; Donnelly and Scott, 2002a; Reiner, 2010; Jones, 2008; Scott, 2011). This broad application of the concept complicated the implementation of police organisational accountability mechanisms, further weakening local democratic accountability. By demarcating the boundary between ‘policy’ and ‘operations’, chief constables have traditionally sought to limit the influence of accountability bodies, particularly the local police authorities (Lustgarten, 1986). I concur with Lustgarten (1986: 20-22), that this is a false distinction and there is a blurring of boundaries between policing policy and operations (see below, 2.4.2). However, the notion has remained “sacrosanct” (Reiner, 2013: 169), often resulting in tensions between police organisational decision-making and the need for external democratic oversight and organisational accountability. These perennial problems are rooted in the historical development of police governance structures in Scotland, as in the rest of Britain. In

the following sections, I present a brief historical analysis of the development of the early modern police forces in Scotland, and the history of tripartism. I argue that the centralising trend (see fig. 2.1 below), coupled with the growing autonomy and operational independence of chief constables, created an imbalance of power and a steady erosion of local government influence in policing policy (Marshall, 1965; Lustgarten, 1986; Oliver, 1987; Walker, 2000; Scott and Wilkie, 2001; Donnelly and Scott, 2002a; Reiner, 2010; Scott, 2011).



**Figure 2.1 - Timeline of police governance legislation in Scotland**

### 2.2.1 - From local beginnings to early tripartism

The establishment of the Metropolitan Police in 1829 is commonly regarded as the birth of the modern police in Britain (Reiner, 2010: 39). Described as a “protracted and painful process, in the face of bitter resistance and smouldering hostility” (Reiner, 2010: 39), Reiner’s historical accounts on the development of early modern police forces were limited in scope to England, even the chronological lists in the Appendix (Reiner, 2000: 221-223) supposedly outlining “British police history” (Reiner, 2000: 16) made no mention of Scotland. Others have correctly identified London’s Metropolitan police force as the first modern police force in *England* (Emsley, 2008: 71, emphasis added). In Scotland, statutory police forces consisting of professional officers with wide-ranging duties and a strong civic focus developed at least two decades before the Metropolitan Police Act of 1829 (Gordon, 1980; Walker, 2000; Dinsmor and Goldsmith, 2005; Barrie, 2008). The Glasgow Police Act established the first police force in Glasgow in 1800, Edinburgh followed suit with its own local force in 1805 and throughout the early part of the nineteenth century local burghs in Scotland continued to raise locally funded police forces (Dinsmor and Goldsmith, 2005: 42; also, Walker, 2000; Barrie, 2008, 2012).

The growth of early local police forces in Scotland was largely informed by what Walker describes as a “distinctive but broadly familiar set of social practices and historical development” (Walker, 1999: 94). Familiar because the establishment of the Metropolitan Police was perceived in some quarters as a centralised response to an increase in crime, disorder and political unrest (Miller, 1989: 43) caused by the “pressures of urban and industrial revolution” (Reiner, 2010: 40). The development of organised police forces in Scotland, although a result of local initiatives, also coincided with the broader socio-economic transformation triggered by an increase in migration from rural areas, and across the Irish Sea (Walker, 2000: 153), to urban centres due to a rapid, albeit later than England, “industrial and commercial expansion, and transatlantic trading” (Barrie, 2012: 454). While the early modern police forces in England had similar duties to their counterparts in the north, Sir Robert Peel’s early instructions to the newly recruited Metropolitan Police officers, that came to be known as ‘Bobbies’, were to focus specifically on the prevention of crime (Emsley, 2008: 73),

a point reiterated by the recent discourse of police reform in England and Wales (Home Office, 2010). Yet, there was no paradigm shift between the old and the new police in Scotland (Walker, 2000: 153) as policing was, and continues to be<sup>10</sup>, perceived as “for the public good” (Dinsmor and Goldsmith, 2005: 41-42).

Early police officers in Scotland had a broad social welfare role that included “patrolling the streets and detecting crime, dealing with environmental nuisance, suppressing riots, squabbles, begging and singing songs, and for arranging the paving, cleansing and lighting of the streets” (Donnelly and Scott, 2008: 183). As the costs of raising and maintaining the early police forces had to be met by local government, central<sup>11</sup> legislation merely played an “enabling” role and did not make it obligatory for burghs and counties to establish professional police forces (Bunyan, 1976: 64; Gordon, 1980: 20, also Walker, 2000; Barrie, 2008). Gordon notes that while the English and Welsh counties were reluctant<sup>12</sup>, the Scottish counties raised local forces at their own behest without the need for central government interference<sup>13</sup> (Gordon, 1980: 20). This arguably laid the underlying foundations of localism that continues to feature strongly in the Scottish police governance discourse, however, it must be noted that these local initiatives were “sanctioned, and often encouraged by the centre” (Barrie, 2012: 455). The increased local government autonomy was recognised and accepted by Westminster, it was deemed that allowing local administrations to “‘cherry-pick’ provisions most relevant to their particular needs, would be more

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<sup>10</sup> The Police and Fire Reform (Scotland) Act 2012 sets out the role and purpose of the police as to “improve the safety and well-being of persons, localities and communities in Scotland” (s32(a)). Further, it recognises that the police need to work in collaboration with other partners in order to “promote measures to prevent crime, harm and disorder” (s32(b)).

<sup>11</sup> Any references to central government prior to 1998 refer to the Parliament of Great Britain, based in Westminster. Following the Union of the Scottish and English Parliaments in 1707, Scotland maintained a distinct social and political system and had autonomy over education, legal and religious matters (Walker, 2000: 151). These areas of domestic policy and the implementation of legislation enacted by the Parliament at Westminster became the responsibility of the Lord Advocate of Scotland (Barrie, 2012: 454), later replaced by the Scottish Office, in 1885 under the tutelage of Secretary of State for Scotland comprising of civil servants and policy experts (McAra, 2005: 285-286). Following the Scotland Act 1998, the Scottish Office became the Scotland Office and policing and criminal justice became a devolved matter for the Scottish Executive (later known as the Scottish Government following the SNP victory in 2007) through the Cabinet Secretary for Justice.

<sup>12</sup> Until compelled to do so by the County and Borough Police Act of 1856.

<sup>13</sup> Police (Scotland) Act 1857 made it compulsory for counties and the Burgh Police (Scotland) Act 1892 made it compulsory for towns to raise and maintain a police force, however, by 1860s all of Scotland was being policed by regular forces (Gordon, 1980: 20).

effective and less consuming of parliamentary time than the existing bespoke acts” (Pugh, 2014). In return, the central government relied on the local administrations “to regulate public order” (Davidson *et al.*, 2016: 93).

Despite central legislation playing an enabling role, the governance structure of the early modern police forces in Scotland was “piecemeal” and a “patchwork affair” (Walker, 2000: 41). The Royal Burghs Municipal Reform Act 1833 established the early boundaries for each police burgh, and enabled burghs to raise local police forces and maintain them through elected commissioners (Gordon, 1980: 18). The 1833 Act also enabled local governments to develop “a limited democratic franchise on the basis of property ownership” (Walker, 2000: 154). This allowed the affluent middle classes to increase their influence on local politics, and the governance of police swiftly became part of local government administration (Walker, 2000: 154). Since the police forces were raised and maintained by the local government, local ratepayers became key stakeholders with a “vested interest in making policing work” (Donnelly and Scott, 2008: 184).

Local government in Scotland continued to enjoy significant control and influence over the governance of local police forces and any notion of a centralised police force was “traditionally met with increased hostility” (Gordon, 1980: 77). For instance, attempts to amalgamate the police forces within the county of Inverness-shire in 1942, were perceived as a “centralising agenda” of the Scottish Office, and swiftly rejected by the local councillors (Davidson *et al.*, 2016: 99). Yet a gradual move towards “centralised and harmonised administrative structure” had begun as early as in the 1850s (Walker, 2000: 154; also, Gordon, 1980). The County and Burgh Police (Scotland) Act 1857 initiated the trend towards central government control by making it compulsory for local administrations to maintain a police force through police committees comprising of police commissioners in burghs, commissioners of supply in counties, local sheriffs and the lord lieutenant (Walker, 2000: 154; Barrie, 2012: 474). The 1857 Act also gave formal powers of force amalgamations to central government and created a new office of the Inspectorate of Constabulary for Scotland. The Inspector, appointed by Westminster, and answerable only to the Crown, had powers to issue grants to police committees towards costs of maintaining the force on



the basis of efficiency and was also responsible for setting out regulations on conditions of service (Gordon, 1980; Walker, 2000; Barrie, 2012). This development shaped an early tripartite governance structure in Scotland, as central government would increasingly use the efficiency grants as “leverage” to push through force amalgamations, allowing for an early form of “checks and sanctions and the sharing of the allocation of resources” between local and central government (Davidson *et al.*, 2016: 93). However, these grants were rejected by burghs who preferred to remain outside the scope of influence of the central government (Davidson *et al.*, 2016: 94).

This “steady current of centralisation” mirrored the discourses in England and Wales and it was considered in the elite policy circles as “in the best interests of policing” (Emsley, 2008: 73) particularly because it brought uniformity of practice and encouraged a “centrally organised model of good police administration” (Barrie, 2012: 477; also, Lustgarten, 1986; Walker, 2000). Further central government legislation in 1892<sup>14</sup>, 1900<sup>15</sup> and in 1929<sup>16</sup> brought more uniformity in police governance arrangements as elected town councils and county councils also became police authorities, comprising locally elected representatives (Walker, 2000: 155).

The above historical account helps illuminate that the system of governance that came to be known as the ‘tripartite’ arrangement developed very early in Scotland. These developments coincided with the early growth of the operational independence doctrine, as senior police officers became important partners in the ‘tripartite’ relationship. The gradual trend towards centralisation also gave rise to the tussle between local and central political representatives for control over the police. The formalisation of tripartism, following the Royal Commission on the police (1962), exacerbated these problems. Below, I briefly outline the rationale for the Royal Commission on the police (1962) and the broad contours of tripartism, as formalised by the Police (Scotland) Act 1967, followed by an in-depth examination of the effects of tripartism on the two perennial problems of police governance.

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<sup>14</sup> Burgh Police (Scotland) Act 1892.

<sup>15</sup> Town Councils (Scotland) Act 1900.

<sup>16</sup> Local Government (Scotland) Act 1929.

### 2.2.2 - Formalisation of tripartism

As outlined above, the governance arrangements that existed in Scotland prior to the Police (Scotland) Act 1967 evolved without the need for central government legislation and there was no clear accountability framework through which local police forces could be held to account, largely due to “constitutional neglect” (Walker, 2000: 156). The proximity of local police authorities and local chief constables meant that this remained the primary accountability relationship in Scotland. The formalisation of tripartism took place, primarily due to external discourses in England and Wales, that led to the Royal Commission on the police.

The public police in England enjoyed a considerable period of legitimacy until the 1950s largely due to the English ‘bobby’ being perceived as an icon of English identity and a symbol of power and security (Reiner, 2010: 68-77, also, Loader, 1997). However, by the end of the 1950s, a series of incidents including the Notting Hill and Nottingham race riots of 1958, mismanagement and scandals within the police organisations, and allegations of maladministration and corruption against chief constables, and senior officers (Reiner, 2010: 78) led to the appointment of the Royal Commission with the mandate to review the constitutional position of the police and police governance and accountability arrangements throughout Britain (Royal Commission, 1962: 1). Thus, while the Commission was formed primarily because of the events in England and Wales, it also sought to review the Scottish policing landscape, particularly the role of the local police authorities.

The Commission presented its final report in 1962 and found that while in Scotland the town and county councils acted as police authorities, the governance and accountability decisions were delegated to police committees who had no formal powers of their own nor any legal standing (Royal Commission, 1962, para 213: 68). At the time of the Commission, the local police authorities in Scotland solely comprised of elected councillors, however, the police committees had no formal powers, and generally reported back to the full council for approval of decisions, similar to a housing or an education committee (Gordon, 1980: 77). It was suggested by the Commission that police committees could continue to consist of locally elected representatives but they needed a statutory provision and a limited membership (as

opposed to the whole council) to solely focus on the maintenance of the police (Royal Commission, 1962, para.216: 68-69) alluding to the specialist nature of the task of police governance – an early nod to the need for expertise and capacity as explored in later chapters (Chapter 3 and Chapter 4). The Commission also sought to downplay the strong emphasis on localism in police governance and accountability and it argued that local influence on policing was not unique at the time as local authorities could also raise locally administered armies and regiments, and had considerable control over hospitals, prisons and other infrastructure. It was suggested that historically, local authorities were best placed to govern effectively in their respective areas of influence due to the "primitive communication network" (Royal Commission on the Police, 1962: 6).

The outcome of the findings of the Royal Commission Report (1962) was the formalisation of tripartism through the Police (Scotland) Act 1967<sup>17</sup>. Under the new statutory provisions, local councils maintained the role of police authorities and became the primary employer of each corresponding local police force. The police authorities had powers to set fifty per cent of the budgets locally (s. 2 (2)), to appoint or dismiss chief constables with the approval of the Secretary for State (s.4 (1)), and to request annual reports from chief constables for the policing of their local areas (s.15). However, crucially from a governance and accountability point of view, local police authorities in Scotland had no statutory duty to "secure the maintenance of an adequate and *efficient* police force for the area", something that their counterparts in England and Wales did have (Gordon, 1980: 79, emphasis added). The Secretary of State for Scotland became responsible for all aspects of policing involving the overall governance, administration and efficiency of police forces, setting regulations for hiring and dismissing police constables and the maintenance of discipline in police forces (s. 26), force amalgamations (s. 20), issuance of grants and fifty per cent funding to local police authorities for policing of their local areas (s.32), and formal powers to instruct a police authority to call on a chief constable to retire in the interests of efficiency (s.31 (1)). The Secretary of State could also request the Inspector of

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<sup>17</sup> Police Act 1964 in England and Wales.

Constabulary to carry out inquiries into the state and efficiency of police forces (s. 33 (3)). Chief constables were given responsibility for the day-to-day affairs and the direction and control of their respective police forces (s.17 (2)). Hence, the gradual transfer of powers of police governance from local government to central government was formalised by tripartism. The formalisation of tripartism also gave rise to the two perennial problems of police governance, as I examine below.

### 2.3 - Local versus central: The perpetual tussle

In theory, it was envisaged that a tripartite system of governance would give due recognition to local and central interests and maintain the independence of chief constables. However, in practice, the legislation failed to “specify broad strategic roles for the tripartite parties” (Walker, 2000: 156) and the statutory powers afforded to police authorities, were "vague and self-contradictory at crucial points" (Reiner, 2010: 227). The result in practice was a lop-sided governance structure that accentuated the complications in police organisational accountability. In matters concerning the use of formal powers, the local police authorities were often merely reduced as a bystander, even in areas where they had explicit powers to appoint senior officers. For instance, as argued by Scott and Wilkie:

“It would appear that generally with appointments the way the tripartite system works is that the key players are central government officials and chief constables with the local police board largely providing the rubber stamps” (Scott and Wilkie, 2001: 58).

The imbalance of power between local and central governments in Scotland was largely due to the structural limitations of tripartism and this drastically affected the governance and accountability of the police at a local level. The Local Government (Scotland) Act 1973 replaced town and county councils with a two-tier model of regional and district councils (Walker, 2000: 156; Donnelly and Scott, 2002a: 5). The regional councils had responsibility for education, social work, police and fire, while districts took responsibility for housing, leisure and cleaning (Donnelly and Scott, 2002a: 5). These reforms had a direct impact on the organisation of police forces and the concomitant governance structures, shifting local governance and accountability

of the police to a regional level. Following the reforms, eight regional police forces were formed, six of those were coterminous with their own regional councils acting as police authorities and two (Lothian and Borders and Northern) were served by joint police boards consisting of several smaller councils (Donnelly and Scott, 2002a: 5). The ensuing structures meant that the Strathclyde police force served half of Scotland's population while the other seven forces served some of the smallest regions. This arrangement led some to argue that "the organisation of policing has tended to follow the organisation of local administration rather than any logic regarding the geographical needs or characteristics of operational policing" (Davidson *et al.*, 2016: 111).

The strong localism that had dominated police governance discourses in Scotland (see, 2.2.1 and 2.2.2 above) was diluted even more following further reforms to local government structures in 1994<sup>18</sup>. The two-tier system of local government was replaced with *thirty-two* unitary local authorities. The eight regional police forces remained the same but their governance structures changed from six regional police authorities to six joint police boards (Central Scotland, Grampian, Lothian and Borders, Northern, Strathclyde and Tayside) and two unitary police authorities (Dumfries and Galloway and Fife) (Walker, 2000; Donnelly and Scott, 2002a). These reforms coincided with greater central government involvement by imposing new reporting obligations on chief constables and directing police authorities to ensure effective and efficient policing of their respective areas of influence (Walker, 2000: 164). Further, as joint police boards consisted of several local authorities, *twelve* in the case of Strathclyde, there appeared to be less cohesion in police governance structures at the local level and less of a defence against "encroaching central influence" (Walker, 2000: 165). Following the market-based reforms in the 1990s (see Chapter 4), chief constables also became directly responsible for civilian staff and local police forces effectively became large corporate organisations, further reducing the role of police authorities to merely act as paymasters with very little influence in local policing policy making (Gordon, 1980:80; Walker, 2000: 165). Similar trends were apparent in

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<sup>18</sup> Local Government etc. (Scotland) Act 1994

England and Wales, as Reiner has argued that “the police authorities paid the piper but did not call any tunes” (2010: 227).

The next structural change that had a significant influence, not only on Scottish police governance arrangements but also on the Scottish political landscape, was the devolution of powers to the Scottish Parliament in 1998. The powers of the Secretary of State for Scotland within the tripartite system were transferred to the Justice Secretary who along with Scottish Ministers assumed responsibilities of national police policy, overall police budgets and force amalgamations (Donnelly and Scott, 2010: 81). Before the 1998 Act, policing was considered to be a “small administrative section” by the ministers of state in the Scottish Office (Scott, 2011: 123) and the political influence on Scottish policing was less "overt and abrasive" (Walker, 2000: 159). The creation of the Scottish Parliament and its close proximity compared to Westminster allowed Scottish politicians and MSPs to increase their influence on policing policy in a bid to develop professional relationships with senior police officers (Donnelly and Scott, 2008: 189; Scott, 2011: 124). The ambiguities surrounding the role and powers of police authorities were reinforced following the emergence of new centralised actors such as the Scottish Parliament’s Justice Committee, and the expansion of powers of Her Majesty’s Inspectorate of Constabulary in Scotland (HMICS) and Audit Scotland following an emphasis on public services to achieve greater efficiency and effectiveness through the principles of ‘Best Value’ (Donnelly and Scott, 2000a: 9). This changed the approach to police governance and accountability significantly (see Chapter 4) and the strong emphasis on localism, while it continues to feature strongly in political discourse (Chapter 3), was diluted by the proliferation of other actors and stakeholders, all of whom were based centrally.

The 2012 Act, the centralisation of the local police forces, and the abolishment of the local police boards represents the pinnacle of the centralising trend that began as early as 1857, with the establishment of the Inspectorate of Constabulary (see above, 2.2.1). However, the tussle for democratic control over the police between local and central political stakeholders is a perpetual one as I explore further in Chapter 3 in the context of the 2012 Act official policy discourse. Further, my findings in later chapters will

show that the debate is far from settled (Chapter 7). Below, I examine the second perennial problem in police governance, which has also continued to feature strongly in the police governance literature.

#### 2.4 - From 'Constabulary' to 'Operational' Independence

The doctrine of constabulary independence is the most controversial and long standing trend in the British police governance discourse and "it remains central to contemporary attempts to understand – and change – the world of police governance" (Walker, 2000: 44). The doctrine has no statutory foundation in either England and Wales, or Scotland, yet it has made organisational accountability of the police, particularly by local police authorities, a contentious matter. At its very core, constabulary independence is underpinned by the argument that "the policeman [sic] is nobody's servant...he executes a public office under the Law and it is the Law...which is the policeman's master" (Sir John Anderson quoted in Marshall, 1965: 33).

The primary legitimising foundation for this doctrine is the judicial interpretation of the ancient office of the constable which derives its authority from English common law and exercises independent authority, instead of delegated powers (Lustgarten, 1986: 25). In Scotland too, the office of the constable has existed at least since the Union of the Crowns in 1603 as an office holder with original powers and authority and thus not answerable to anyone, save the Crown (Royal Commission, 1962, para.28: 10). This interpretation of the powers of a constable formed the basis of case law in England and Wales leading to the sanctification of the independence doctrine. In *Fisher v Oldham Corporation*<sup>19</sup>, Fisher sought damages from Oldham Council for actions of the Oldham police. But it was decided that in affecting arrest or detention of the plaintiff, the officers were fulfilling their duties as officers of the Crown and that Oldham Corporation was not answerable in law for the actions of individual officers (Marshall, 1965: 35-36). The judicial view that police officers were not in a master-servant relationship with their local police authorities was further strengthened

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<sup>19</sup> [1930] 2 KB 364.

in *R v Metropolitan Police Commissioner*<sup>20</sup>. In his judgement, Lord Denning emphasised that “police officers are responsible for their actions to the law and only to the law” (Walker, 2000: 45). In Scotland, there had been several unsuccessful attempts<sup>21</sup> to fix vicarious liability on local police authorities for the actions of police officers (Marshall, 1965: 39-40).

While the judicial backing for constabulary independence was primarily rooted in the context of civil damages under tort (Delict in Scots Law), the doctrine was also vigorously defended and invoked by chief constables throughout Britain to protect police operational policies from local political interference, and quite often from organisational accountability. As Lustgarten argued, the judgement in *Fisher* allowed the doctrine of constabulary independence to be “extrapolated and applied to the chief constables in their day-to-day running of the police forces and broad operational policies... due to the absurdity of the constitutional understanding that the difference between a police constable and a chief constable was merely one of rank” (Lustgarten, 1986: 60-61). The Royal Commission (1962) gave its backing to the judicial interpretation (para. 151: 50) and following the Police Act (1964) and Police (Scotland) Act 1967, chief constables had complete autonomy over the operational direction and control of their police forces. As Walker’s quote at the start of this section suggests, it is important that the doctrine of operational independence is dissected and understood in order to appreciate the complexity it adds to the implementation of police governance arrangements.

#### 2.4.1 - Independence from what?

The doctrine of constabulary independence has been viewed as a sacred shield against political interference, partisanship and problems of corruption, particularly by police reformers in the USA (Reiner, 2010: 88). The key legitimising argument for the notion of constabulary independence is rooted in the view that police constables should be insulated from undue political interference during the course of their duty. This interference could permeate in different ways. Drawing on Walker (2000: 54-55)

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<sup>20</sup> Ex-parte Blackburn [1968] 2 QB 118.

<sup>21</sup> Leask v County Council of Stirling S.L.T [1893] 241; Adamson v Martin [1916] S.C. 319.



firstly, an individual politician could interfere in police operations for personal gains. For instance, due to greed, rivalry, or personal enmity a politician may seek to influence specific police operations or influence an arrest or detention. Secondly, an elected representative may seek to influence police officers for narrow political interests, for instance, a politician could use political leverage to stop or start investigations against someone, or influence the police to use their powers of arrest against members of rival political parties or undesired factions. Thirdly, police could be used to protect the interests and security of the governing regime and its policies for instance, through deployment at industrial disputes caused by the government's broader socio-economic policies. Fourthly, political interference could be used to ensure the security of the underlying political order. And finally, politicians may seek to prioritise specific policies in local areas due to ideological political interests.

Even if the arguments by Walker provide a strong justification for the constabulary independence doctrine, and it is accepted that specific police operations should be insulated from political interference, and that instructions by the supervisory bodies in operational matters of the police could be construed as “an interference with the course of justice” (Marshall, 1978: 626), this should not amount to a lack of retrospective accountability for those decisions. However, a historical review of policing in England and Wales, and in Scotland, highlights that the doctrine of constabulary independence has largely been invoked to distance police policy-making from *local* democratic oversight (Marshall, 1965; Gordon, 1980; Lustgarten, 1986; Walker, 2000; Donnelly and Scott, 2002a; Scott, 2011). In Britain, there are many instances where the police have been deployed in industrial disputes or political protests, particularly where *central* government's interests are challenged – and by extension the interests of the ruling political party. For instance, the 1980s' miner's strikes (Reiner, 2010: 78-94,228), or the more contemporary examples of the G20 summit protests in 2009 and the student protests in 2010 all led to the deployment of police against those protesting *central government* policies. Further, policing scholars have underlined the ‘order maintenance’ role of the police (Marenin, 1982) and argued that the governance of police becomes even more complex when the lines between order maintenance and “pervasive reproduction of order” are blurred (Braithwaite, 1992 *in* Loader and

Walker, 2001: 17). Lustgarten (1986: 45-48) provides the strongest critique of the constabulary independence doctrine, arguing that it was the political turmoil of the 1919, and the apparent rise of bolshevism in some local authority areas, that led the central government to actively support and encourage the independence of chief constables. Lustgarten argues that “in an era of financial crisis and retrenchment, expanding the central bureaucracy and nationalising the police forces was not an option. ... in political conflicts between the central government and the “socialist” local authorities, the chief constable served as an intermediary, which was a godsend to Home Office” (Lustgarten 1986: 45). Thus, the independence doctrine of the chief constables was “built up” by invoking the judicial principle that viewed the constable as an officer of the law (Lustgarten 1986: 47). As a consequence, and particularly after the formalisation of tripartism, the chief constables used their powers to refuse requests for information, if they deemed that such requests amounted to interference in police operations (Donnelly and Scott, 2002a: 11; Reiner, 2010: 227). The definition of ‘operations’ used by chief constables to distance themselves from local democratic oversight is a very broad one, as I explore further below.

#### 2.4.2 - Operations vs. Policy

Chief constables have traditionally sought to underline their operational independence, by demarcating the boundary between policy and operations. However, in agreement with Lustgarten, I argue that this distinction between policy and operations is a false one (Lustgarten, 1986: 20). Who should decide whether police should focus on drug related offences or hate crimes? Whether more resources should be available to tackle missing persons or domestic violence? It is here, in determining police policies and priorities, that the notion of operational independence has been consistently invoked, subsequently limiting the influence of the local police authorities (Lustgarten, 1986; Reiner, 2010; Scott, 2011). As Lustgarten (1986: 19) has argued “the police do not encounter offences at random”. The organisation and capability of the force usually determines which offences are prioritised, and ultimately the operational policies dictate which policing strategies and tactics are employed and where limited resources are deployed. Organisational accountability mechanisms can affect individual policing behaviour in the same vein as how operational policies can affect specific police

operations. The following scenarios illustrate the argument that police operations and policies are mutually dependant:

### **Scenario 1**

Consider a situation where a chief constable decides to reduce the number of officers available in a specific area. Consequently, a local commander, with reduced resources at their disposal for deployment, prioritises cases of domestic abuse over incidents of public disorder. Whilst the deployment of officers, and prioritisation of one incident over another may be deemed as an ‘operational’ matter, the limited resources at the disposal of the local police unit is a direct consequence of a policy decision (paraphrased from Walker, 2000: 25).

### **Scenario 2**

Following a major terror incident, a local police commander has identified that members of a particular minority group are at an increased risk of hate-related violence. In order to counter this threat, the threshold for what constitutes an arrestable offence for hate-related crimes is lowered to encourage reporting. Further, local policing policy is adjusted to treat all incidents of verbal and physical abuse against members of the particular minority group as a potential hate crime. As a consequence of this change in policy, more police resources are deployed locally to deal with hate-crimes. Conversely, in a different area, a local police commander increases surveillance and stops and searches, disproportionately targeting members of a specific minority group. Both are effectively policy decisions, with a direct impact on deployment, police tactics, and subsequent operations.

#### **Box 2.1 - Policy v Operations: A false distinction**

The above scenarios illustrate two points. Firstly, that organisational or operational policies, can and do, affect police operations on the ground. These operations have a direct impact on local communities and areas policed which leads to the second point. The decision of the chief constables to reduce police numbers from an area, redirecting and prioritising resources towards domestic violence, or to deploy extra resources to deal with potential hate-crimes against a particular minority group, all have a deeply political character (also, see Lustgarten, 1986: 17). These ‘policy’ decisions are driven by the political priorities of the time. Further, prioritising and allocating scarce resources towards one type of crime, may lead to policing that is potentially divisive

or contentious among some communities and localities (a point explored in greater detail in Chapter 4, 4.4.2). While accountability to law provides safeguards for abuses of power, it does not provide ample protection against policing policy that may be ‘legal’ but may still have negative consequences on certain groups. For instance, as illustrated in Scenario 2 (Box 2.1, above), the decision of a local commander to increase stops and searches, disproportionately targeting specific minority group areas would be deemed as an ‘operational’ matter based on intelligence and may be entirely ‘legal’, yet it may result in a negative impact on that particular minority group. Therefore, it is even more crucial for the democratic state to set out processes and mechanisms of police organisational accountability that can proactively scrutinise operational policies, or obtain answers on contentious policies, retrospectively. Even where *specific* police operations are considered, it is reasonable for the democratic representatives to seek answers, to ask why certain operations were conducted in one way and not the other, a point surmised in a review carried out by a former Inspector of Constabulary in Scotland:

“it would indeed be wrong for a police authority or board to tell its chief constable today to have an individual arrested but, on the other hand, the same authority could legitimately ask the chief constable tomorrow why a man was arrested or not arrested today” (Jim Gallagher, 2007 quoted in Tomkins, 2009: 57).

Despite the ‘contested’ nature of the operational independence doctrine, it remained a sacred shield for the chief constables during tripartism. It routinely complicated matters between local police authorities and chief constables, often resulting in tensions, as examined below.

#### 2.4.3 - Operational Independence and Tripartism

Under the Police (Scotland) Act 1967, local police authorities had a statutory responsibility to maintain an adequate police force in their local area. Local police authorities also had powers of appointment and dismissal of chief constables, however, these powers were subject to the approval of the Secretary of the State. Further, in order to ensure effective policing of local areas, local police authorities could request reports from chief constables on matters affecting their regions, however, chief constables could refuse such a request if they perceived it interfered with their

operational independence (Donnelly and Scott, 2002a; Scott, 2011). A former chief constable of Central Scotland Police force, Ian Oliver, argued that local police authorities were routinely criticised for not exercising their right and power to regularly ask for reports from chief constables, particularly in regards to the “allocation of scarce public resources” (Oliver, 1987: 48). However, the failings of the local police authorities in influencing where public resources were spent, were largely because chief constables were “sensitive to the apparent attack on their positions” and they felt “compelled to distance themselves from local authorities” (Oliver, 1987: 54).

In addition to a lack of influence on police spending, due to the operational independence doctrine, local police authorities were also often reluctant to ask questions regarding operational policies of the forces in their local areas. According to Gordon (1980), whenever an opportunity presented itself for the police authorities to exert their power or a measure of control over the police, they failed. For instance, in 1975 during a National Front meeting in Glasgow, over 100 anti-fascist protestors were arrested, Strathclyde Police were criticised extensively in the public domain for excessive use of force, however, the local police board did not raise the issue for further discussion (1980: 80) presumably because it was felt that this amounted to interference in ‘police operations’. Additionally, when a Special Branch officer unsuccessfully tried to recruit an 'informant' at the Paisley College of Technology, the matter became highly publicised and Special Branch's tactics were criticised by the public and the media. However, the convenor of the Police and Fire Committee said "she had no plans to raise the issue with the Chief Constable" (Gordon, 1980: 80), deferring to the independence of the police.

By successfully demarcating the boundary between operations and policies, chief constables would consolidate their independence over anything they regarded as operational, limiting the influence of external influence and scrutiny. This arrangement created a very powerful position for the chief constables both "constitutionally and personally" with almost no political intervention or democratic accountability (Scott, 2011: 123).

Another contemporary trend in the sanctification of the operational independence doctrine has been the rise of police professionalism (Jones, 2008), and deference of the local police authorities in Scotland, to the knowledge and expertise of the chief constable on operational matters. This is explored further in Chapter 4.

## 2.5 - Discussion: The 'perennial' problems

In the above sections, I have outlined the two most important, and often contentious trends in police governance, - i.e. the operational independence doctrine and the perpetual struggle between local and central government for control over the police. Through a historical analysis of the tripartite governance arrangements in Scotland, I have shown that these problems occurred perennially, complicating the implementation of police organisational accountability mechanisms. Tripartism sought to balance the interests of the central government, local government and chief constables, however, due to a consistent centralising trend, reforms in the local government structures, and the emergence and solidification of the operational independence doctrine, the powers and abilities of local police authorities to deliver local democratic accountability were severely hampered.

In light of these problems, it is pertinent that police governance arrangements ensure a balancing of competing interests between operational independence and organisational accountability of operational policies, and between the demands of local and central government. The tripartite governance arrangements largely resulted in an imbalance of power relations, both the operational independence of chief constables, and the encroachment of central government influence meant that the local police authorities often rubber stamped key decisions. The unravelling of the perceived sanctity of the constabulary independence doctrine by Lustgarten, uncontested and often endorsed by other policing scholars (see for instance, Reiner, 2010: 227), provides a strong case for democratic oversight, and accountability of police operational policies both proactively, and retrospectively. So long as legal provisions are in place that limit the interference of local and central political representatives in *specific police operations*, no reasons should preclude police organisations from

accountability to democratic institutions and having to explain instances of action and inaction after the fact (also, see Chapter 7).

The importance of these problems, in the context of this study is signified by the fact that the SPA has replaced the local police authorities. Whether these two problems featured in the official policy agenda leading up to the reforms is examined in Chapter 3.

## 2.6 - Conclusion

The development of the early modern police forces in Scotland was predicated in localism. Throughout the nineteenth and early part of the twentieth century, policing and police governance remained a key part of local government administration. A gradual shift towards centralised control, in the interests of harmonisation and efficiency, began as early as 1857, with the establishment of the Inspectorate of Constabulary in Scotland. The centralising trend gathered speed following the Royal Commission on the police in 1962. The subsequent legislative framework, the Police (Scotland) Act 1967, formalised the tripartite relationship between central government, local police authorities and chief constables. Whilst in theory the tripartite governance arrangement sought to balance the interests of the local and central government, in practice the 1967 Act remained vague and ambiguous and the resultant structures were lop-sided. Further, the evolution of the constabulary independence doctrine into the much broader notion of ‘operational’ independence meant that chief constables had unrivalled control over operational decision-making and in key matters of policy, the local police authorities often provided the rubber stamp. Thus, both the operational independence doctrine, and the centralising trend, hampered the ability of the local police authorities to deliver effective mechanisms of police organisational accountability, particularly in relation to operational policies.

The perennial problems outlined in this chapter predate the 2012 Act, and as I have argued by drawing on Walker (2000), they remain part of the regulatory puzzle of police governance. It is due to this reason that these problems are cast as ‘the research problem’ and remain the focus of discussions in the ensuing chapters. In the following

chapter I examine whether the policy agenda leading up to the 2012 Act sought to resolve these problems.





### **Chapter 3 - The Police and Fire Reform (Scotland) Act, 2012: ‘The Solution’?**

In this chapter, I map out the powers and responsibilities of the key actors involved in the post-2012 Act governance arrangements and critically assess the policy discourse to identify the rationale for the creation of the SPA. Further, I examine whether the perennial problems of police governance, outlined in chapter 2, featured in the official policy agenda. I argue that while austerity provided a strong impetus for the reforms, the official policy agenda also sought to strengthen police governance in relation to the allocation of resources, local service delivery, and national policing requirements. The policy discourse also highlighted the need for expertise in police governance, providing a strong rationale for the creation of the SPA. However, the official policy agenda neglected the need for police governance arrangements to provide stringent mechanisms for organisational accountability of police operational policies. Further, whilst the incapacity and ineffectiveness of the former local police authorities featured highly in the discussions for the move towards centralisation, the perennial problems that existed before the new arrangements have remained unresolved. These ‘omissions’ had consequences for the SPA and the new governance arrangements, particularly in the early days of their development, as examined in the later chapters (Chapters 7 and 8). This chapter, therefore, provides essential context for the overall research aims of this study by critically evaluating the strengths and weaknesses of the new legislative framework in relation to the perennial problems identified in the previous chapter.

Section 3.1 provides an outline of the new police governance arrangements introduced by the 2012 Act, mapping out the powers and roles and responsibilities of the key actors. The remarkable pace of the reforms themselves was preceded by a long period of consultations and reviews. In section 3.2, I provide a chronological summary of the myriad consultations, reviews, and reports that accompanied the official reform agenda in the run up to the 2012 Act. The policy discourse is then critically analysed in section 3.3, I distil the nuances of the rationale for the reforms and draw on select

interviews conducted as part of this study (see Chapter 6 for a detailed discussion on methodology) in support of my analysis.

### 3.1 - The 'new' landscape of police governance

The Police and Fire Reform (Scotland) Bill was introduced to the Scottish Parliament in January 2012, was passed in June 2012 and received Royal Assent in August 2012. The key actors in the new police governance landscape are set out as follows (see fig. 3.1 for a snapshot):



Figure 3.1 - A snapshot of the distribution of powers following the 2012 Act

#### 3.1.1 - The Police Service of Scotland

Police Scotland replaced the eight former regional police forces, the Scottish Crime and Drug Enforcement Agency (SCDEA), and the Association of Chief Police Officers in Scotland (ACPOS). It is led by an Executive Team of senior police officers of rank

Assistant Chief Constable and above, and headed by the Chief Constable. There are *thirteen*<sup>22</sup> local policing divisions across the *thirty-two* local authority areas, each led by a Local Divisional Commander. Further, there are three Regional Command Areas, led by an Assistant Chief Constable, corresponding to the North, West and East regions of Scotland. In addition, specialist services such as counter terrorism and investigations of major crimes are delivered by the Specialist Crime Division (SCD), and Operational Support Divisions provide support functions such as Road Policing, Air support, Dog branch, Mounted Branch and Marine Policing. The 2012 Act places the direction and control of all of the police organisation under the domain of the Chief Constable (s.17(2)(a)), who is also responsible for the day to day administration of the police service (s.17(2)(b)). Crucially, by virtue of s.17, police officers of any rank, including the civilian staff, in exercising their functions are also subject to the direction and control of the Chief Constable (s.21), and it is the Chief Constable who is liable for any unlawful conduct by a constable in respect of their functions (s.24(1)). The Chief Constable has to prepare an annual police plan (s.35) and have regard to any comments received on the draft plan by the SPA (s.35(3)).

### 3.1.2 - The Scottish Police Authority

The SPA replaced the former local police authorities, and it occupies a central role in the new landscape of police governance. The SPA is the legal employer of Police Scotland. It has statutory responsibility to maintain the police service (s.3) and it is the only body with formal statutory powers to hold the chief constable to account (s.2(1)(e)). As it is the SPA's duty to allocate police budgets, it has to pay damages in case of unlawful conduct by constables under the direction of the Chief Constable (s.24(3)). The SPA also has powers to appoint the chief constable, deputy chief constables and assistant chief constables (s.7(1)). However, the appointment of the chief constable has to be approved by the Scottish Ministers (s.7(2)), and the appointments of other senior officers have to be made following consultation with the Chief Constable (s.7(3)). Similarly, the SPA can require a chief constable to resign or

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<sup>22</sup> Argyll and West Dunbartonshire, Ayrshire, Dumfries and Galloway, Edinburgh, Fife, Forth Valley, Greater Glasgow, Highlands and Islands, Lanarkshire, North East, Renfrewshire and Inverclyde, Tayside, The Lothians and Scottish Borders.

retire in the interests of efficiency or effectiveness, but it must do so following consultation with the Scottish Ministers (s.14 (2)(c)). The SPA also has a duty to prepare a strategic police plan, setting out the main objectives for the policing of Scotland (s.34), the chief constable's annual police plan has to give cognisance to the strategic police plan (s.35(2)(b)).

### 3.1.3 - Scottish Government

The Scottish Ministers have formal powers throughout the various sections of the 2012 Act, maintaining a check on the powers of the SPA and the Chief Constable. Section 5 of the 2012 Act, allows the Scottish Ministers to give directions to the SPA, however, the direction may not be about a specific operation carried out by Police Scotland (s.5(2)). The Scottish Ministers also have powers to determine 'strategic police priorities' (s.33(1)), which the SPA has to take into account when developing the strategic police plan. Schedule 1 of the 2012 Act, also lays out the powers of the Scottish Ministers to appoint the chair of the SPA, and to appoint between *ten* and *fourteen* members, as well as formal powers to remove members if certain conditions are satisfied.

As the focus of this study is on the SPA, its composition, roles, responsibilities, functions and processes of accountability in relation to the Chief Constable and the Scottish Government are examined in the findings chapters (Chapters 7 - 9). However, the brief outline of the distribution of powers of police governance and accountability highlights that the 2012 Act does give some semblance to the previous 'tripartite' relationship. This relationship remains significant as far as the perennial problems (Chapter 2) of police governance are concerned, as the later chapters will explore. However, there are other actors that are equally important, who emerged as key players in the landscape of police governance since the devolution of the Scottish Parliament (Donnelly and Scott, 2002b; Scott, 2011). The 2012 Act has formalised this multifaceted approach to police governance, providing a legislative framework for what appears to be similar to the contemporary network-based governance approaches elsewhere in the public sector (see Chapter 4). These actors are as follows:

### 3.1.4 - The Scottish Parliament's Justice Sub-Committee on Policing

The 2012 Act (s.124(1)) requires the Scottish Parliament to make arrangements for keeping under review the operation of the Act. Following the passing of the 2012 Act, the Justice Committee comprising of a cross-party membership took responsibility of fulfilling the requirements of the Act, and conducted several meetings on matters relating to police reform and the new governance arrangements. The Parliament established the Justice Sub-Committee on Policing on 13<sup>th</sup> March, 2013 due to the “legislative workload” of the Justice Committee (Scottish Parliament, 2014a: 1). In the three years since the reforms, and during the period of this study (April 2013-March 2016), the Justice Sub-Committee on Policing played a significant role in delivering public accountability of the police and the SPA, reporting on issues including armed policing, local policing, stop and search and the adequacy (or inadequacy, see Chapter 7 and 8) of the new police governance arrangements.

### 3.1.5 - Her Majesty's Inspectorate for Constabulary in Scotland (HMICS)

The role and powers of HMICS were retained, and extended in the 2012 Act (s.71). HMICS has formal powers to conduct inquiries about any matter relating to the SPA and Police Scotland, as directed by the Scottish Ministers (s.74). During the three years since the reforms, HMICS played a crucial role in supporting the SPA in delivering organisational accountability of Police Scotland. As it is explored later in this chapter, the reviews and reports published by HMICS also played an instrumental role in the run-up to the reforms. During the three years since the reforms, HMICS carried out thematic inspections on local policing, armed policing, stop and search, and call handling centres, all of which were drawn on extensively in this research (see Chapter 6 for methodology). Whilst the statutory position of the Inspector of Constabulary is that of an officer of the Crown, the Act permits the Scottish Ministers to determine the number of inspectors of constabulary (s.71(2)) and to designate the Chief Inspector of Constabulary among them (s.71(3)). Further, the Scottish Ministers can also appoint assistant inspectors of constabulary (s.72).

### 3.1.6 - Audit Scotland

The 2012 Act (s.37) places a statutory obligation on both Police Scotland, and the SPA to secure ‘Best Value’, giving due regard to the principles of efficiency, effectiveness, economy and meeting the requirements of providing equal opportunities (s.37(4)). By virtue of s.37, the Auditor General for Scotland is responsible for auditing the SPA (s.42) and Police Scotland (s.43). The Auditor General is independent of the Scottish Government, and reports to the Scottish Parliament. Similar to HMICS reports, Audit Scotland’s inspection reports into the previous local police authorities played a crucial role in the lead-up to the reforms. In addition, following the reforms, particularly in the first three years, Audit Scotland delivered scathing reviews of the reform process, and the early power struggles between the SPA, the Scottish Government and Police Scotland (Chapter 7), proving a useful resource for this study (see Chapter 6).

### 3.1.7 - Local Scrutiny Committees

The provision of local policing is made a statutory requirement by the 2012 Act, requiring the chief constable to appoint a local commander for each local authority area (s.44). Whilst the Act did not prescribe how the local scrutiny arrangements would be organised, it did give powers to local authorities to determine local policing priorities in partnership with the local commander, and to approve the local police plan (s.47). Crucially, the powers of police funding, and maintenance of the local police forces, previously enjoyed by the local police authorities were passed to the SPA, and under the new governance arrangements, the role of the local authorities is to ‘monitor’ and ‘provide feedback’ to the local commander on the performance of local policing (s.45(2)). The local commander is required to involve the local authority in setting the local policing priorities (s.45(1)) and to participate in community planning (s.46). All *thirty-two* local authorities have made arrangements for local scrutiny, in the form of local scrutiny committees. The role of the local scrutiny committees alongside that of the SPA, in relation to local democratic accountability of the police, is crucial in relation to the perennial problems outlined in Chapter 2, and will be examined in greater detail in the findings chapters (Chapter 7).

### 3.1.8 - The Police Investigations and Review Commissioner (PIRC)

PIRC is the main organisation responsible for handling complaints against individual police officers and it has powers to investigate the most serious incidents involving the police (s.62). PIRC replaced the previous Police Complaints Commissioner for Scotland (PCCS) and it is organisationally independent of Police Scotland and the SPA. It is under the jurisdiction of the Lord Advocate, who is responsible for all prosecutions. The 2012 Act (s.65) gives powers to PIRC to initiate investigations in relation to any policing related matter, that may be of public interest. PIRC also has a statutory duty to keep under review the complaints handling processes of both Police Scotland and the SPA.

A cursory look at the allocation of powers and responsibilities of the main players in police governance in the 2012 Act, may suggest that the perpetual debate between local and central control of the police has been settled, with the local emerging as the “undoubted loser” (Scott, 2013b: 143). The local police authorities have been abolished, the new local scrutiny committees do not have any powers over resource allocation, the paymasters often criticised for “paying the piper and not playing any tunes” (Reiner, 2010: 227) are paymasters no more. On the other hand, the operational independence doctrine, whilst left undefined by the 2012 Act, seems to remain intact by virtue of the powers of the chief constable, and the explicit mention that Scottish Ministers may not give any directions regarding specific operations. The implication of these debates on the SPA, are considered in depth in the findings chapters (Chapter 7 and 8). Below, I chart the official policy discourse and summarise the various reviews, reports and consultations that took place prior to the 2012 Act. This roadmap, in conjunction with the previous chapter (section 2.2 and 2.3) completes the history of centralisation of the Scottish police forces that started as early as the Police (Scotland) Act 1857. A critical analysis of the official rationale for the reforms (see, 3.3) will follow after the section below.

### 3.2 - The Roadmap to the 2012 Act

Despite local beginnings (see Chapter 2), it has been argued that the centralisation of policing has been the most “obvious and consistent trend” in both England and Wales (Newburn, 2008: 98) and Scotland (Donnelly and Scott, 2002a: 12-13; also, Gordon,



1980; Walker, 2000). The centralising trend in Scotland has continued, initially without a clear statutory framework (Walker, 2000; Donnelly and Scott, 2002b), and it has culminated in the creation of Police Scotland and the SPA. Nevertheless, the reform process was gradual, the rationale nuanced, and involved a considerable period of deliberation and consultation.

The Scottish Parliamentary elections of 2007 and the formation of the Scottish National Party (SNP) led minority government triggered a sequence of events, consultations, reviews and inspections (see Box 3.1 below), that involved a broad range of stakeholders including the Scottish Parliament, the now defunct Association of Chief Police Officers in Scotland (ACPOS), members of the Scottish Police Authority Conveners' Forum representing all of the local police authorities and joint boards, HMICS, the Audit Commissioner, local and central elected representatives, civil servants, and academics. Each report, committee and commission through its recommendations sought to address the weaknesses in the governance structures that existed since the last comprehensive review of policing in Britain that was conducted by the Royal Commission on Policing in 1962. The following sections offer a brief historic timeline of events and recommendations made by the various stakeholders in the lead up to the Police and Fire Reform (Scotland) Act 2012.

- **May, 2007** - Scottish National Party win the Scottish Parliamentary elections and form a minority government
- **January, 2008** - Justice Committee Inquiry report into the effective use of police resources
- **January, 2009** - Independent Review of Policing in Scotland
- **November, 2009** - Scottish Policing Board set up following the Independent Review recommendations
- **October, 2010** - Sustainable Policing sub-group set up in anticipation of the UK Spending Review
- **February, 2011** - Scottish Government Consultation on the future of policing
- **March, 2011** - Sustainable policing sub-group, Phase Two Report: Options for Reform
- **May, 2011** - HMICS publish paper on police governance and accountability
- **June, 2011** - Christie Commission publish recommendations on efficient public service delivery
- **September, 2011** - Scottish Government Consultation on amalgamation of the police forces
- **September, 2011** - Scottish Government publish Police Reform Outline Business Case
- **January, 2012** - The Police and Fire Reform (Scotland) Bill introduced in the Scottish Parliament
- **August, 2012** - The Police and Fire Reform (Scotland) Act received Royal Assent
- **April, 2013** - The single service, 'Police Scotland' and the SPA come into effect

**Box 3.1 - Timeline of events leading up to the 2012 Act**

**3.2.1 - The Justice Committee Report (2008)**

During the 2007 election campaign, the SNP made a pledge to recruit more police officers (SNP, 2007: 58). Following the formation of a SNP minority government, the newly formed Justice Committee commenced an inquiry with an initial remit to “review the use of police resources in Scotland including plans by the Scottish Government to provide for an additional 1000 police officers” (Justice Committee, 2008: para. 3).

The Justice Committee broadened its remit very soon and the final report published in 2008 included recommendations on all aspects including the purpose and priorities for policing in Scotland and the effectiveness of the tripartite governance arrangements (para. 5). In particular, the Justice Committee recommended that the roles and responsibilities of all actors within the tripartite relationship should be clarified (para. 349), the composition of local police authorities should be reviewed to include independently appointed advisors with a range of professional skills and expertise (para. 351), the local police authorities should ensure they have sufficient support and

analytical capacity to independently scrutinise the performance of the police (para. 353), and that local police authorities should make themselves more visible to local communities, promote dialogue with the electorate and effectively communicate local priorities for policing (para. 354).

As part of the recommendations, the Justice Committee also called for a thorough independent review of Scottish policing in appreciation of the fact that there had not been a comprehensive review of policing and police governance arrangements in Scotland since the Police (Scotland) Act 1967 (para. 364).

### 3.2.2 - Independent Review of Policing in Scotland (2009)

The review conducted by the then Her Majesty's Chief Inspector of Constabulary Paddy Tomkins took the findings and recommendations of the Justice Committee's report (2008) as the point of departure and he initiated his own review into the roles and responsibilities of police forces in Scotland. The review was wide ranging and looked at all aspects of Scottish policing and one of its stated objectives were to "make recommendations for the organisation, governance and accountability of police forces in Scotland" (Tomkins, 2009: 9).

The HMICS report re-emphasised the ambiguities in the existing tripartite structure of governance and found that the local police authorities had very little influence over local policing decisions that were usually made through the community planning partnerships and Single Outcome Agreements<sup>23</sup> (SOAs) (para. 1.17). The local police authorities also lacked independent support to enable them to scrutinise and challenge police operational policies effectively (para. 1.18). Further, there was no statutory requirement for the local police authorities to consider national policing requirements such as counter terrorism, cybercrime and organised crime, and chief constables were bound by legislation "to give primacy to the decisions of local police authority" causing a potential conflict of interest between local and national priorities,

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<sup>23</sup> In 2007, the Scottish Government and Scottish local authorities (through COSLA) agreed a Concordat underpinning a closer working relationship between central and local government. A single outcome agreement (SOA) sets out priorities for local outcomes which are agreed between local public services and local authorities for each local authority area and the Scottish Government (Christie, 2011: 43-44).

particularly because ACPOs, on the other hand, had a mandate to “promote the common good of policing” throughout Scotland (para. 1.19). The report also highlighted serious gaps in governance over national policing decisions (para. 1.19) due to a lack of formal mechanisms to hold ACPOs to account as a collective body. As part of its recommendations, HMICS proposed the creation of a national steering group (they referred to as the Policing in Scotland Steering Group or PSSG) to oversee national strategy and collaborate with partners of the existing tripartite arrangement to respond to national policing risks (Tomkins, 2009: 51-53). In 2007, a Scottish Police Services Authority (SPSA) had already been established to “improve the efficiency and effectiveness of services which support Scottish policing” (Audit Scotland, 2010a: 1). However, the SPSA did not have a governance role over any of the eight local police forces, it provided specialist support services such as forensics, fingerprint and DNA analysis to the police and the Crown Office and Procurator Fiscal Service.

Following the Independent Review by HMICS, the Cabinet Secretary responded by setting up a Scottish Policing Board (SPB) in November 2009, membership of which consisted of the Scottish Government, Chair of the Police Authorities Conveners’ Forum, three nominated Conveners of the local police authorities, ACPOS President, Vice President, a third Chief Constable nominated by ACPOS, and CoSLA representatives (Scottish Government, 2009: para. 9).

### 3.2.3 - Sustainable Policing Sub-group (2010)

In anticipation of the UK Government’s Spending Review for years 2011 to 2015, the SPB members, on request of the Cabinet Secretary for Justice, initiated a programme of work in June 2010 in order to identify a sustainable policing model for Scotland (Scottish Policing Board, 2010a: 1). By October 2010, a Sustainable Policing Sub-group (SPSG) was formed with a remit to “develop rigorously appraised options for further cost savings to enable frontline policing outcomes to be sustained in 2013-14 and beyond, in the face of anticipated spending reductions” (Scottish Government, 2010a: 1).

The SPSG submitted its interim report in November 2010, and among many early considerations it explored three structures of policing; a more streamlined local force

model, a regional model and a single service (SPSG, 2010a: 22-25). Three tiers of accountability concomitant to the three structures were also proposed. Firstly, at the multi-member ward level, through the community councils as the first tier to hold operational policing to account (3.15). Secondly, at the local authority level and embedded within the existing community planning partnership structures and SOAs, particularly through the delivery of jointly agreed outcomes (3.16). And nationally through a “Scottish Police Authority should a single force be created”, with existing bodies like the SPB to co-ordinate national priorities and strategic objectives (3.17). This was the first mention of a national accountability body that would work alongside the SPB, but operate as an independent body.

The interim report was presented at the SPB meeting in December 2010 which was attended by the SPB members, the SPSG project team, representatives from CoSLA, ACPOS, HMICS, officials from the Scottish Government, some conveners of the local police authorities and joint boards, members of the Association of Scottish Police Superintendents (ASPS) and the Scottish Police Federation (SPF). Due to a range of options requiring further exploration, the SPB members could not reach a consensus and the Cabinet Secretary for Justice took forward the proposed local, regional and national models to the Cabinet for further consideration (Scottish Policing Board, 2010b: 4).

#### **3.2.4 - Scottish Government Consultation on the future of policing (February, 2011)**

In terms of the roadmap towards a centralised police service, 2011 proved to be the busiest year for all stakeholders involved in the Scottish policing landscape. Following the early work conducted by the SPB and the subsequent SPSG, the Scottish Government embarked on a wide-ranging consultation process asking stakeholders to provide written responses to 12 questions based around “improving services and delivering improved outcomes; accountability and engagement, especially in relation to local communities; and delivering efficiencies while protecting frontline services” (Scottish Government, 2011a: 5). The consultation also sought views on the three proposed structures i.e. “significantly enhanced collaboration between the existing eight forces; a rationalised regional model; and a single service” (Scottish

Government, 2011a: 5). The consultation received 219 responses and an independent research group was commissioned to “analyse and report on the responses to the consultation” (Bryan et al., 2011: 1). The results of this consultation are discussed below (see, 3.2.8).

### 3.2.5 - Sustainable Policing Sub-group, Phase Two Report: Options for Reform (March, 2011)

A month after the Scottish Government issued its consultation document, the SPSG reported to the SPB with its phase two report with further evidence for a viable model of policing going forward. In exploring the three models, the SPSG expressed their support for the single service:

“The single force model represents the most significant change; however, it provides the greatest opportunity to manage change, drive efficiency and in delivering operations when the change is complete. The eight force model represents the opposite” (SPSG, 2011b: 5, para. 15).

As the SPSG’s work gained momentum in identifying the most efficient and effective structure for the future delivery of policing in Scotland, the Scottish Government reiterated its desire to improve governance and accountability of policing in Scotland whichever structure was adopted. There was widespread recognition within the policy circles that whilst the local police forces were actively contributing to the community planning partnerships and SOAs, “there were few formal mechanisms for holding the police to account at the local authority level” (Scottish Government, 2011b: 2, para. 11).

The Scottish Government also asked the SPSG to consider formal structures to strengthen national accountability. In the event of amalgamation, two models were particularly being explored; one where the Chief Constable is directly answerable to the relevant Minister, providing direct democratic accountability; or a second where the Chief Constable is answerable to a National Policing Board or Authority with powers to allocate funds, appoint chief officers and approve strategic plans (Scottish Government, 2011b: 3, para. 15). In any scenario, the desire to preserve the operational independence of the chief constable was reiterated. Further, whilst appreciating the need for formal local and national structures and mechanisms of accountability, the

Scottish Government also showed an interest in strengthening accountability through “engagement and dialogue, information provision and performance reporting and the use of web and social media” (Scottish Government, 2011b: 4, para. 18).

### 3.2.6 - HMICS' Discussion Paper on Governance and Accountability of Policing in Scotland (May, 2011)

The Scottish Government's concerns about a lack of formal mechanisms for local and national accountability were endorsed once again by HMICS. Andrew Laing and Emma Fossey made a timely contribution to the governance and accountability debate while the future of Scottish policing was being considered. In particular, their report showed cognisance of the weaknesses in the tripartite arrangements that the Justice Committee (2008) and the Independent Review (Tomkins, 2009) had alluded to previously and went as far as saying that the “fundamental problems raised by the Royal Commission in 1962 had never been addressed and the complex competencies required for governance and accountability of the police had never been made available” (Laing and Fossey, 2011: 14). Among the recommendations, it was proposed that any future structure of policing should “develop a fuller system of governance incorporating the wider skills, knowledge, competences, capabilities and capacity necessary to draw policing more fully to account” (Laing and Fossey, 2011: 15).

The discourses up to the May 2011 Scottish Parliamentary elections, even while the shadow of austerity loomed, strongly supported police reforms and the most important rationale for change at the time was the weak governance and accountability structure and the underlying ambiguities of tripartism that had not been addressed in over four decades. However, it was the economic debate, and the need to develop a sustainable policing model that ultimately became the catalyst for change.

### 3.2.7 - Christie Commission (June, 2011)

The debates and consultations around the future delivery of policing in Scotland were being conducted at a time when, in light of the UK Government's spending review, the Scottish Government had commissioned a much broader consultation on the future delivery of public services. It was in this context that the Scottish Parliamentary

elections were contested in 2011. Despite the impending public services review being undertaken by the Christie Commission, the SNP pledged to maintain the 1000 extra police officers that they had initially promised in 2007 whilst also recognising that the “existing eight local police forces are not sustainable and the number of police forces will be reduced” (SNP, 2011: 18), stopping short of pledging full support for a single service. The Scottish Labour (Scottish Labour Manifesto, 2011: 47-48) and the Scottish Conservatives (Scottish Conservatives Manifesto, 2011: 20) outright supported a single service, while the Scottish Liberal Democrats (Scottish Liberal Democrats Manifesto, 2011: 72) and the Scottish Greens opposed it (Scottish Greens Manifesto, 2011: 22).

The responsibility of reforming the police in Scotland fell on the SNP following a majority win and despite their initial reluctance, the momentum towards a single police service hastened following the publication of Christie’s report. Christie made recommendations of greater integration between not just the police forces but in terms of wider public service delivery provision (2011: 43), a reduction in duplication and sharing of resources for greater efficiency (2011: 48) and greater accountability and transparency of public services (2011: 63).

While the focus of the report was on all public services, Christie showed cognisance of the ongoing debates on police reform. Specifically, Christie recommended that any reform needs to ensure that “services are required to account to the people and communities of Scotland, both directly and through their democratically elected representatives” (Christie, 2011: 76, para. 8.24). However, as HMICS (Laing and Fossey, 2011) and the Justice Committee (2008) had previously observed, the weaknesses in tripartism particularly at the local authority level were not due to a lack of democratic control but due to a lack of expertise and capacity (also see below, 3.3.2.c).

### **3.2.8 - Scottish Government Consultation on Amalgamation (September, 2011)**

The results of the first consultation conducted by the Scottish Government in February 2011 showed very limited support for a single service. Only 22 respondents out of a



possible 225 supported a single service, 45 favoured a rationalised regional model, 59 preferred the eight local force model and 77 chose no option due to insufficient evidence and knowledge-base (Bryan et al., 2011: 26). 50 per cent of the respondents also noted that the existing governance and accountability arrangements were working well (Bryan et al., 2011: 15). This makes it difficult to glean whether the respondents had a sufficient understanding, awareness or appreciation of the weaknesses of the existing tripartite structure.

The respondents who did not favour a single force model expressed concerns that centralisation would result in a “loss of local knowledge in terms of needs, geography, training and skills and a consequent negative impact on services; and a loss of local accountability and democracy” (Bryan et al., 2011: 42). Despite such unfavourable results, the Scottish Government formally announced its intention to create a single police service in September 2011 and initiated another round of consultation to inform the legislative framework for the reform bill.

The announcement came after the SPB had responded to the concerns raised in the first consultation with proposals that local policing will be made a statutory requirement and local accountability will be strengthened by giving powers to local authorities to “approve the local police plan, scrutinise local policing performance and to hold the local senior officer to account for local policing” (SPB, 2011: 2, para. 8-9). The SPB also noted that any national governance arrangement may be at an increased risk of political influence due to its proximity to central government. However, the SPB argued that “in many countries such as New Zealand, and the Republic of Ireland<sup>24</sup> there is a direct relationship between the government and the police service” but in the Scottish context, “it would be possible to establish a statutory body at arms-length to ministers” (SPB, 2011: 2, para.10).

The proposals in the second round of consultation included the creation of a centralised governing body of independently appointed members; the Scottish Police Authority

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<sup>24</sup> The Republic of Ireland has since reformed its police governance structures and the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act 2015 established the Policing Authority, that came into effect on the 01<sup>st</sup> January 2016, as an independent body to oversee the performance of the Garda Síochána in relation to policing services in Ireland.

(SPA). The SPA was envisaged to provide governance and accountability of the police without interference from Scottish Ministers and it was reiterated that the chief constable would be directly answerable to the SPA (Scottish Government 2011c: 13, para. 3.9). The proposals also recognised that the composition of the SPA would have to be broad and reflect a range of competencies and skills. Whilst identifying knowledge of local government and local policing as key areas for the future SPA composition, the consultation document specifically asked about what skills, knowledge and expertise would be required for the SPA to enable it to adequately fulfil its functions (Scottish Government 2011c: 14).

The proposals also included measures to strengthen local policing and local accountability by allowing each of the 32 local authorities to monitor and scrutinise police performance against the Local Police Plan and to seek reports, answers and explanations from the Local Commander about the Plan or any other local policing issues (Scottish Government 2011c: 15, para 3.20). Crucially (discussed below, 3.4), the Scottish Government did not intend to legislate a single way for local authorities to formalise their proposed local scrutiny functions, it was left to the local councillors to determine the most appropriate mechanism and to form a relationship with their Local Commanders to secure delivery of local outcomes (2011c: 16, para 3.21).

Along with the consultation document, the Scottish Government also issued an outline business case for a single service proposing that “it provides the least complex and most efficient option; the best opportunity to reinvest to improve local policing outcomes; the highest potential for long-term financial sustainability; and the best opportunity to co-ordinate change, optimise benefit and minimise risk” (Scottish Government, 2011d: 9). The preparations were underway and the intent was clear, the proposed single police service and a centralised governing body just needed Parliament’s approval.

The above provides a chronological timeline of the myriad reviews, consultations and discussions that took place prior to the police reforms in Scotland. In the following section, I distil and critically analyse the official policy rationale for the reforms. In order to provide a rounded analysis, I also draw on some of the original data generated

from the interviews conducted as part of this research (see Methodology, Chapter 6) with key individuals in the elite policy and policing circles involved in the reforms.

### 3.3 - Reforms in context

The themes that became a catalyst for the reforms, and for the creation of the SPA as an expert body, are distilled from the official policy discourse and are critically analysed below.

#### 3.3.1 - Austerity

In the “age of ‘austerity’” (Neyroud, 2012: 315), the primary driver for the reforms was the concern around public service spending following the UK Government Spending Review, and an overall reduction in Scotland’s devolved budget (HM Treasury, 2010: 70). As of 2011-12, according to the Scottish Government, policing in Scotland cost the economy a total of £1.4 billion per annum (Scottish Government, 2011c: 18, para. 4.1). With all estimates suggesting that the public service spending was not expected to return to 2010 levels for 16 years (Christie, 2011: viii), inaction was not an option.

HMICS’ Independent Review raised concerns very early on, that local police forces, particularly the smaller ones, were facing financial pressures (Tomkins, 2009: 4, para. 1.7). It was anticipated that while the larger forces such as Strathclyde would have been able to deliver savings through a reduction in corporate and civilian staff, smaller forces may be forced to reduce front line provision, a measure that was perceived to have drastic effects on communities in areas served by those smaller forces (Scottish Government, 2011a: 11, para. 23). While some local police forces were struggling to provide resources for front line community policing, due to the changing demands on policing and new threats such as terrorism, others like Grampian and Lothian and Borders raised specific concerns about having insufficient resources to police the oil industry and the Capital respectively (Justice Committee, 2008: paras. 56, 57).

In order to provide the necessary savings, it was considered prudent to integrate specialist services and resources and to avoid duplication as proposed by Christie (2011). Of all the options presented, a single force was decided to have been the most

efficient with an estimated savings of £151m per annum (Scottish Government, 2011d: 54, para. 5.32). Despite a long period of consultations, the pace of the reforms, once the option to move towards a single force was chosen, was remarkable. A civil servant involved in the reform programme told me that work was already in progress on managing the pressures of financial cuts on the local police forces, however, when the extent of the cuts became clear, there was a sense that a structural change was necessary:

“wow, suddenly there is going to be a significant reduction in budget, that started to focus their minds...the whole thing was very quick, in a sense that, we knew that we had to keep the momentum up of this work and there was a pressing need to take it forward, so in that sense there was a pressing need to get on with it” - (Interview: Civil Servant).

An early suggestion of a single force at an SPB meeting was rejected, however, it was felt very early in the discussions that centralisation would be the most cost-effective option:

“well there was a strong sort of evidence base for that [single service] ... at the very first meeting of the SPB, the chair of Strathclyde Police Authority made a point of raising the issue of a single force... so it was not that there weren't people talking about it even back then” - (Interview: Civil Servant).

In the period leading up to the reforms, whilst the consultations were taking place, the reform team had also taken cognisance of the reform programmes in other countries. A former Minister who was initially reluctant about the single force told me that:

“we looked long and hard at this, because the first option was: do you go to regional services ... and I always remember what persuaded me not to go down regional services was speaking to those in Finland who had been through reform. In Finland, they said we reformed from 30 or 40 [police forces] and we brought it down to 9 or 10 and they said we now have to move on [to a single service]. And they said if you are going to reform then do it once and I took that on board, I thought there was a logic there, if we had gone to 3 or 4 East, West, North as was kind of proposed, you would not have made any significant savings or the savings

would have been significantly less. And the lesson that we learned from Finland, and I think that was the evidence, that we would have to move on to a single service pretty quickly. If you were gonna do [reform the police], you do it once so that was the driver there. – (Interview: Former Minister).

The Finnish example by the former Minister in the above quote underlines the fact that the police reforms in Scotland were not taking place in a vacuum, rather several jurisdictions across Europe were undergoing, or had already undergone, various police reform programmes. In Finland, the first set of reforms had taken place in 1996, and coincided with the changes in the local government structures. As a result, the concomitant police forces were reduced from 229 police districts to *ninety* local police departments (Haraholma and Houtsonen, 2013: 59). Subsequent reforms took place in two phases, in 2009 and 2010, resulting in a unified police service with one of the stated aims as “to gain productivity savings” (Haraholma and Houtsonen, 2013: 60).

Similarly, in the Netherlands, a national police service replacing the previous *twenty-five* “semi-autonomous” regional police forces came into effect in January 2013 (Terpstra, 2013: 139). Whilst austerity did not feature strongly in the police reform agenda in the Netherlands, there were overall concerns regarding resource and information sharing between the regional forces, and the need for a more harmonised administrative structure following a failure of a major IT project (Terpstra, 2013: 143-144; Terpstra and Fyfe, 2015: 530).

In 2012, Sweden also embarked on police reforms from 21 county police forces to a single national police service, and the police authorities, responsible for maintaining the county forces were replaced by a centralised police authority, with “cost-effectiveness” as a key stated rationale for the reforms (Wennström, 2013: 159).

In a stark contrast to the tide of centralisation in Europe, the reform programme in the jurisdiction closest to Scotland, also driven by austerity, followed a “divergent trend” (Fyfe and Henry, 2012). In England and Wales, the Police Reform and Social Responsibility Act in 2011 devolved more powers to local representatives through the

newly established role of the Police and Crime Commissioner (PCC) and the Police and Crime Panels (Lister, 2013; Loveday, 2013; Reiner, 2013). The PCCs are elected officials and replace the powers and responsibilities of the local police authorities. Tasked with enhancing local democratic accountability of the police forces in England and Wales (Home Office, 2010), the role of the PCCs in the broader debates on police governance and democracy is examined in Chapter 4, particularly in comparison to the centralised, and expert base provided by the SPA.

It is too early to suggest whether Police Scotland and the SPA are on course to make the anticipated savings but it is clear from the above analysis that the reforms were driven by financial pressures, and coincided with similar reform programmes across Europe. An Audit Scotland review of four previous mergers of public Services in Scotland since 2008 has previously argued that public sector mergers tend to be based on “broad assumptions”, the estimated costs of reforms were “likely to be underestimated” and the “analysis of savings and efficiencies is often inadequate” (Audit Scotland, 2012a: 4). Another stated rationale for the reforms was to enhance and strengthen police governance arrangements, as I examine below.

### 3.3.2 - Enhanced Police Governance

In the context of the reform programme, whilst it was accepted that the local police authorities were not effective in delivering democratic accountability of the police, the reasons considered did not make any mention of the problems I discussed in Chapter 2 (also see below, 3.4). Instead the policy discourse introduced a more contemporary debate in police governance, highlighting the need to balance democratic accountability and expertise (see, Chapter 4). Since the Justice Committee hearing in 2008 (as above, 3.2.1), it was recognised in the official policy circles that the governance of police in Scotland was an issue that needed to be addressed, perhaps more so than the reduction in budgets. I argued above (3.2.7) that following the Christie Commission, austerity became a catalyst for the reforms, however, a senior police officer, also involved in the reform agenda had no doubt that the weak governance structures during tripartism provided the strongest stimulus for change:

“The point I would probably just make which is relevant to the question is that one of the drivers for change in the first place was a general view or belief that the governance arrangements for policing were inadequate, they were weak, and they were kind of toothless, and they didn’t provide the kind of clarity or assurance for you know government or for the public ... when we went into reform policing was not broken, policing was firing on all cylinders we were delivering everything that the communities asked of us, we had made significant cost savings before Police Scotland even came into being, the individual legacy forces had saved £9m in the lead up to change from the cost-base and crime was on an all-time low, performance was very strong really across the board, public confidence using all the recognised measures was very very strong and in contrast a lot stronger than England”  
- (Interview: DCC, Police Scotland).

As per the DCC’s quote above, a combination of a lack of financial oversight over local police resources, a lack of interest by the local police authorities in national policing requirements, and a lack of expertise, skills and capacities of the local police authorities were crucial weaknesses of the tripartite governance arrangements, as far as the official reform agenda was concerned. These three points are considered in greater detail below.

#### *3.3.2.a - Financial Accountability*

The Local Government in Scotland Act 2003 introduced statutory duties on local authorities to secure Best Value in delivering public services by giving due regard to efficiency, effectiveness, economy and equality (s.1(4)), and to initiate, maintain and facilitate Community Planning in consultation with all public bodies responsible for providing services locally (s.15). The provisions applied to all functions of local authorities and it was here in securing Best Value and delivering on joint outcomes that the weaknesses of the local police authorities were magnified.

Previous HMICS reviews had highlighted that local police authorities were not effective in providing accountability for the way police resources were spent locally in relation to the SOAs and community planning partnerships (Tomkins, 2009: 39-40; Scottish Government, 2011a: 13, para. 28). In the first Best Value audit and inspection of a local police authority, the Audit Commissioner and HMICS found that the Tayside Joint Police Board was not meeting its objectives of “contributing effectively to setting

priorities for the police service and holding the chief constable to account” (Audit Scotland and HMICS, 2009: 3, para. 3). Following the audit and inspection of all eight local police authorities, the Audit Commission and HMICS reported that whilst the local police forces were playing an active role in local community planning and delivering local outcomes, local police authorities were “not effective in their role of influencing local policing and partnership priorities and then monitoring development and delivery” (Audit Scotland and HMICS, 2012: 6, para. 15). Further, there was a lack of financial oversight particularly in terms of directing police resources towards local priorities (Audit Scotland and HMICS, 2012: 6, para. 16). These findings were merely a confirmation of what previous inspections and reports had already alluded to. In giving evidence to the Justice Committee, HMICS had argued that “there was too little direct input or challenge from elected members” in relation to priority setting of the local forces (Justice Committee, 2008: para. 324).

Despite having formal powers, I argued in Chapter 2, particularly in reference to Scott and Wilkie (2001:58), that when it came to key decisions, the local police authorities often provided the rubber stamp. This point was emphasised by a former Scottish Minister in relation to the powers of the local police authorities to allocate funds locally:

“The money was basically coming from the centre anyway, it’s not like they previously decided how they spent it, they might think that but actually it’s a false argument because it wasn’t their money, it was coming from central grants and anyway other than the chief saying this is what I would like to spend it on I’ve never heard of a councillor saying you’re not spending on that” -  
(Interview: Former Minister).

The above statement by the former Minister merits a deeper examination of the state of police funding prior to the reforms. Under the tripartite governance arrangement, the allocation of funding to the local police forces was split between central government and local authorities at a ratio of *fifty-one* per cent central funding and *forty-nine* per cent local government funding. According to a Scottish Parliament briefing (SPICe, 2011), direct central government funding was used to fund the SPSA, and to provide additional support to local police forces, as well as, for pensions.



Central government also made additional contributions to the local authorities through ring-fenced police grants making a total contribution of £691.9 million in 2011/2012, whilst the local authorities contributed £462 million (SPICe, 2011: 11-12). However, around 85 per cent of the local authority expenditure is funded through a Revenue Support Grant<sup>25</sup> issued by the Scottish Government, with the remainder raised through council tax. This additional central government funding is part of the Concordat agreement between the Scottish Government and local authorities on joint delivery of services towards key local and national outcomes (Scottish Government and CoSLA, 2007). Against the backdrop of the Concordat, the lack of oversight over the way police funding was contributing towards local and central priorities provides a strong rationale for the reforms and the creation of the SPA.

In the lead-up to the reforms, the Scottish Government (2011a, 2011b, 2011c, 2011d) drew heavily on these weaknesses in support of a case for the single police service. As noted above (3.1.7), the 2012 Act has removed powers of resource allocation from the local authorities but local policing (Chapter 7, 2012 Act: ss44-47), and a duty to participate in community planning (s46) is still a statutory requirement.

### *3.3.2.b - National Policing Requirements*

Another stated rationale for the reforms was the need to develop formal structures that would consider national policing priorities and objectives and oversee national risks. National risks and policing priorities were perceived to include, but not limited to, “counter-terrorism, specialist firearms support, motorway policing and air support, child protection and monitoring sex offenders, serious fraud, armed criminals, kidnap and extortion, the infiltration of police organisations by organised crime, cost of technical aids to investigation, - e.g. in forensic science, forensic accounting and surveillance techniques, new techniques in dealing with large-scale disorder, and additional support to other services dealing with threats such as pandemic disease, food

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<sup>25</sup> A ‘block grant’ funding scheme consists of a Revenue Support Grant, Non Domestic Rates Income and Specific Grants and it is part of a joint service delivery agreement between the Scottish Government and local authorities established under a joint Concordat agreement in 2007 (Scottish Government and CoSLA, 2007).

contamination and the effects of severe weather” (Donnelly and Scott, 2008: 191; Tomkins, 2009: 12, para. 2.19; Scottish Government, 2011a: 11, para. 24).

The local police authorities were under no statutory obligation to give regard to any of those risks. The strongest call for a national strategic body came in 2009 following the HMICS Independent Review that recommended that “Scottish Ministers should bring forward draft legislation to impose a statutory duty on chief constables and police authorities to take Scotland’s national policing capacity and capability; its national resilience to catastrophic events or strategic threats from criminality; and the reduction of the costs that arise from unnecessary duplication of services into account in all decision-making” (Tomkins, 2009: 52, para. 8.3). A civil servant noted that it was the review carried out by Paddy Tomkins that had paved the way for the creation of the SPB and the SPSA, and even those developments were initially criticised for bringing in centralisation:

“so the SPB was an attempt to say look we need something where people come together at a national level... so there was a definite sense of getting to a point where we had the SPB as something that whilst not being a governance structure in the formal sense of the word, did provide an opportunity to bring everyone together to work at a strategic level. Well there was quite a lot of opposition to that, it was seen by some as being some kind of centralisation” –  
(Interview: Civil Servant).

While perhaps not immediately apparent but the need for a national level strategic body also raises questions in respects of an increased central government interference, precisely due to the changing nature of national risks. As outlined above (see, 3.1.3), under the new arrangements, the Scottish Ministers have powers to give directions to the SPA, and they have an overall responsibility to appoint and dismiss board members. As part of the analysis of the SPA, I will examine if the SPA has sufficient autonomy and capacity to operate independently of the Scottish Ministers (see, Chapter 5, 7 and 8). But it is important to note that while the stated rationale for creating a centralised police authority was to “establish a statutory body at arms-length to ministers” (as quoted above in 3.8; SPB, 2011: 2, para.10) the wording of the 2012 Act has created a complex relationship between the SPA and the Scottish Ministers

with the latter having formal channels for exercising considerable influence into the day-to-day functions of the SPA.

### *3.3.2.c - Expertise, Skills, and Capacities*

One of the reasons why the local police authorities were reported to be ineffective in delivering financial accountability of the local police forces was due to a lack of professional expertise at the disposal of the local councillors. Most local police authorities were found to have “limited dedicated professional support to carry out their functions effectively” (Justice Committee, 2008: para. 352). It was recommended by the Justice Committee that the appointment of independent members in an advisory capacity “could contribute particular professional skills and expertise, professional support and analytical capacity”, enabling the local police authorities to scrutinise the performance of their police forces effectively (Justice Committee, 2008: para. 351 and 353). Concerns regarding the lack of expertise and capacity were particularly raised in respect of the reliance of local police authority members on the local police forces to provide information that was crucial for the analysis of police performance (Justice Committee, 2008: para. 352). At the Justice Committee session, Dr. Kenneth Scott suggested that:

“... if a police board wants to know anything about what its local force is doing, it asks the chief constable to provide the relevant information. A problem arises in that respect, given that accountability needs nowadays to be much more objective. There is a real question about whether police boards are in a position to effectively hold the police to proper democratic account” - (Justice Committee, 2008: para. 327).

Audit Scotland and HMICS, in 2009 also remarked that the “local police authority members needed more support to improve their knowledge and understanding of their role as board members in order to fulfil their core activities, including setting direction and priorities and scrutinising police performance” (Audit Scotland, 2009: 3, para. 5). An inspection of the Strathclyde Police Authority, that maintained the largest police force in the country also found that members had “limited training, varying levels of understanding of their roles and responsibilities and a generally passive, rather than influencing, approach to information from the force” (Laing and Fossey, 2011: 6).

The continuing emphasis of the official policy discourse on the need for expertise in police governance raises an important trend in the broader context of police governance and accountability. The creation of the SPA, as a centralised body with a professional base, has introduced a new nexus between the role of experts and traditional forms of democratic governance. This development sets the foundation for the debates on expertise and democracy, explored in detail in Chapter 4 (see 4.2.5), and the subsequent analysis of the SPA in Chapters 7, 8 and 9.

### 3.4 - Discussion: Police Organisational Accountability - *Missed Opportunities?*

It has been argued that the 2012 Act has created “effective accountabilities” of the police through the requirement to achieve ‘Best Value’ (Scott, 2013b: 145), therein lies the problem. In the run-up to the reforms, the organisational accountability of *operational policies* may have been overlooked. Financial accountability of the police organisation has long been an uncontested method of managing and delivering police organisational accountability, particularly by central government (Reiner and Spencer, 1993; also, see Chapter 4). It comes as no surprise that, against the backdrop of austerity, much of the emphasis during the policy discourse remained on the need to improve financial accountability of the police. Whilst I accept that financial accountability is a key aspect of police governance, as I argued in Chapter 2, organisational accountability of the police is concerned with more than financial oversight. In cognisance of the broad role of the police organisation (Chapter 2, 2.1), and the inherent political backdrop against which policing policies are developed (as I argued in 2.4.2), the processes and mechanisms of organisational accountability also need to provide oversight of police operational policies. This is imperative particularly where policing policies are ‘legal’ yet contentious, and may potentially have a negative impact on certain communities. There was a sense, as exemplified by the earlier quote by a DCC above (see, 3.3.2), that operational policing and the accountability of operational policies were not a cause for concern. This was reiterated by a civil servant involved in the reform programme:

“There had not been any issues that had come to light before then, under the prior structure, about operational policing, not that I can recall as we speak. So, in a sense ... operational policing, policing delivery, was working very well and these reforms, were not about fixing a problem in operational policing, except for, and again very explicit about that, and this is going back to Paddy’s review, that there needed to be better co-ordination of delivery of national policing” – (Interview: Civil Servant).

Whilst it may be true that the police forces in Scotland have generally avoided the heated scandals that their counterparts in England have been embroiled in, several controversies related to operational policing did exist prior to the reforms (such as the Paisley College Incident, Chapter 2, 2.5.2; Gordon, 1980: 80; or the criticisms involving the murder inquiry of Surjit Singh Chokar, see Fyfe and Henry, 2012: 175), and indeed several surfaced after the reforms (Chapter 7). However, despite the controversies, there is some credence in the view that, in comparison to England and Wales, the Scottish police governance discourse has historically lacked “any semblance of accountability” (Lennon and Murray, 2016: 11). Further, despite all the criticisms of the local police authorities, and the lack of local democratic oversight over policing, the official policy discourse failed to highlight the extent to which the operational independence doctrine (Chapter 2, 2.4), and the structural limitations of tripartism (Chapter 2, 2.3) had contributed to those shortcomings. As I argued in Chapter 2, the weaknesses in the tripartite governance arrangements were a product of these perennial problems that solidified during decades of tripartism. These problems hampered the ability of local police authorities to deliver effective mechanisms of organisational accountability of their local police forces (Chapter 2, 2.5). However, whilst the official reform agenda heavily criticised the local police authorities, it did so for different reasons, as outlined above, and did not raise the spectre of any weaknesses in police organisational accountability mechanisms.

The lack of attention on the operational independence doctrine in the reform agenda is particularly astounding, given the coverage this doctrine has traditionally received in the police governance literature (Chapter 2, 2.4; Lustgarten, 1986; Walker, 2000; Donnelly and Scott, 2002a; Jones, 2008). This is not to say that those discussions leading up to the 2012 Act did not raise the issue at all. The HMICS paper on

governance and accountability explicitly stated that the existing legislation was “frustratingly opaque on the matter of independence” (Laing and Fossey, 2011: 9) and called for a “better balance” that established clear boundaries between operational independence and the duties of those who sought to hold the chief constables to account for their operational decision-making (Laing and Fossey, 2011: 10). The 2012 Act does not define operational independence, and instead replicates the ambiguities that existed in the previous legislative framework (examined further in Chapter 7). When I asked those involved in the reform programme about a lack of clarity on the operational independence doctrine, their replies reflected the complexity that has surrounded this notion, it was felt that a contemporary interpretation should be left to negotiated agreement between the actors in the new governance landscape:

You could write books and theses on it. At the end of the day, the chief [constable] has to call all the shots. Equally we live in a world where things are very interactive. Where does the line cross, depends on the society, the history, the era in terms of what is happening in the community... it has to come down to common sense and there will always be grey areas. Do you want to litigate over it? No. I think that's where it's a job for the Parliament, it's a job for the Ministers, it's a job for the Chief, it's a job for the Authority [the SPA] - (Interview: Former Minister).

The non-prescriptive nature of the 2012 Act was reiterated by a civil servant:

“There wasn't something that in the end, certainly from a legislative perspective, would seem to be a neat solution. It was very difficult to find something where you could legislate because again there were different arguments... from a government perspective, the tools the government has got is legislation and then the setting up of the SPA. There was a public appointments process the government ran or oversaw, after that it's down to those parties to work out” - (Interview: Civil Servant).

I argued in Chapter 2, that due to the operational independence doctrine, the local police authorities were often reduced as a spectator, a toothless partner in the tripartite relationship. Further, during consultations it was observed that the removal of powers of resource allocation from the local authorities, and an emphasis on national policing requirements would further perpetuate the tussle between local and the central.

Concerns were raised that centralisation of police governance arrangements would result in a “continual tension to secure a right balance between national and local accountability” (Bryan et al. 2011: 16, para. 3.4). As I show in the later chapters (see, Chapter 7, 7.2.2), the “potential tension around the balance between a ‘bottom up’ and a ‘top down’ approach to setting local priorities and objectives” (Fyfe, 2014: 10), has already manifested in “structural disconnects” between national and local policing policies and local democratic accountability (Henry *et al.*, 2016: 9-13).

The analysis above highlights that at the time the 2012 Act was passed and came into effect, the two perennial problems of police governance, i.e. the operational independence doctrine and the perpetual tension between local and central democratic control of the police, were far from settled. This omission manifested in difficulties for the SPA when it came into effect. It appears that the SPA did not just inherit the powers of the local police authorities but also its problems. I discuss this further in Chapter 7. In addition, the Scottish discourse on police reform has introduced a contemporary debate between democratic control of the police and the role of experts. The conceptual debates on democracy, police governance and accountability, and knowledge-based expert governance are examined further in Chapter 4.

### 3.5 - Conclusion

This chapter, through a chronological narrative of the official policy agenda, captured the key discourses that became the catalysts for change and helps to develop a nuanced understanding of some of the rationale behind the current structures of police governance and accountability, particularly the creation of the SPA as an expert body. It was argued that the reforms took place against a backdrop of austerity, and were driven by the official view that the financial accountability of the local police forces was inadequate and that national policing requirements needed greater attention. Following a period of consultations, it was decided that a structural change was necessary, ensuing a remarkably quick transition to a single police service. However, I argued that the policy agenda did not take into consideration that organisational accountability of the police also required oversight of operational policing and it did not merely constitute financial scrutiny. Further, despite criticising the role of the local

police authorities, not enough attention was given to the operational independence doctrine, and it was left for the SPA to resolve these issues through negotiated agreement.

In Chapter 2, by drawing on the police governance literature, I argued that the notion of operational independence and the perpetual struggle between the local and the central are *perennial* problems that form part of the regulatory puzzle of police governance. In this chapter, I have shown that the official reform agenda, and the subsequent legislative framework did not seek to resolve these problems that have historically hampered police organisational accountability. My findings, in later chapters show that these omissions manifested in an abrasive fashion, hampering the ability of the SPA to deliver effective mechanisms of accountability, as it developed as an organisation (Chapter 7 and 8). As part of my contribution to the study on police governance, I will put forward an original conceptual framework as a prescriptive solution to these problems (Chapter 5). The analysis of the SPA and the new governance arrangements as they have continued to evolve and develop, through my framework, suggests that the SPA may have finally started to resolve these problems (Chapter 9).





## **PART II – EXPERTISE IN POLICE GOVERNANCE: A CONCEPTUAL SHIFT**

### **Chapter 4 - ‘New’ governance, Accountability and Epistocracy**

One of the drivers for the reforms was that the previous local police authorities lacked expertise, and skills to effectively deliver police governance (Chapter 3, 3.3.2.c). This provided the rationale for the creation of the SPA, as a body composed of members, appointed on the basis of expertise and competencies, rather than elected councillors (Scottish Government 2011c: 14). The developments in the Scottish police governance landscape, replacing ‘democratic’ local police authorities with a centralised body of ‘experts’, have introduced a new nexus between expertise and democratic governance of the police.

In this chapter, I firstly provide conceptual clarifications for the terms ‘governance’ and ‘accountability’, as in the context of police ‘governance’, these terms are used interchangeably. Due to the focus of this research on police organisational accountability, I draw on the canon of literature in public administration that treats accountability as a *mechanism* rather than a *virtue* (Bovens, 2007, 2010; Schillemans, 2011). Following conceptual clarifications, I chart the developments in police governance and accountability mechanisms in Scotland and argue that these mechanisms have followed a similar trajectory to the wider discourses elsewhere in public administration in Britain; from hierarchical bureaucratic mechanisms through market-based approaches (Marshall, 1965; 1978; Reiner and Spencer, 1993; Walker, 2000; Donnelly and Scott, 2002b) to the more complex network-based governance (Rhodes, 1996; Bevir, 2010, 2012), formalised in the 2012 Act (see Chapter 3, 3.1)

I then draw on the notion of *epistocracy* (Estlund, 2003, 2008; Holst, 2011, 2012, 2014) to provide a theoretical foundation for conceptualising knowledge-based governance. I argue that the conceptual model for the SPA, as a body of experts, resembles the myriad expert groups within the European Union (EU) and the elite policy circles that have historically been active in criminal justice policy-making

(Loader, 2006) and public service administration (Rhodes, 1996; McAra, 2008). I propose that an epistocracy in police governance can not only be justified, but may in fact be desirable. The premise of my argument is twofold. Firstly, the rise in police professionalism has contributed to the solidification of the operational independence doctrine (Jones, 2008), therefore, a governance body with a more professional expert base may be best suited to counterbalancing police expertise. Secondly, in addition to the practical limitations of traditional forms of democratic arrangements (such as tripartism, see Chapter 2 and 3), there are inherent risks of direct democratic control over the police such as majoritarianism and partisanship. An epistocracy may circumvent the risk of majoritarianism by vetoing contentious policing policies, and it may be best placed to act as an intermediary, a conduit, between the local and the central political actors, and the police.

I conclude my justification for an epistocracy by responding to criticisms that the rise of experts and network-based governance approach signify a democratic deficit (Bevir, 2010: 95-96) and a “hollowing out of the state” (Rhodes, 1996: 661). I suggest that an epistocracy situated *within* a democratic order does not inherently signify a democratic deficit. At least in the context of police governance and organisational accountability, it may be more useful to reframe the weaknesses in governance structures as *accountability deficits*, rather than democratic deficits, which is a conceptually vague term. I develop this line of argumentation further in Chapter 5, as I put forward a conceptual framework for how an epistocracy could be *institutionalised* within a democratic order, in the context of police governance.

#### 4.1 - ‘Governance’ and ‘Accountability’: Conceptual Clarifications

Through the lens of political theory and public administration, ‘governance’ refers to “the process of governing” and it is not synonymous with ‘government’, which might refer to state institutions (Rhodes, 1996: 652; Bevir, 2010: 1). Governance can involve a network of actors both private and public, it can be hierarchical and non-hierarchical, it can take on various methods including negotiation, bargaining, and participation, and often the choice between various methods of governance depends on the purpose and interests of different policy objectives (Rhodes, 1996; Weale, 2011; Bevir, 2010,

2012). Governance strategies in public administration throughout the various national and international spheres have followed a similar trajectory: from bureaucratic hierarchy through markets to network-based approaches (Bevir, 2012: 101; also, Rhodes, 1996). The conceptual and practical shift from modes of ‘government’ to ‘governance’ has largely coincided with “a crisis of faith in bureaucracy and widespread rise in markets and networks as instruments of public governance” (Bevir, 2012: 59). The emergence and proliferation of interstate policy actors and expert groups particularly within the European Union (EU) (Héritier and Lehmkuhl, 2010; Weale, 2011; Holst; 2014; Cross, 2015) has also accelerated the complexity of network governance with multiple political and non-political expert stakeholders in charge of public policy making. Further, the narrow focus of early twentieth century civil servants on bureaucratic and hierarchical “management through fixed rules has been superseded by decision-making that is far more complex and iterative” (Rosenvallon, 2011: 66).

While governance is increasingly viewed in broad terms, contemporary writers in public service administration insist on a sufficiently focused definition of accountability, particularly for the study of accountability relationships between non-hierarchical organisations (Bovens, 2007, 2010; Schillemans, 2011; Yang, 2014). The reasons for this are twofold. Firstly, with the rise of ‘new’ governance, power and authority is distributed at a horizontal level. Within this complex landscape, lines of responsibility, power, and accountability of various public actors are blurred and policy implementation often requires negotiated agreement and flexible co-operation (Yang, 2014: 161; also, Bovens, 2007; Schillemans 2011; Rosenvallon, 2011). In hierarchical accountability arrangements, the principal-agent relationship is clearly set out; principal has formal authority to “set expectations of standards, administer incentives, and coerce individual behaviour through powers and capabilities of sanction, discipline, and providing redress” (Olsen, 2015: 428). However, coercion, sanction and redress is more difficult to achieve in a network governance approach where accountability is “an emergent property ... changing and shifting as actors act and interact” (Yang, 2014: 161). Secondly, and closely intertwined with the first reason, accountability itself is a contested and slippery concept. It has been described

as a “chameleon” term (Day and Klein, 1987: 32) that often serves as a “conceptual umbrella for other distinct concepts” such as answerability, responsiveness, openness, integrity, transparency and even democracy (Bovens, 2007: 449). Accountability can both be a *mechanism* concerned with social arrangements, processes, interactions and structures, or a *virtue* of “being accountable” concerned with the behaviour of public actors (Bovens, 2010: 947-948).

Bovens argues that “some dimensions, such as transparency, are instrumental for accountability, but not constitutive of accountability” (2007: 450). Similarly, accountability is distinct from ‘responsibility’ because it “requires justifications”, and imposes “sanctions”, whereas responsibility may refer to “personal culpability, morality and professional ethics” (Mulgan, 2000: 558). The literature on police ‘governance’ and ‘accountability’ has often employed these terms interchangeably (examined below, 4.2), often referring to the same principles of organisational accountability (for instance, Marshall, 1965; Lustgarten, 1986; Walker, 2000). On the other hand, chief constables have often protected their own professional and personal integrity by invoking that they are accountable to their “own conscience” (Day and Klein, 1987: 105-106), referring to the *virtue* of being accountable (Bovens, 2010). This distinction is particularly important when considering *mechanisms* of police organisational accountability within the contours of police governance. In giving evidence to the Justice Committee hearings in 2008, Sir Ronnie Flanagan, a former HM’s Chief Inspector of Constabulary in England and Wales, distinguished between responsiveness, answerability and accountability. He argued that:

“I see responsiveness as referring to behaviour (actions and their conduct); answerability as the process through which those held to account are required to explain (and justify) their actions; and accountability can be seen as a formal set of institutionalised relationships that should help to bring about appropriate responsiveness, and answerability.” - (Justice Committee, 2008, para: 245).

As I have argued earlier, individual accountability and organisational accountability are analytically distinct categories (Chapter 2, 2.1). Individual accountability to law and financial accountability are relatively uncontentious matters, in comparison to the

organisational accountability of police operational policies (Chapter 2, 2.4). Whilst the Scottish police reform agenda focused on enhancing police ‘governance’ and ‘financial accountability’ (Chapter 3, 3.4), the need to provide effective *mechanisms* of organisational accountability, particularly in relation to police operational policies was neglected.

For the analysis of the SPA’s approach to delivering organisational accountability, in the new governance landscape, this thesis adopts a “restricted definition” of accountability focusing on the *mechanisms* and processes with which actors and organisations in the public sector are held to account (Schillemans, 2011: 389; also, Bovens, 2007, 2010). Particularly in the absence of a clear principal-agent relationship, I focus on *horizontal* accountability mechanisms “where the accountee is not hierarchically superior to the accountant” (Schillemans, 2011: 390). Accountability as a *mechanism* is defined 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” (Bovens, 2007: 467). This definition will be revisited, dissected and adapted for the conceptual and analytical framework in Chapter 5. I now briefly examine the *mechanisms* of organisational accountability that have historically been implemented within the broader umbrella term of police ‘governance’ and draw comparisons with broader developments in public service administration.

#### 4.2 - Developments in Police Governance and Accountability mechanisms

In policing literature, the notions of ‘governance’ and ‘accountability’ have been deployed and utilised interchangeably, both often referring to the same principles. Lustgarten (1986) and Walker (2000) framed police governance within the contours of constitutional law. Both deemed accountability as “too narrow” and focused on exploring the paradoxical relationship between the democratic state and the police, and the enabling and constraining functions of law in relation to police powers (Lustgarten, 1986: 1; Walker, 2000: vii). Marshall (1965; 1978), and later Reiner (Reiner and Spencer, 1993; Reiner, 2010), examined the various regulatory strategies implemented at different times during tripartism to secure accountability of chief constables and

their police forces, implicitly focusing on organisational accountability. These regulatory strategies followed a similar trajectory to the developments elsewhere in public administration and evolved from hierarchical bureaucratic structures, through market-based reforms and the New Public Management (NPM), to the current police governance landscape that resembles a network governance approach (see fig. 3.1, Chapter 3, 3.1). These developments are summarised below.

#### 4.2.1 - Hierarchical and bureaucratic accountability

Marshall conceptualised the power relations in the early police governance and accountability structures, as "subordinate and obedient" (Marshall, 1978: 633). This approach, described as the "directive" model elsewhere (Morgan, 1985 in Walker, 2000: 34), allowed local and central political actors to give directions to the police in terms of broad policing policies and priorities. Lustgarten has argued in reference to the early modern police forces that at least in the burghs "the subordination of the police to elected representatives was part of common understanding" (1986: 39). The original notion of constabulary independence prevented interference in the day-to-day operations, however, hierarchical power relations gave more control to the local and central politicians to govern the police. As Reiner argues that under the 'subordinate and obedient' model, there was a persistent view that like other public services, policing policy "should be formulated and regulated by democratic authorities" (Reiner, 2013: 169). Under the old bureaucratic arrangements in the public sector, policies were evaluated routinely, processes of organisational accountability were more fluid rather than retrospective, and the overarching focus of such strategies remained on procedures and top-down steering rather than performance reviews after the fact (Bevir, 2010: 36-37). As outlined in Chapter 3 (3.1.2), the 2012 Act requires the SPA to set strategic objectives for the policing of Scotland, which the chief constable's annual police plan has to take into consideration. The SPA's strategic police plan itself has to take cognisance of the strategic priorities set out by Scottish Ministers (3.1.3) and the policing principles defined in statute (s.32, 2012 Act). This gives a formal route to both the Scottish Government, and the SPA to set directions for policing policy and opens up scope for bureaucratic control that prevailed in the earlier 'subordinate' model. However, the power relations in the new police

governance landscape are more complex, and far from hierarchical. This dimension of police governance enables a potential for 'proactive scrutiny' during the policy-making phase, and it is analysed in relation to the SPA in Chapter 9.

#### 4.2.2 - Retrospective and explanatory accountability

Following formalisation of tripartism and in the interests of striking a balance between powers of central government, local authorities and chief constables, the directive approach gave way to a more "explanatory and co-operative" model (Marshall, 1978: 633). An essential requirement under this form of accountability was the duty on chief constables to produce and present annual reports to local police authorities and central government, and to provide information regarding policing of local areas, as and when required. This approach fits into the strict definition of accountability as a *mechanism* outlined earlier as it made it possible for democratic institutions to deliver organisational accountability by monitoring police performance and scrutinising it in public forums such as the local police authority meetings. While the chief constables had autonomy over operational policies and decision making, there was an expectation that explanatory accounts will be provided both in terms of operational policies but also regarding police performance in relation to local and central objectives. Moreover, this model encouraged consultation and resolution through dialogue over contentious issues but ultimately lacked potency due to the persistent imbalance in power relations during tripartism, and the lack of influence of local police authorities (reasons for which have been outlined earlier, see Chapter 2 and 3). While chief constables understood there was an obligation to deliver annual reports and 'explain' the performance and activities of their local forces to the police authorities, there were "no formal sanctions" if their explanations failed to convince the elected officials (Day and Klein, 1987: 108; also, Scott and Wilkie, 2001; Donnelly and Scott, 2002a; Scott, 2011). This form of 'explanatory and co-operative' accountability relationship strengthened the operational independence doctrine, increasingly giving rise to a culture where chief constables were required to give an account of their performance annually, but there was no "enforceable obligation on them to listen to the reply!" (Reiner, 2013: 169; also, Lustgarten, 1986; Reiner, 2010; Scott, 2011). Under the 2012 Act, the duty on chief constable to prepare and submit an annual police plan to the



SPA, and the Scottish Parliament maintains the 'explanatory and co-operative' style of retrospective accountability of police performance, the efficacy of which are examined in Chapters 7, 8 and 9.

#### 4.2.3 - Performance and target-based accountability

The rise of the New Public Management (NPM), described as a "top-down affair in Britain" (Bevir, 2012: 60), paved the way for both central and local government to monitor police performance through greater emphasis on efficiency and effectiveness and key performance indicators. Market-based principles introduced and implemented in the 1980s and 1990s gave rise to "contractual and calculative" mechanisms of organisational accountability introducing target-setting, performance related pay and short term contracts (Reiner, 1993: 19; Reiner, 2010). Wholesale market-based principles were introduced, first in England and Wales, following the Sheehy Inquiry into police responsibilities and rewards through the Police and Magistrates Court Act (PMCA) 1994 (Walker, 2000; Jones, 2008). In Scotland, the changes introduced by the PMCA were only applied partially (Donnelly and Scott, 2002a: 9; also, Walker, 2000). This was predominantly because of a different legal system (Walker, 2000: 159), and due to selective implementation of certain policies by the elite policy networks within the Scottish Office (McAra, 2005). Moreover, the local police authorities, along with chief constables, opposed the wholesale implementation of market-based reforms, considering it as an attempt for greater centralised control (Walker, 2000: 161-162). Some changes that did make it through included the dismantling of bureaucracy and placing civilian police staff under the direction and control of chief constables, and performance-based national objectives (Donnelly and Scott, 2002b). These changes were brought about without a formal legislative framework in Scotland, in the absence of which the role of HMICS was crucial as the Scottish Executive relied on force inspections to monitor the performance of local police forces in relation to key national targets (Donnelly and Scott, 2002b: 57). The 'contractual and calculative' approach created pressures on police organisations for efficiency in a market-based competitive environment. The rationale for the NPM, in general, was not only to encourage public services to innovate, but it also gave them freedom to manage their resources releasing the burdens of centralised government

control (Rhodes, 1996: 665; Bevir, 2012: 60). The emphasis on efficiency also markedly enhanced the autonomy, supremacy, and technical expertise of chief constables (also, see below 4.4.1) as they were considered best placed to deliver policing services effectively, by providing the most up to date equipment, technological aid, and appointing the most skilled officers for the most reasonable cost (Lustgarten, 1986: 76). While the ‘explanatory’ accountability under tripartism did not interfere with the operational decision making of chief constables, the ‘contractual and calculative’ model did allow for the establishment of nationally set key performance indicators that had the capacity to "constrain" the autonomy of senior officers (Jones, 2008: 703). It was argued that the increased powers of central government through the introduction of performance based pay and rewards "nibbled at the edges" of police operational independence (Donnelly and Scott, 2010: 84) and measures such as key performance indicators rendered the notion of operational independence as somewhat "illusory" (Reiner, 2010: 233). In fact, this apparent diminishing of the operational independence doctrine was only true as far as the relationship between central government and chief constables was concerned. So far as the local police authorities were concerned, chief constables remained the more powerful partner (Chapter, 2, 2.4.3 and Chapter 3, 3.4). Nevertheless, the emphasis on greater efficiency and contractual modes of accountability brought with it the element of sanction through the “power of the purse strings” (Donnelly and Scott, 2010: 82) allowing the Scottish Ministers and local police authorities to influence police priorities and general direction in line with public and political objectives. However, as I argued in Chapter 3, local police authorities rarely used their powers of sanction and were routinely found to be ineffective in terms of delivering financial accountability and oversight of the use of resources on local and national priorities. The NPM model of delivering police organisational accountability was effective only in the sense that central government had increased powers to “steer” policing policy (Reiner, 2010: 235).

Whilst financial accountability and performance management of the police is not the focus of this study, it remains vitally important in the context of the new police governance arrangements in Scotland (Chapter 3, 3.3.2.a). Audit Scotland became a prominent institution within the ‘contractual and calculative’ model, following the

devolution of the Scottish Parliament. It regularly carried out reviews of local police forces and local police authorities under the auditing system known as "Best Value" to ensure policing was carried out efficiently and effectively within a clear set of standards, and with due emphasis on costs versus quality of service (Donnelly and Scott, 2010: 93). Under the new arrangements, there is a statutory duty on both Police Scotland, and the SPA to achieve Best Value and Audit Scotland is empowered to conduct inspections of both organisations and report back to the Scottish Parliament (Chapter 3, 3.1.6). The continuing emphasis on financial accountability is part of a multifaceted approach to police governance and accountability, as examined below.

#### 4.2.4 - Network-based governance and horizontal accountability

As argued above (see, 4.1), network-based governance approaches have created complex relationships between various actors and under such arrangements the lines of power and responsibility are often diffused. Further, in the absence of a hierarchical principal-agent relationship, *horizontal* accountability is often achieved through formalised mechanisms between various stakeholders of equal standing (Schillemans, 2011). The police governance and accountability mechanisms in post-devolution Scotland resemble the network-based governance approach and horizontal accountability mechanisms.

The practical shift towards 'new' governance followed the devolution of the Scottish Parliament. It is argued that the proliferation of networks was often actively promoted by political institutions to "overcome the deficiencies of both old bureaucratic structures and new market-related processes" (Bevir, 2012: 67). Following devolution, the Cabinet Secretary for Justice became the central government representative within the tripartite structure, and whilst the Scottish Ministers became increasingly involved in policing (Scott, 2011), other semi-autonomous actors emerged, further weakening the influence of the local police authorities (Donnelly and Scott, 2002b). This development was reminiscent of the proliferation of networks elsewhere in Britain. Even prior to the Scottish devolution, Rhodes argued that "British government creates agencies, bypasses local government, uses special purpose bodies to deliver services,

and encourages public-private partnerships, so networks become increasingly prominent among British governing structures” (1996: 658).

Consistent with the network-based approach to police governance in Scotland, following devolution, new partnerships emerged such as the establishment of a Scottish Policing Performance Framework (SPPF) that involved political and non-political stakeholders including the Justice Secretary, Audit Scotland, HMICS and the now redundant Association of Chief Police Officers Scotland and the Scottish Police Authorities' Convenors Forum (Donnelly and Scott, 2010: 94). The SPPF enabled a basis of performance measurement through which police performance could be monitored and improved, providing opportunities for horizontal accountability to professional peers. New forms of "multi-tier" policing and the establishment of the Scottish Policing Standards Agency (Donnelly and Scott, 2010: 100) also enhanced avenues of horizontal accountability of chief constables, placing an emphasis on negotiated agreement and dialogue with stakeholders from within the policing landscape, as well as those representing national and local political institutions. However, these new modes of achieving organisational accountability, while enhancing oversight of police operational policies through various actors, and introducing new methods of measuring police effectiveness, failed to set out sanctions in cases where national targets were not being met (Laing and Fossey, 2011: 8; also, Donnelly and Scott, 2010).

The network-based governance approach has been formalised by the 2012 Act. As outlined in Chapter 3 (see, 3.1), each actor fulfils a different role, providing a different dimension of police accountability within the broad contours of police ‘governance’. The Scottish Government, the Scottish Parliament and the local scrutiny committees provide democratic oversight and avenues for retrospective and explanatory accountability. Audit Scotland and the Scottish Parliament’s Public Accounts Committee<sup>26</sup> are key actors in providing financial accountability of Police Scotland and the SPA. HMICS can carry out thematic inspections in relation to any matter of

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<sup>26</sup> Following the 2016 Scottish Parliamentary elections, this committee has been re-formed as the Public Audit and Post-legislative Scrutiny Committee.

interest and importance, as directed by the Scottish Ministers, consolidating the performance-based accountability mechanisms. PIRC has a role to handle complaints against individual officers, investigate serious incidents, and review the complaints handling procedures of Police Scotland and the SPA. The SPA, however, is placed at the centre of this complex governance landscape. In addition to its broad maintenance and governance role, it is the only actor in the new governance landscape, with an explicit legislative duty to *hold the chief constable to account* for the policing of Scotland. Whilst this may denote a hierarchical relationship, the SPA does not have any formal powers of sanction and the 2012 Act left the implementation of the SPA's precise accountability relationship to be negotiated between the stakeholders. The resultant arrangements are indicative of horizontal accountability relationships. The developments leading-up to the implementation of these arrangements, and their efficacy in relation to the perennial problems of police governance are examined in Chapters 7, 8 and 9.

The creation of the SPA as a body composed of independent members with professional expertise, rather than democratically elected representatives has introduced a new trend in police governance and accountability which is examined below.

#### 4.2.5 - Expert-based governance and accountability

One of the stated rationales for the creation of the SPA, as explored in Chapter 3, was that it would provide expertise, skills and capacities that the previous local police authorities lacked (see, 3.3.2.c). The local police authorities comprised entirely of elected councillors. Successive HMICS reviews have highlighted that the composition of the local police authorities contributed to ineffective governance and accountability mechanisms because of a lack of independent members with professional expertise (Justice Committee, 2008; Tomkins, 2009; Laing and Fossey, 2011). It was particularly noted by Laing and Fossey (2011: 7) that in the police authorities in England and Wales, the inclusion of independent members with professional experience and expertise had led to “effective decision-making”. Laing and Fossey went on to argue that the core reason for the perceived failings of the local police

authorities in Scotland was the “lack of development around wider ‘governance competencies’, rather than simply the need for democratic control” (2011: 7). The SPA was conceived by the Scottish Government (2011c: 14, para. 3.13) to bring the “right skills, experience, and expertise to collectively govern the [police] service and hold the Chief Constable to account”. This vision for the SPA has introduced a new nexus between expertise and democracy in the traditional debates on police governance and accountability.

The above sections provided an overview of how police governance and accountability mechanisms have evolved and followed a similar trajectory to the broader developments elsewhere in public administration. The chapter now focuses its attention on the SPA’s conceptual model as an expert body, and draws on the notion of *epistocracy* (see below, 4.3) to provide a conceptual justification for an expert-based approach to police governance and accountability.

#### 4.3 - Conceptualising epistocracy

Epistocracy, defined as rule of the knowers, is adapted from the Greek word *epistēmê* meaning knowledge (Estlund, 2003: 53) and it is deeply embedded within the Platonic view that the wiser among us ought to have a greater share of political authority. Plato, in *Politeia*, proposed that philosophers should be kings, and political greatness and wisdom should combine. Today, Plato’s notion of philosopher kings represented by a privileged class of men and women, he referred to as *guardians*, bred, raised, and educated together, to rule over the rest of the citizenry (The Republic, Chapter V) would be considered as nothing other than despotic. However, as Estlund notes, in modern political discourse, liberal political philosopher John Stuart Mill was also deeply influenced by Platonic thought (Estlund, 2003: 54). Mill was a proponent of those with better education having more than one vote and argued, “when two persons who have a joint interest in any business differ in opinion, does justice require that both opinions should be held of exactly equal value? ... One of the two, as the wiser or better man [sic], has a claim to superior weight” (Mill, [1861] 2015: 54-55). In exploring this notion further in political philosophy, Estlund asks “if some are wiser than others and they would do what they thought best for the polity then why should

these wise folks not rule: why not epistocracy?" (Estlund, 2003: 54). By his own admission, Estlund coined the term "for convenience" (2008: 277-278) as he set out to test whether knowledge-based rule could plausibly be conceived as an alternative to democracy.

In testing the plausibility of epistocracy as an alternative to democracy, Estlund argues that there are certain true normative standards by which political decisions ought to be judged, and only a small group of knowers or epistocrats, would have knowledge of those standards. Through this claim to superior knowledge, the epistocrats should be able to exert political authority over a majority that does not possess this knowledge (Estlund, 2008: 30). Estlund then goes on to reject the epistocratic argument on the basis that such an arrangement would lack the necessary authority and legitimacy because it would not pass the qualified acceptability requirement (Estlund, 2003, 2008). Estlund argues that "privileging the wise would require not only their being so wise as to be better rulers, but also, and more demandingly, that their wisdom be something that can be agreed to by all reasonable citizens" (Estlund, 2003: 58). As claims to expertise are often followed by contestations and counterclaims, and due to a lack of a universal definition of who constitutes as a political expert, Estlund could not plausibly justify epistocracy as an alternative to democracy (Estlund, 2008). It is worth clarifying that whilst Estlund refers to a lack of consensus on who the political experts are, other experts such as doctors, scientists, surgeons etc. are less contested and already have established criteria of expertise (2008: 40). Further, Estlund did not reject the normative qualities of knowledge-based governance and instead proposed democratic authority based on "epistemic proceduralism" that involves the acquiring of knowledge in the decision-making process, he argues that under such conditions "so long as proper decisions and guarantees were respected, even erroneous decisions will often have authority and legitimacy" (Estlund, 2008: 110).

The above discussion by Estlund serves as a point of departure for a shift towards conceptualising epistocracy as knowledge-based governance. Rather than engaging in an expansive philosophical discussion about whether epistocracy can be justified as an alternative to democracy, for the purposes of this thesis, the scope of discussion is

narrowly focused on the role of knowledge and expertise in public administration, and more specifically tied into the role of experts in achieving robust police governance and accountability. The influence of experts in public administration and policymaking was traditionally monopolised by the elite bureaucratic networks exercising central government control through hierarchical modes of governance (Bevir, 2012: 57). It was certainly true for criminal justice policy, 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). The centralised expert bureaucracies represented an ideal separation of administrative and professional experts and political players. However, through the 1960s and 70s, trust in impartial experts eroded as bureaucrats were increasingly viewed as “self-interested actors intent on advancing their own careers” (Bevir, 2012: 58-59). With the rise of ‘new’ governance and network-based approaches, there has been a proliferation of expert policy networks spanning the boundaries of the public, private and voluntary sectors (Rhodes, 1996: 659; also, Bevir, 2010, 2012; Holst, 2012, 2014).

Adapting the notion of epistocracy from political philosophy and utilising it in the context of network governance within the EU, Holst argues that “epistocracy is not inherently bad, in fact knowledge-based governance can be desirable if it is institutionalised adequately and legitimately” as another dimension in the new modes of governance (Holst, 2012: 53). While epistocracy as a term does not have mainstream purchase, for instance it does not appear in any dictionary, it has broad application in relation to conceptualising knowledge-based governance. The conceptualisation of the SPA as an epistocracy is in keeping with Holst’s usage rather than Estlund’s. Holst’s application of epistocracy is not limited to scientific or academic knowledge, neither is it a substitute for technical knowledge or *technocracy*. According to Holst, “epistocracy includes all variations of knowledge, including



technical knowledge” and the justification for epistocracy depends on the specific characteristics of an epistocratic arrangement (Holst, 2012: 52). In other words, an epistocratic governance arrangement can be formalised and shaped in relation to the specific knowledge demands of a given field.

The example of EU institutions serves to show that epistocracy can be formalised in terms of institutions, policies and law particularly where conditions of recruitment explicitly prescribe specific education, skills, competencies or experience (Holst, 2012: 44). According to Holst, the EU is a “unique and highly contested experiment in transnational governance with a myriad epistocratic features, and thus provides a reservoir of examples and illustrations of the forms epistocracy may take in modern democratic societies” (2012: 42). The rise of network governance has coincided with an increase in independent regulatory authorities bringing in greater expertise and competence in order to regulate complex organisations and competing interests (Rosenvallon, 2011: 79). Along with the independent regulatory authorities, new modes of governance have also given rise to specialised, expert based Comitology; where policy making and implementation is delegated to expert commissions and committees within the EU, the self-regulation of specialist industries by internal industry actors and stakeholders, and non-binding voluntary partnerships and coordination (Héritier and Lehmkuhl, 2010: 129). Then there are more powerful, autonomous, expert interstate actors that operate independently and exercise considerable powers over the EU member states, the European Central Bank and the European Court of Justice are just two examples (Holst, 2014: 2). Further, there are expert policy networks, characterised as epistemic communities or knowledge-based networks within the EU. These epistemic communities consist of “networks of experts who persuade others of their shared norms and policy goals by virtue of their professional knowledge” (Cross, 2015: 91). This “division of labour” between experts and non-experts, between political and non-political institutions, between independent autonomous regulatory authorities and state actors, points towards a “seemingly unavoidable expert dependency or a fact of expertise” (Holst, 2014: 2).

Based on the above discussion, due to its broad application, the notion of epistocracy allows for a conceptual framework that can be helpful in understanding and empirically analysing knowledge-based governance arrangements such as the SPA (see Chapter 5). However, before I consider devising a framework for how epistocracy could be institutionalised in the context of police governance, I first put forward a conceptual justification for an epistocracy, below and explain why it may be more desirable than existing forms of democratic governance.

#### 4.4 - Justifying epistocracy

I draw on the notion of epistocracy not just to provide a conceptual and analytical framework for the analysis of the SPA, I go further than this and propose that if institutionalised properly (see Chapter 5) an epistocracy in police governance may not only be justified, but may in fact be more *desirable* than the existing ‘tried and tested’ methods of democratic governance, such as tripartism. The premise of my argument rests on two strands. *Firstly*, the rise in police professionalism has further increased the operational independence of chief constables. I argue that a governance body with a professional expert-base and access to independent knowledge and information may be better suited to counterbalance police expertise. *Secondly*, the historical analysis of the tripartite arrangements (Chapter 2 and Chapter 3) has highlighted that traditional forms of democratic governance have not resolved the perpetual tussle between local and central governments for democratic control over the police. In addition to these practical problems underpinned by tripartism, there are inherent conceptual risks with direct forms of democratic governance such as majoritarianism and partisanship. I examine these arguments in greater detail below.

##### 4.4.1 - Police Professionalism

As Reiner has argued, during the height of police legitimacy in England and Wales, accountability was achieved through the “mystical process of identification with the British people” (Reiner, 2010: 74). If such a state did exist, the emergence of “detached professionalism” led to the erosion of the idea that the police was “intimately connected with the local community” (Walker, 1996: 61). The police have historically regarded themselves as a highly-professionalised expert body with technical knowledge and skills and have demanded greater autonomy in the same vein as

doctors, teachers and lawyers (Lustgarten, 1986: 170; also, Fyfe, 2013). These claims to professionalism also enhanced the operational independence of senior officers, often serving as an occupational shield against public or political accountability (Lustgarten, 1986; Jones, 2008; Scott, 2011). However, previous research on police accountability and the role of local police authorities has challenged this notion of police professionalism. It has been argued that professional bodies set the objectives and rules which govern the performance of individual members, therefore, on a strict construction of the term, the police lack any distinguishing characteristics of a profession (Day and Klein, 1987: 67). Until recently, the claims to police professionalism were contested, particularly because of a lack of “code of police ethics and life-long learning and reaccreditation” (Fyfe, 2013: 408). Nevertheless, there has been a consistent trend towards police professionalism in England and Wales, and in Scotland (Jones, 2008; Donnelly and Scott, 2005,2010; Fyfe, 2013).

In Scotland, the “intellectual shift” in placing the day-to-day affairs of the local police forces under the supervision of the chief superintendents due to their “knowledge and expertise” coincided with the development of the local police forces, well before the formalisation of tripartism (Barrie, 2012: 478-479). Further, developments in performance-based governance mechanisms and the market-based reforms introduced by the PMCA 1994 (as above, 4.2.3) also resulted in police forces, both in England and Wales, and Scotland, becoming corporate entities, affording greater professional autonomy to chief constables and bringing in external expertise in the form of civilian staff (Jones, 2008; Donnelly and Scott, 2010).

Recent developments in police professionalism in England and Wales have led to the establishment of the College of Policing (Fyfe, 2013). The College of Policing provides opportunities for new and existing police officers to develop their skills and competencies through various learning initiatives and sets professional standards based on evidence and research. As part of its National Police Vision 2016, the College also offers leadership programmes that lead to fast-track direct entry at the Superintendent and Inspector levels (College of Policing, 2016). In Scotland, the Scottish Policing College provides an array of courses for existing officers including

leadership and management courses in collaboration with the Scottish Credit and Qualifications Framework. There has also been an increase in collaborative research networks providing enhanced opportunities for the police to engage with academics. For instance, Police Scotland is an active contributor and stakeholder at the Scottish Institute for Policing Research, which serves as a platform for knowledge exchange not just between academics and the police but also between Police Scotland and other international forces. The N8 Policing Research Partnership is a network of eight research intensive universities in the North of England and focuses on research, collaboration and knowledge exchange in key areas of policing such as prevention and community policing.

Whilst these recent developments in police professionalism, outlined above, have placed an emphasis on knowledge exchange, and learning and development, the traditional claims to police professionalism were based on “ownership of an area of expertise and knowledge” (Fyfe, 2013: 408). Such ownership translates into the “defining of the nature of problems” and “controlling of access to potential solutions” (Evetts, 2013: 788). For instance, particularly in relation to assessments of risk and security, 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 outside actors also perceive police organisations as “experts” and “knowledge brokers” (Ericson, 1994: 151).

There is also an increase in the sharing of intelligence and expertise between the public police and other national and international security organisations. 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 including the public police (Loader, 2002; 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 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 there is no specific “technical” knowledge or expertise that would serve as a pre-requisite for policing. Police policies and operations can, and do, have great implications on the rights of citizens (Loader, 2002), 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 state and the electorate that policing policies are not based on skewed information or self-referential expertise. In other arenas, such as schools, the “unbridled professional dominance” has successfully been challenged and counterbalanced by the inclusion of parents as school governors (Lustgarten, 1986: 170). It has been noted more recently that police professionalism has been redefined from the notions of the police as professional crime fighters to a new professionalism centred more on increased accountability and legitimacy (Fyfe, 2013). However, as Fyfe contends that a combination of political and economic influences, particularly the demands on police organisations to deliver policing services on reduced budgets is once again pulling policing in the direction of the “old” professionalism, demarcating the lines between professional crime fighters and the public (Fyfe, 2013: 418).

Despite the contested nature of the claims to police professionalism, the occupational expertise and experience of the senior officers, by virtue of the broad role and function of the police organisations (Chapter 2, 2.1), cannot be disputed. It is imperative that the governance and accountability bodies, charged with scrutinising policing policies, and setting policing priorities, are also equipped with professional expertise, capacities and skills to counterbalance police expertise. Rosenvallon argues that a legislature creates independent regulatory authorities "in order to restore credibility by shedding certain of its own powers or to shift responsibility for policy areas in which it lacks the necessary competence" (Rosenvallon, 2011: 9). An epistocracy, with the right composition, may be better equipped to achieve this than a group of elected councillors, some of whom may be appointed to a local police authority even if they had no interest in undertaking such a role (Etherson, 2013: 112). I revisit this point in

Chapter 5, where I put forward my proposal for how an epistocracy could be institutionalised. I now turn to the second argument on which my justification of epistocracy is based upon.

#### 4.4.2 - The inherent problems with democracy and police governance

While several policing scholars have made influential contributions to define the relationship of democracy and policing (Marenin, 1982; Jones *et al.*, 1996; Manning, 2010; Aitchison and Blaustein, 2013), there is insufficient engagement with how democratic principles translate into actual processes and mechanisms of police governance and accountability. Some have explicitly set out to avoid being too prescriptive and framed policing and democracy, particularly the role of the democratic state in promoting policing as a public good, in ideal terms (Loader and Walker, 2007: 216), while others have viewed democracy as a set of ideals that the police need to achieve, encapsulate and maintain rather than the narrower concept of democracy as a political method or a set of political institutions (Jones *et al.*, 1996: 183). For instance, Jones, Newburn and Smith (1994, 1996) list these democratic principles, in order of importance, as 1. *Equity*, 2. *Delivery of service*, 3. *Responsiveness*, 4. *Distribution of power*, 5. *Information*, 6. *Redress*, 7. *Participation*. Marenin (1998: 169) identified six principles of democratic policing as: *effectiveness*, *efficiency*, *accessibility*, *accountability*, *congruence*, and *general order*. Aitchison and Blaustein (2013: 500) have conceptualised democratic governance of police through the overarching notion of *responsiveness*, provided that equity and a minimum level of service delivery is in place.

Most of these studies, however, have avoided explicit engagement with the precise method of democratic governance and accountability; i.e. how the powers should be distributed between local and central actors? What mechanisms, structures and processes of democratic accountability may look like in practice? Or indeed, what should the status of operational independence of chief constables be in a democratic governance arrangement? Reiner has argued that the issue of how democratic governance manifests in practice remains “vigorously disputed” (Reiner, 2013: 169). Further, as Walker has pointed out “democratic control itself is a fiercely contested

prize and it is possible that as democracy is enhanced at one level, it reduces at the other" (2000: 34). The perpetual debate between the local and the central during the tripartite relationship, and the resultant weak governance and accountability structures has shown that direct forms of democratic governance are not without problems (Chapter 2 and 3). The local police authorities, in the face of increasing centralisation and emergence of the NPM and network-based governance approaches, were long perceived as the symbol of local democratic accountability. However, during tripartism in Scotland, the eight local police authorities, organised over the geographical boundaries of 32 unitary authorities, were perceived as too remote from local communities (Pugh, 2014). Further, the local police authorities were not democratic, in a strict sense. For example, as noted by the Scottish Government, "policing for Dumfries and Galloway's population of 148,190 was overseen by a Council Committee of 10 members, whilst policing for Glasgow's population of 592,820 was overseen by a Joint Board of 34 members, of whom only eight represented Glasgow" (Scottish Government, 2011d: 16, para. 2.19). None of the local councillors were directly elected to the local police authorities for the specific purpose or a with direct mandate of delivering police accountability.

In addition to the practical limitations of democratic governance, as outlined above, direct forms of democratic control over the police may also lead to unintended consequences, as examined below.

#### *4.4.2.a - Majoritarianism*

The early twentieth century bureaucratic liberal agenda denounced rule of the many due to the fear that it would lead to the "tyranny of the majority", yet the majority is the legal basis of any democracy and provides instrumental legitimacy to a democratically elected government (Rosenvallon, 2011: 71). It has long been recognised that direct forms of police governance do not guarantee democratic policing (Jones *et al.*, 1996: 189). In diverse communities, policing policies can often produce undesired results and a "persecution of powerless minorities" (Jones, 2008: 695). Policing scholars have routinely drawn attention towards the "unbridled oppression of vulnerable minorities who become 'police property'" (Reiner, 2013:

173; also, Lee, 1981). It was the “non-interventionist approach” by the ‘democratic’ governance regimes that historically led to the marginalisation of victims of racial harassment, sexual assaults and young people, as these groups were often characterised as “undeserving or oversensitive” (Walker, 1996: 60). Whilst, in the post-Macpherson era of police governance in Britain, legal regulation and democratic ideals of fairness, equity and procedural justice provide safeguards against crude majoritarianism, direct political control over policing resources can have the capacity for minority needs to be side-lined in favour of populist rhetoric to appease the majority voters. For instance, in England and Wales, there were concerns that the PCCs may overlook minority groups as they engage in a “political struggle over police resources in order to shore-up support among the broader constituent of eligible voters residing within their electoral areas” (Lister and Rowe, 2015: 371). While in the first four years of the PCCs there was no “spurt of populist or extremist policy” (Loader and Muir, 2016: 2), an empirical study on three PCCs and roads policing policy found that the PCCs had shown a “consistent preoccupation with the views (or assumed views) of their electorates” (Wells, 2016: 287). In her concluding remarks, Wells argues that

“in the era of the PCC, roads policing is a potentially cautionary tale. The use of a single, directly elected, individual to represent the views of the public on crime generates a situation where the problematic (and at times fatal) behaviour of that public may cease to receive the attention it deserves, while stereotyped and less ontologically unsettling ‘others’ will continue to be on the receiving end of punitive populist pronouncements about ‘real crime’ from powerful individuals flexing their muscles in ways that make re-election more likely” - (Wells, 2016: 288).

As argued by Loader and Walker, “not just in authoritarian regimes, but also in liberal democracies policing remains tied to dominant interests (organized around axes of class, gender, race and age) and integral to the reproduction of unjust economic and social relations” (2007: 79). Thus, the threat of majoritarianism is an ever-present risk with direct forms of democratic governance. However, an epistocracy situated within a democratic order, at the very least, could potentially veto any policy deemed to be unfairly targeting particular groups (Brennan, 2016: 215).



#### 4.4.2.b - Partisanship

There is also a danger that direct democratic forms of control may erode the quality of the actual processes and mechanisms of police governance and accountability due to the threats of partisanship. Partisanship, according to Loader and Walker (2007), can manifest in two significant ways. Firstly, the democratic state itself is partisan, as it has the powers and the instruments, in the form of the police, at its disposal to consolidate its interests (2007: 73), or as in majoritarianism above, the interests of the majority it serves. Secondly, the threat of political partisanship persists under direct forms of democratic governance (Walker, 2000; Loader and Walker, 2007). These interests could range from local politicians exerting influence over policing operations for personal ends, or through serving interests of a particular political party to a broader form of influence that would entail politicians seeking to prioritise policing for particular ideological commitments (Walker, 2000: 54-56; Loader and Walker, 2007).

The consolidation of the original doctrine of constabulary independence coincided with the view that operational policing should be independent from the narrow interests of the political ruling class (as discussed in Chapter 2, 2.4.1). However, drawing once again on the example of the PCCs in England and Wales, *twenty-nine* of the *forty-one* PCCs elected in the inaugural elections in 2012 were affiliated to one of the mainstream political parties and only twelve were ‘independents’ (Lister, 2012: 242). After the May 2016 PCC elections, this figure decreased even further with only *three* independent PCCs, while *thirty-five* belonged to either the Conservative or Labour Party (Davies, 2016: 4).

The affiliation of the PCCs with mainstream political parties, coupled with the overall low turn-out – 15 per cent in 2012, and 26 per cent in 2016 (Davies, 2016: 4), raises significant questions around partisanship. Further, because of the low turn-out, the vocal and well-organised local pressure groups can have more of an influence on allocation of resources and police priorities, as in the case of the PCCs and roads policing (Wells, 2016), discussed above. The debates around policing policies can also centre along the lines of party political rhetoric rather than representing the actual needs of local communities. For instance, Lister and Rowe (2015: 367-368) found that

following the 2012 elections, the majority of Conservative candidates advocated ‘crime-fighting’ (75.0%), in their election statements, which coincided with the stance by the then Home Secretary Theresa May in the lead-up to the reforms (Home Office, 2010). Similarly, a majority of Labour candidates propagated ‘disorder reduction’ (76.9%) echoing the Labour party’s continued drive against anti-social behaviour. Chief Constables have long raised concerns over political-infighting and point-scoring at local police authority meetings (Reiner, 1991: 251). An epistocracy of professional members, appointed on the basis of professional backgrounds, skills and competencies, rather than party-political affiliations would be best-suited to scrutinise policing policies rather than political point-scoring.

In light of the practical and conceptual difficulties of democracy and police governance outlined above, an epistocracy may not only be justified but it may even be desirable, particularly if it can circumvent the concerns highlighted above and promote key democratic ideals (see above, 4.4.2). I summarise and conclude my justification for epistocracy below.

#### 4.5 - Discussion: Why not epistocracy in police governance?

While Estlund (2003, 2008) posed the question in political philosophy to explore whether epistocracy could plausibly be justified as an alternative to democracy, I argue that an epistocracy *within* a democratic order could not only be justified, in normative terms, but may actually be conducive to enhancing the principles of democracy and resolving the traditional difficulties and perennial problems in police governance and accountability.

However, a justification of epistocracy becomes contentious when considering who can be regarded as an expert. While Estlund’s rejection of epistocracy within political philosophy was on the basis that political expertise or wisdom of epistocrats will not be universally acceptable to all qualified points of view (Estlund, 2003, 2008), Holst avoids pinning the notion of epistocracy to a specific definition or interpretation of knowledge. She argues, “knowledge is that which is regarded as knowledge in a wider sociological sense” (2012: 52). She accepts that particular emphasis is placed on scientific and professional knowledge in contemporary policy circles, but again it is

context dependant (Holst, 2012: 41). I concur with Holst's broad application, the membership and composition of epistocracy, in the context of police governance, would depend on the skills and competencies identified by those charged with making the appointments (see Chapter 5). Another criticism in relation to the composition of epistocracy is the demographic objection (Estlund, 2008; Forcehimes, 2010; Brennan, 2016). Estlund argues that "even if it is accepted that the experts will carry with them a certain degree of goodwill towards all people, they are inevitably biased by their race, social class and gender" (Estlund, 2008: 215). It is also likely that experts within the policy-making circles will not be entirely disinterested neutral actors as was the case of liberal elites in England and Wales (Loader, 2006). Following, Holst and Mollander (2014) I argue that any objections to epistocracy regarding the composition, demography, and organisational structure must be re-defined into the problem of an institutional design. This will be considered in relation to my proposed framework in Chapter 5.

I now turn to another pertinent criticism of epistocracy, particularly in the context of the EU, the expert dependency often leads to criticisms of 'democratic deficits' (Bevir, 2010: 110-111; Moodie and Holst, 2014: 293-294). Further, critics of network-based governance approach also point to a democratic deficit left by the proliferation of actors in the 'new' forms of governance (Rhodes, 1996; Bevir, 2010).

A democratic deficit arises when public office holders are not directly answerable to the electorate (Bevir, 2010: 110-111). Rhodes (1996: 661) argues that the rise in new forms of governance in Britain represented a "hollowing out the state" as the role and functions of local and central government diminished. According to Rhodes, hollowing out of state manifests in three ways: *fragmentation* leads to reduced control over implementation by state institutions, *Steering* (the process of setting norms) complex sets of organisations becomes difficult, and hollowing out erodes direct democratic *accountability*, blurring the lines of responsibility of different actors (Rhodes, 1996:662). In contemporary political context, the EU expert groups are particularly criticised for exacerbating the democratic deficits, due to being closed, elitist, and lacking democratic legitimacy (Moodie and Holst, 2014: 293-294). Similar

concerns have been raised in the context of the new police governance arrangements in Scotland. Particularly in relation to the organisational accountability of operational policies, it has been argued that the reforms have left a “democratic deficit in Scottish policing” (Murray, 2015b).

However, as Holst and Mollander (2014) have argued, an epistocracy situated within a democratic order will operate within the confines of its delegated powers and it will be accountable to the democratic state. Taking the example of the SPA, for instance, in relation to the post-2012 arrangements outlined in Chapter 3 (3.1), the SPA sits between the police and the Scottish Government with delegated powers and responsibilities of police governance and accountability. The SPA is answerable to the Scottish Ministers and the Chair of the SPA can be called to account by the Scottish Parliament. In addition, there is considerable scope for the Scottish Government to ‘steer’ from the centre by determining broad policing principles and priorities (as outlined in Chapter 3, 3.1.3). Further, in the post-2012 Act network-based governance arrangements, the Scottish Government, the Scottish Parliament, and the local authorities are key stakeholders, allowing for greater scope of horizontal checks and balances and democratic oversight (discussed above, see 4.2.4).

The more pertinent question would be to consider whether by virtue of its *composition*, could an epistocracy be deemed as anti-democratic? However, is it merely enough for any semblance of democratic governance that local and central political actors should have *direct control* over the police? I propose that, an epistocracy can be institutionalised and the principles of democratic governance (Jones *et al.*, 1996) can be weaved into its institutional design and its approach to delivering police governance and *mechanisms* of organisational accountability (Bovens, 2010). I undertake this task in Chapter 5. However, if an epistocracy is then unable to deliver effective mechanisms of police governance, then the criticisms of ‘democratic deficits’ particularly in this context need to be recast as *accountability deficits*. Accountability deficits simply refer to a lack of robust accountability arrangements (Bovens, 2007: 462). For instance, the weaknesses in the previous police governance structures, the lop-sidedness and the ambiguities of tripartism, the lack of capacities skills and expertise of local police

authorities, and the perennial problems (Chapter 2 and 3) all manifested in accountability deficits rather than democratic deficits.

The discussions above, and throughout this chapter, serve to highlight that the SPA's conceptual vision indicate a turn towards an expert dimension within the broader landscape of police governance. The notion of epistocracy, due to its broad application, can be used to conceptualise the SPA's model as an expert body. In addition, I have proposed, by underlining the problems and limitations of the previous 'democratic' governance arrangements, and the inherent unintended consequences of direct democratic control, that an epistocracy in the context of police governance may not only be justified, but may in fact be desirable. An epistocracy of independent members, with the right mix of knowledge, skills and competencies may be better placed to understand, challenge, and counterbalance police expertise to ensure policing policies are not based on self-referential knowledge. Such an arrangement would also limit the ability of the senior police officers to use their operational independence and the veil of professionalism as a shield against oversight and accountability by legitimate bodies. Further, an epistocracy can tackle the risks of majoritarianism by drawing on expert knowledge and evidence to veto, or reverse, policing policies that may be deemed as contentious. As I argued in Chapter 2 (2.5), robust organisational accountability mechanisms are needed to challenge police operational policies that may be 'legal' but nevertheless contentious. An epistocracy can also serve as an intermediary, a conduit, between the local and the central democratic representatives, and between political actors and the police, minimising the risks of partisanship based on narrow party-political lines.

If an epistocracy can achieve all of the above, and promote and enhance certain democratic ideals, would it not at least be a more desirable arrangement in comparison to the previously tried and tested methods of democratic governance? In a normative sense, based on my arguments above, it would. In the next chapter, I will put forward a conceptual framework, outlining the key components and characteristics for an epistocracy to be institutionalised in the context of police governance. As part of my framework, I will address the criticisms regarding epistocracy's claims to knowledge

and the demographic objection. Further, as I argued in this chapter, the literature on democracy and policing, whilst promoting ideals and principles of democracy, has remained cautious on how those principles should be implemented into mechanisms and processes of governance and accountability (see above, 4.4.2). By drawing on the definition of accountability as a *mechanism* (Bovens, 2010), I will outline the key components that an institutional epistocracy needs to formulate a holistic approach to police governance and accountability, and how the key principles of democratic governance (Jones *et al.*, 1996) can be weaved into its institutional design.

#### 4.6 - Conclusion

This chapter provided conceptual clarifications for the concepts of ‘governance’, ‘accountability’, and ‘epistocracy’. I argued that a restricted definition of accountability as a *mechanism* is needed due to the particular focus of this study on police organisational accountability of operational policies, within the broad contours of police governance. I also examined key historical developments in police governance, specifically focusing on the mechanisms of organisational accountability in relation to the wider discourses in public service administration. I argued that police organisational accountability mechanisms followed a similar trajectory, from hierarchical bureaucratic mechanisms, through explanatory and performance-based measures under the NPM, to a broad and multifaceted network-based approach, which has been formalised by the 2012 Act. The conceptual model of the SPA, as an expert body of independent members resembles an epistocracy and other similar expert institutions and regulatory authorities across the EU. In providing a justification for an epistocracy, I argued that direct forms of democratic governance pose conceptual and practical challenges such as the threat of majoritarianism and partisanship. In the context of those limitations, an epistocracy *within* a democratic order may not only be justifiable but in fact it may be more desirable than the previously tried and tested methods of democratic governance. However, an epistocracy is subjected to criticisms and contentions regarding its claim to expertise, its narrow demographic composition, and its anti-democratic character. These criticisms need to be re-cast as problems of institutional design which I address in Chapter 5.



## **Chapter 5 - An 'epistocratic and deliberative' approach to police governance: A conceptual and analytical framework**

If the previous chapters presented a diagnosis of the problems of police governance and organisational accountability, this chapter could be construed as the prescription. Following on from the discussions in the previous chapter, I propose a framework for how an epistocracy could be institutionalised in the context of police governance. Specifically, I draw on Holst and Mollander's (2014: 13-36) notion of epistocracy by democratic delegation, Bovens's restricted definition of accountability as a mechanism (2010), and the principles of democratic governance proposed by Jones, Newburn and Smith (1996) to sketch out the key components of the framework, i.e. *Broad Composition, Power, Autonomy, and Deliberation* as a necessary democratic check on an epistocratic arrangement.

I argue that a *broad composition* addresses the criticisms of epistocracy in relation to its claims to knowledge, and demography (Chapter 4, 4.5). *Power*, and *autonomy* contribute to the overall capacity of an epistocratic arrangement to develop a holistic approach to police governance and accountability. The inclusion of *deliberation* within the institutional design of an epistocracy allows it to operationalise accountability mechanisms (Bovens, 2010), whilst also encapsulating certain key principles of democratic governance (Jones *et al.*, 1996). I argue that this 'epistocratic and deliberative' framework reconciles expertise and democracy and provides for a holistic approach to police governance and accountability, whilst resolving the perennial problems of police governance outlined in Chapter 2.

The framework will be utilised for the thematic analysis of the SPA, however, it is pertinent to note that the framework developed over a period of time, and the process was a bit more fluid and iterative. Whilst the framework has a foundation in the literature as mentioned above, the data generated during the fieldwork helped develop and unpack the various components and the subsequent analysis of the SPA consolidated and confirmed them (see Chapter 6, 6.5).



## 5.1 - Institutionalising epistocracy

In this section and the next (5.2), I outline the key components of my proposed epistocratic framework. I will then consolidate them and engage with each component in detail in section 5.3 below.

Taking the notion of epistocracy as a blank canvass, the first pre-conceived foundation characteristic for the proposed framework is *knowledge* which is the inherent quality of epistocracy (Estlund, 2003, 2008; Holst, 2012, 2014; Lippert-Rasmussen, 2012; Brennan, 2016). One of the strongest challenges to an epistocracy is the lack of consensus on who is considered as an expert. I responded to this criticism in Chapter 4 (4.5) by drawing on Holst (2011,2012) who avoids pinning a specific definition of knowledge and expertise to an epistocracy. All knowledge-based governance arrangements will differ from each other, and the specific expertise, competencies and skills would depend on the relevant knowledge demands of a given field. An epistocracy involves all variations of knowledge, including technical knowledge (Holst, 2012: 52; also, Chapter 4, 4.3). Due to its broad application, the notion of epistocracy can be utilised for the analysis of any knowledge-based governance arrangement. The criticisms and questions regarding an epistocracy's claims to knowledge and expertise will need to be re-cast as the problem of institutional design (Holst and Mollander, 2014; also, Chapter 4, 4.5). Therefore, I argue, in an institutional epistocracy, its knowledge credentials would be reflected in its *composition*. The epistocrats will be appointed on the basis of their skills and competencies based on the specific knowledge demands of a given field. Their epistocratic credentials will not only be reflected in the knowledge, skills, and competencies they already possess but also in their abilities and capacity to interpret and draw on external knowledge and evidence.

In addition to criticisms related to epistocracy's claims to knowledge, it is also subjected to a demographic objection (Estlund, 2008; Forcehimes, 2010; also, Chapter 4, 4.5). I counter this criticism by proposing that members will need to be appointed from diverse backgrounds, reflecting a broad range of experiences and skills. Thus,

the first key component for an epistocracy to be institutionalised is *broad composition* that encapsulates knowledge, and a broad demography.

Further, according to Holst and Mollander (2014: 16) an epistocracy can be institutionalised within a democratic order through *delegated powers*. This will create a division of labour between experts and democrats, where experts will carry out their duties within the prescribed legislative framework and perform specific functions, as required by the democratic state. Thus, the second core component for an epistocracy to be institutionalised is *power*, as I explain below (see 5.3.2).

Moving forward, I argued that an epistocracy could not only be justified, but may in fact be desirable if it can promote and enhance key principles of democratic governance (Chapter 4, 4.5). I draw on the principles of democratic governance proposed by Jones, Newburn and Smith (1996), primarily because they offer the most comprehensive list that speak directly to issues of police governance, albeit in conceptual terms. The principles proposed by Jones *et al.*, are *Equity, Delivery of Service, Distribution of power, Responsiveness, Information, Redress, and Participation* (1996: 190-193). I have rearranged the order slightly so I can address these in turn as I develop my proposed framework.

*Equity and delivery of service* are concerned with the behaviour of the police. Nevertheless, the underlying purpose of the proposed governance and accountability framework would be to promote fair and equitable policing policies and to ensure minimum service delivery. I alluded to this in Chapter 2 in my discussions on the importance of organisational accountability (Chapter 2, 2.1 and 2.5). From an operational policy perspective, it would indeed be the task of the proposed governance arrangement to implement robust mechanisms of accountability to scrutinise policing policies both proactively and retrospectively to ensure policing conforms to these core democratic values. As this framework focuses on the mechanisms and processes of police governance and accountability, it would be outside the scope of this study to analyse whether policing policies and behaviour conforms to these two principles. Therefore, by drawing on Walker (2000: 35), and in relation to my proposed

framework, I argue that these two principles provide for an *underlying* purpose that robust police governance and accountability mechanisms should aim to achieve.

*Distribution of power* can more readily be tied into the institutional design of the proposed framework. Jones *et al.*, argue that “the idea that power should not be too much concentrated among a few individuals or groups is one that runs through democratic theory ... there is agreement across the political spectrum that power should be more evenly distributed” (1996: 191-192). As I have identified above, the proposed arrangement will need *delegated powers*, however, the scope of those powers will be defined by the incumbent government. Further, the *composition* of an institutional epistocracy would also be determined by the democratic state on the basis of pre-defined criteria (discussed below, see *knowledge*, 5.3.1.a). Whilst an institutional epistocracy with powers of police governance and accountability will act as a check against the powers of the police, it is imperative that its members are sufficiently non-partisan and *independent* of the incumbent government. An empowered, suitably independent, and non-partisan epistocratic arrangement can balance the interests of local government and central government, and act as an intermediary between the police, and the politicians, resolving the perpetual tussle between the local and the central. Thus, the third key characteristic for an institutional epistocracy is *autonomy*. The inclusion of *autonomy* as a key characteristic of the framework benefitted from some early engagement with the data collected during the fieldwork. As I alluded to earlier, the framework developed over a period of time and during the data collection stage, in several interviews, the SPA board members raised the issue of “Ministerial involvement”, exemplifying how the focus on the SPA, its potential and its development, helped consolidate and confirm this particular component of the framework (also, see Chapter 6, 6.5).

To summarise the argument thus far, for an epistocratic arrangement to be institutionalised in the context of police governance and accountability, it will need to have a *broad composition* underpinning knowledge and expertise, *power* and *autonomy*. These components will determine the overall *capacity* of the proposed arrangement to undertake its functions.

The remaining principles of democratic governance i.e. *responsiveness, information, redress and participation* can be encapsulated and operationalised in the mechanisms and processes of accountability, underpinned by *deliberation*. I explain this further below.

## 5.2 - Merging '*principles*' of democracy with accountability '*mechanisms*'

I argued in Chapter 4 (4.1) that due to the specific focus of this study on organisational accountability of police operational policies, a strict focus on accountability mechanisms is needed. Accountability as a mechanism is defined 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 judgement**, and the actor may face **consequences**”. (Bovens, 2010: 951)

In the context of my proposed framework, I argue that an institutional epistocracy needs to incorporate this definition fully into its approach to police governance and accountability. As per the definition above, the accountability forum would be the proposed institutional epistocracy, the actor would, for instance, be a chief constable or senior officers of the police. Whilst the *obligation* on the actor to explain their conduct, and the ability of the forum to *pass judgement* may signify a principal-agent relationship, such an arrangement can also be operationalised in a network-based governance setting where lines of hierarchy are blurred. In the absence of a hierarchical relationship, it is imperative that the *powers* of the proposed institutional epistocracy are clearly laid out.

Further, Bovens (2010: 952) argues that this definition of accountability as a mechanism is limited to retrospective accountability. I argue that this definition can be expanded, adapted and applied to *proactive* scrutiny of police operational policies as they are being developed. Such an approach would allow the proposed accountability forum to assess and ensure that policing policies are fair and equitable. Below, I show how the three phases of accountability as proposed by Bovens (2010) can incorporate both retrospective accountability *and* proactive scrutiny, and how the remaining

principles of democratic governance, outlined above, can be implemented into *practice*.

- i. Information Phase: For an accountability relation to be established, it is pertinent that the actor feels an obligation to **provide information** to the forum about his/her conduct (Bovens, 2010: 952).

Information is an essential component for the purposes of governance and accountability. Jones *et al.*, argue that provision of “good information is crucial for the achievement of all of the other democratic objectives” (1996: 92). The Global Accountability Framework associates transparency with the provision of good information as it involves “the provision of accessible and timely information to stakeholders and the opening up of organisational procedures, structures, and processes to their assessments” (Bovens, 2010: 959). However, there are permanent limits to the police sharing information with accountability forums and the public (Harkin, 2015). Some information required by the accountability forum could be of sensitive nature relating to specific persons, or about ongoing police operations that could compromise police work. Nevertheless, the ‘explanatory and co-operative’ mechanisms of accountability during tripartism (Chapter 4, 4.2.2), placed a responsibility on chief constables to submit annual reports and information regarding the policing of local areas to the local police authorities, and chief constables responded by presenting annual reports. This phase of accountability process has largely remained uncontentious. Matters become more contentious where information requested by accountability forums is not provided, not because it contains sensitive material, but because chief constables shield it under the guise of operational independence or the veil of professionalism (Marshall, 1965; Lustgarten, 1986; Walker, 2000; Reiner, 2010; Scott, 2011). When such a situation arises, who is to say whether the information should be made available to the public or not? Should this be left to the senior police officers themselves? What would be the purpose of the accountability forum if senior police officers decide which information is presented, and which is protected? The most essential component within this phase is that chief

constables should feel an *obligation* to present information to the accountability forum. This denotes an element of *power*, as I have argued above.

An institutional epistocracy with clearly defined powers should be able to request information regarding *any* aspect of policing both retrospectively about conduct, and proactively about potential policies. For instance, if a chief constable makes a policy decision to reduce the number of police officers or to close police stations in a particular area, then it would be entirely appropriate for this information to be presented to the accountability forum *before* the decision is implemented, as opposed to a retrospective explanation. As I have argued in Chapter 2 (2.4.2), police policies can, and do, impact operations and may sometimes lead to negative consequences for the public. If the requested information is so sensitive that it cannot be shared with members of the accountability forum on ethical or legal grounds (Harkin, 2015), then the forum should be able to ask the chief constable or senior officers to *justify* that claim. This leads to the next phase of accountability.

- ii. Debating Phase: Once the information has been presented to the forum, the forum must be able to **ask questions**, request **further information** or **seek clarifications** (Bovens, 2010: 952).

This is where accountability takes place in practice. Previous empirical research on accountability of public bodies in England and Wales emphasised that “dialogue” and “deliberations” are “core aspects of accountability” (Day and Klein, 1987: 5). Mulgan has supported this view arguing that accountability is “a dialectical activity, requiring officials to **answer, explain and justify**, while those holding them to account engage in **questioning, assessing and criticizing**. It thus involves open **discussion and debate** about matters of public interest and so becomes equated with the principles of **deliberative democracy**” (2000: 569, emphasis my own).

Following Mulgan, I propose that *deliberation* underpinned by *reasoning* and *justification* would be a crucial component for the proposed epistocratic arrangement. Particularly when it comes to proactive scrutiny of policing policies, the senior police

officers will need to justify and give reasons, either in the public domain or in private to the accountability forum. Deliberation phase in retrospect may be equivalent to explaining conduct, however, if meetings take place often, in formal and informal settings, then senior police officers may become more inclined to deliberate about future courses of action, making proactive scrutiny business as usual. Research on collective action in network governance arrangements has highlighted that frequent ongoing communication, and face-to-face meetings can enhance trust between actors. For instance, Romzek, Leroux and Blackmar have argued that “informal accountability emerges from the unofficial expectations and discretionary behaviours that result from repeated interactions among network members in recognition of their interdependence in pursuit of their shared goal” (2012: 443). However, it has been recognised by researchers that informal accountability mechanisms can often lead to unfettered discretion and the lines of accountability and responsibility are often blurred particularly when things go wrong (Crawford and Jones, 1995). It is pertinent, therefore, that stringent mechanisms of *horizontal* accountability between the various stakeholders are in place to ensure appropriate checks and balances.

A shared goal in the context of police governance and accountability could be fair and equitable policing policies. The pursuit of shared goals through deliberation can enable greater co-ordination between the police and the public, with the proposed epistocratic arrangement acting as an intermediary, or a conduit. Deliberation can thus encapsulate another key democratic principle of *responsiveness*, ensuring that policing policies are *responsive* to the reasonable demands of the public (Jones *et al.*, 1996; Aitchison and Blaustein, 2013).

Whilst *participation* is also another key principle for democratic governance, Jones *et al.*, have deliberately placed it last because they argue “getting together groups of people to discuss policing policy is an uphill struggle” (1996: 193). The scope of public participation in an epistocratic governance arrangement where members are appointed, rather than elected, is seemingly limited. However, *deliberation* can also encapsulate this crucial democratic principle. There is a growing body of research that has shown empirically that ‘mini-publics’ and ‘citizen’s juries’ can be an effective form of

engaging with the public on *specific* policy issues (Escobar, 2014a, 2014b; Roberts and Escobar, 2014). Such forums of deliberation should encourage inclusion of disadvantaged groups and silent voices (Loader and Walker, 2007: 223). Whilst an epistocratic governance arrangement will have limited capacity to interact with all communities on every single policing policy, it could engage with members of the public on specific issues. Knowledge gained from such interactions can be useful when determining public impact of policing policies, and can be invoked in proactive or retrospective deliberations.

Finally, it is pertinent that the members of an epistocratic arrangement are able to understand the information presented by the police, in order to ask questions regarding that information, and present competing evidence during the deliberations. In this phase, the epistocratic credentials of the proposed framework are crucial. Along with deliberation, this phase of accountability could become an exchange of knowledge and expertise, and claims and counter-claims to evidence, ensuring that police policies are not just based on self-referential expertise. By drawing on evidence, knowledge and expertise, the proposed epistocratic arrangement can limit the operational independence of the senior officers.

- iii. Consequence Phase: “the forum may pass **judgement** on the conduct of the actor” (Bovens, 2010: 952).

Perhaps the most contentious and often contested component of an accountability process, but one that is a central element of accountability mechanisms, is the element of sanction or reward. Bovens chooses the word *consequence* because it has a neutral connotation as opposed to sanction which is negatively biased (Bovens, 2010: 952). Further, Jones *et al.* include *redress* as an essential democratic criteria and support powers of sanction against incompetent administration (1996: 192). Redress also means that complaints against the police are investigated and affected parties receive compensation. Further, effective mechanisms of redress should lead to a reversal of contentious policing policies (Jones *et al.*, 1996: 192). Marenin (1998: 170) also alludes to the powers of sanction within the broader notion of accountability, he argues



that “the police are actors but their power is delegated, it can be recalled and its use judged by others”. In the previous tripartite governance arrangements, the local police authorities were responsible for nearly half of the police budgets and had the “power of the purse strings” (Donnelly and Scott, 2010: 82). This power could have translated into the threat of sanction, however, there are no examples of whether this was ever exercised by a local police authority to gain compliance from their respective chief constables.

In the context of the proposed epistocratic arrangement, the consequences need not be formal such as fines, disciplinary measures, legal sanctions etc., they can be informal. Particularly in relation to the police that relies on public consent for its legitimacy (Reiner, 2010) a threat of reputational damage and negative publicity can also equate to sanction. It has been argued that “whilst negative publicity may be the weakest possible sanction, yet research indicates that executives of public organisations are highly alert to perceived negative publicity” (Schillemans, 2011: 391). It is crucial, therefore, that the processes and mechanisms of accountability involve an element of explanation and consequences. In the absence of formal mechanisms of sanction, the proposed epistocratic arrangement would need to negotiate informal sanctions and it needs to have the *power* and an overall capacity to do so.

In the above discussions (5.1 and 5.2), I have proposed how an epistocracy could be institutionalised and how it could encapsulate key principles of democratic governance within the mechanisms of accountability. I consolidate and qualify my arguments further below.

### 5.3 - An ‘epistocratic and deliberative’ approach to police governance

Based on the above discussions, the four key characteristics for an institutional epistocracy in the context of police governance are consolidated below (see Table 5.1):

<b>Reconciling Democracy and epistocracy: Key components for an 'epistocratic and deliberative' approach to police governance</b>			
<b>Institutionalising Epistocracy</b>			<b>Democratic check</b>
<b>Broad Composition</b>	<b>Power</b>	<b>Autonomy</b>	<b>Deliberation</b>
Knowledge (i)	Delegated Powers (i) Consequences Phase (ii) Distribution of power (iii) Redress (iii)	Distribution of power (iii)	Information Phase (ii) Debating Phase (ii) Information (iii) Responsiveness (iii) Participation (iii)

**Table 5.1 - An 'epistocratic and deliberative' approach to police governance - Conceptual Framework**

*Numbers in brackets denote source: (i) Institutional Epistocracy (Holst, 2011,2012; Holst and Mollander, 2014), (ii) Accountability as a mechanism (Bovens, 2010), (iii) Principles of democratic governance (Jones et al., 1996)*

### 5.3.1 - Broad Composition

As I have argued above (5.1), knowledge is the defining characteristic of epistocracy. For an epistocracy to be institutionalised in the context of police governance and accountability, this characteristic will be reflected in its composition. Further, the composition needs to be sufficiently broad to ensure it is reflective of the broader social demography. But what knowledge composition would be appropriate for the purposes of police governance? Further, what would an ideal demographic composition look like? I examine this below.

#### 5.3.1.a - Knowledge

In relation to the knowledge composition of the proposed epistocratic arrangement, based on Holst's usage of the term, a broad application would suffice (2011, 2012). Drawing once again on the example of knowledge-based governance arrangements

within the EU, non-scientific knowledge has been argued to be just as influential as scientific knowledge; “diplomats, judges, defence experts, high-ranking military officials, bankers, and international lawyers, among others, all have just as much of a claim to authoritative knowledge as scientists” (Cross, 2015: 92). In the security policy field, there has been an increase in security experts that the EU routinely calls upon for advice. The comprehensive security initiatives comprise a “mixture of expert officials and competences from the fields of intelligence, military, judicial, policing, as well as regional, local, political and economic expertise” (Eriksen, 2011: 1171).

Claims to knowledge and expertise do not necessarily mean specialisation in a specific field but rather it is possible for experts to have general insights and awareness of social problems and available research (Collins and Evans, 2007: 77). It is recognised that knowledge itself may be socially constructed, but epistemic communities must nonetheless have a means of objectively recognising the validity of knowledge (Cross, 2015: 91). The key element for an epistocracy would be for epistocrats to have an ability to interact and communicate across fields and disciplines and with a range of stakeholders. This is essential because the reliance on experts is not limited to technical or factual issues, it is often the case that policies developed following expert advice and consultation have the capacity to influence moral and ethical dimensions (Holst, 2012: 47). Holst points out that within the EU, representatives from NGOs are routinely included in certain policy circles because they are deemed to carry “morally relevant knowledge and experiences as affected parties” or political philosophers are included in committees due to their ability to conceptualise and analyse normative problems (Holst, 2012: 49). It is pertinent that an epistocratic governance and accountability arrangement reflects a range of expertise and knowledge and does not only consist of technocrats or academic elites.

Even within the scope of police governance and accountability, various contexts and purposes will demand various types of knowledge and expertise. As argued by HMICS, 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 epistocracy could reflect, as

proposed by HMICS, 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). I expand this list and propose, that 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 prescriptive knowledge composition. It is reiterated, however, that members of the proposed epistocratic arrangement should ideally represent a range of backgrounds and not just consist of academic elites. It could also include practitioners, members of the civil society, and independent analysts, bringing in knowledge of policing, of local areas and needs, of laws related to human rights and equality.

An example of a broad knowledge composition would be of the Northern Ireland Policing Board that consists of nine independent members and ten elected representatives. The independent members represent a broad range of expertise, competencies and educational backgrounds. Members have voluntary and community sector background, school teaching experience, there are graduates in criminology and Human Rights Law, independent consultants as well as independent researchers, and a Professor of International Law (NIPB, 2017). However, knowledge composition of an epistocracy is one component of the framework. Whether a particular composition is *right* for the purposes of police governance needs to be ascertained in relation to the other components such as *power* and *autonomy* that contribute to the overall capacity of the proposed epistocratic arrangement. Further, as argued above, whatever the knowledge composition may look like, the epistocrats will also need to have the ability and capacity to interpret and draw on external knowledge and evidence (Collins and Evans, 2007; Cross, 2015). This could be achieved through horizontal deliberation with external stakeholders such as academics, independent analysts and practitioners (also, see 5.3.4 below).

### 5.3.1.b - Demography

Once the knowledge demands of an epistocratic arrangement are determined, epistocrats will need to be appointed from a broad demographic. This is a key legitimising component for the proposed epistocratic arrangement. Drawing on Estlund once again, he argues that "even if it is accepted that the experts will carry with them a certain degree of goodwill towards all people, they are inevitably biased by their race, social class and gender" (Estlund, 2008: 215). Also, more often than not, epistocrats would have acquired formal education such as a degree which is "privilege of certain races and classes, even genders" (Estlund, 2003:62). For an epistocratic arrangement to be representative of wider society, it is essential that members are appointed from a diverse cultural, social and gender demography.

This is arguably easier to achieve because members will be *appointed* rather than elected through direct electoral processes. In the recent elections of the PCCs in England and Wales, "more former police officers (32) stood in the elections in comparison to women (29) and there were more white men called Kevin (6) than there were Black Minority and Ethnic (BME) candidates (3)" (Muir, 2016). It is imperative that the membership reflects the broader social demography. Irrespective of the jurisdiction and the context, MacPherson's seminal recommendation, following the Stephen Lawrence inquiry, is relevant here:

"That the Home Secretary and Police Authorities should seek to ensure that the membership of police authorities reflects so far as possible the cultural and ethnic mix of the communities which those authorities serve" - (Macpherson, 1999: Chapter 47, para.7)

Applying the recommendation to my proposed arrangement in fairly idealised terms, the composition of an epistocratic arrangement should reflect the broader social composition of the society.

Further, in relation to the criticisms of experts acting in their own interests (Forcehimes, 2010), the group of experts in an epistocratic governance arrangement will be appointed for their specific skills, expertise and competencies, with a specific

mandate and an obligation to govern, taking out the element of personal desire to govern in a despotic sense and minimising the risk of elitism (Dougherty, 2010: 79). Also, members will be held to account by democratic bodies so the elitist and exclusionist objections purely on the basis of their expertise and knowledge need not be viewed in a negative sense, as these are the inherent qualities of an epistocratic arrangement (Lippert-Rasmussen, 2012).

I accept that epistocrats may not be completely disinterested, non-partisan actors and personal desire to govern or to be in a position of power could manifest in different ways. For instance, certain members may be attracted to apply because of reasons such as remuneration, perks, and other financial benefits. This might have an adverse effect on their impartiality and the way they exercise their responsibilities particularly because they would be concerned about reappointments. However, I suggest that the adverse effects of experts acting in their own interests could be mitigated so long as there are proper rules and regulations around how experts are appointed and remunerated, and so long as robust mechanisms of horizontal accountability to professional peers, and vertical accountability to the democratic state are in place (Holst and Mollander, 2014).

### 5.3.2 - Power

As I argued above (5.1), for an epistocracy to be situated within a democratic order, it will need clearly defined powers establishing an accountability relationship between the police and the proposed arrangement. In the absence of a clearly defined hierarchical relationship, and particularly in a network-governance approach, an epistocratic institution will need to *negotiate* its role within the confines of its legislative powers. Drawing on Zimmerling's treatment of power and influence (2005), I argue that power can manifest in two significant ways; formal powers enshrined in law, and informal powers that are negotiated between actors during their interactions. Scholars have long tried to distinguish the precise meanings of the words power, influence, control and authority, and some have used these terms interchangeably (Zimmerling, 2005: 2-4). For the purposes of this framework, I use the terms power and authority interchangeably to denote formal legal powers. But as

power can manifest in many ways, I reserve the use of the term ‘influence’ for informal power, resulting from negotiated agreement. As the first phase of an accountability relation requires that the account giver feels *obligated* to present information, it is imperative that powers of an epistocratic governance arrangement are clearly enshrined in statutory terms; “unclear power relations create a space for competing interpretations” (Olsen, 2015: 427).

For an accountability relationship to be established, the key question should be “does the accountability forum have enough inquisitive powers ... are the available sanctions strong enough to have preventive effects?” (Bovens, 2007: 465). Even where formal legal powers do not signify a principal-agent relationship, informal influence may result in a ‘shadow of hierarchy’ and it remains an important bargaining tool in any non-hierarchical governance landscape (Héritier and Lehmkuhl, 2008; Weale, 2011). The power to allocate funding, and monitoring of budgets, and resources could potentially be used as a bargaining tool for changes in police policy and practice, something that the previous local police authorities repeatedly failed to do (Chapter 2 and Chapter 3). Researchers have also found that in a multi-agency approach to policy negotiations, institutions often concerned with “getting things done” find creative ways to “manage tensions and conflicts” (Crawford and Jones, 1995:21). As it has been discussed earlier, in relation to horizontal accountability, the threat of negative publicity particularly for the public police that relies on policing by consent can also tilt the power relations in favour of the accountability forum (see above, 5.2). Further, as I will argue below (5.3.4), the inclusion of deliberative principles would allow the proposed epistocratic arrangement to establish its sphere of influence and manage potential conflicts and tensions arising from misinterpretations of power.

Power will manifest in many ways. It will be reflected in the actual mechanisms of accountability, it will also be evident through the element of consequences and sanction at the disposal of the accountability forum, and it will be reflected in how the allocation of funding, and threat of reputational damage is used as a bargaining tool during the accountability processes, particularly where the outcome is related to a change in policing practice or a reversal of contentious operational policies.

### 5.3.3 - Autonomy

Along with power, it is imperative that the proposed epistocratic arrangement is reasonably independent of central and local government. One of the most crucial aspects of police accountability mechanisms is to ensure that policing does not serve partisan interests (Jones *et al.*, 1996; Walker, 2000). However, direct forms of democratic governance do carry an underlying risk of partisanship, as I have argued earlier in Chapter 4 (see 4.4.2.b). Jones *et al.*, have placed *distribution of power* as an important democratic principle arguing that “many criticisms of the arrangements for police governance have identified the concentration of power in some sense as *the problem*” (1996: 192, their own emphasis).

Within a network governance approach, networks are self-organising and while this dilutes democratic oversight and blurs the lines of responsibility, self-governing and self-organising networks are often autonomous (Rhodes, 1996: 659). Whilst the proposed epistocratic arrangement will not be self-governing and self-organising in a strict sense, as it will have delegated powers and its members will be appointed by the state, it should, nevertheless, be visibly distant from local and central political actors, denoting impartiality and non-partisanship.

Independent, arms-length regulatory agencies have delegated powers due to their expertise in the fields where political actors lack the necessary competence (Rosenvallon, 2011: 9). However, if experts are deemed as partisan, a crisis of legitimacy can occur (Rosenvallon, 2011: 80). The proliferation of networks within the new governance approach is often attributed to central government consolidating its own control through agencies, often bypassing local authorities (Rhodes, 1996). As I have argued earlier, the previous tripartite arrangements were decidedly lopsided towards the central government and chief constables (Chapter 2 and 3). The imbalance in power relations contributed to the accountability deficits that this framework aims to resolve. It is crucial that an epistocratic arrangement is not just seen as an extension of central government, at the expense of local authorities. Epistocracy by democratic delegation means that directly elected political actors will appoint experts (Holst and Mollander, 2014). This dependence of experts on central political representatives can



potentially lead to a loss of professional autonomy rendering the whole governance arrangement ineffective, with power shifting back to central government and the police.

Further, the proposed epistocratic arrangement will also need to be independent of the police itself. There is an established concept of regulatory capture in corporate governance that highlights how private firms often ‘capture’ the regulatory agencies, leading to ineffective governance and accountability and a loss of public trust (Carpenter and Moss, 2014: 1-22). Regulatory Capture could be defined more broadly as a “a process by which regulation...is consistently or repeatedly directed away from the public interest and toward the interests of the regulated industry by the intent and action of the industry itself” (Kwak, 2014: 73). It is also reflected in “a regulatory agency's collusion with the firms it is ostensibly regulating, to the detriment of the public interest” (Zinn, 2002: 107). The effectiveness of the proposed framework rests on autonomy, within the broad confines of its role and powers. As I mentioned above, in reference to Rosenvallon (2011), if an epistocratic arrangement is perceived to be colluding with the police, or serving central government interests at the expense of the local government, or the public, then such an arrangement will lose its legitimacy and purpose.

#### 5.3.4 - Deliberation

Whilst the composition, power and autonomy would relate to the overall *capacity* of an epistocratic arrangement to carry out its functions, deliberation refers to the *way* it delivers police governance and operationalises the mechanisms of accountability. Deliberation gives an epistocracy, a democratic character, particularly because it encapsulates key principles of democratic governance, as argued above (5.2).

The idea of deliberation, used as an essential characteristic for the proposed epistocratic governance arrangement, is adapted from discussions in political philosophy on deliberative democracy (Dryzek, 2000; Gutmann and Thompson, 2004; Fishkin, 2009). However, the application of deliberation in this context manages to avoid concerns regarding mass participation and equal representation which is related

to wider public policy making (Fishkin, 2009; Lafont, 2015) and the criticisms of deliberative democracy in general (for instance, Kuper, 2004: 61-74). Instead, as argued above, in reference to Mulgan (2000), the defining characteristics of deliberative democracy such as *justification*, and *reasoning* are extracted and tied into the processes and mechanisms of accountability.

Deliberative democracy is defined by the “*need to justify decisions* made by citizens and their representatives” and its first and most important characteristic is its “*reason-giving*” requirement (Gutmann and Thompson, 2004: 3, emphasis my own). Justification and reason-giving is also at the core of an accountability relationship (Day and Klein, 1987; Mulgan, 2000; Bovens, 2007, 2010). Particularly in the debating phase, instead of merely providing the required information, or explaining conduct in retrospect, senior police officers would be required to engage in meaningful deliberation with the accountability forum about future course of action and police policy. In such an environment, deliberations would result in “*persuasion* rather than coercion” (Dryzek, 2000: 1, emphasis my own).

The proposed epistocratic arrangement will need to weave in principles of deliberation into its approach to delivering police accountability. Particularly in relation to organisational accountability mechanisms, as I argued above, the proposed arrangement will need to *proactively* scrutinise operational policies. Through deliberation, the accountability relationship with the police could be developed in such a way that the debating phase can be pursued through formal structures of retrospective account-giving, or through meetings and informal scrutiny (Romzek *et al.*, 2012; Romzek, 2014).

The inclusion of deliberation also acts as a democratic check on the proposed epistocratic arrangement. Particularly in a network-based governance approach, an epistocracy will be one stakeholder, there will be the police themselves, local and central political actors, as well as other auditing and regulatory bodies, etc. In such a landscape, deliberation between the different actors will ensure horizontal accountability between professional peers (Schillemans, 2011; also, Chapter 4, 4.2.4)

and horizontal responsiveness (Kuper, 2004). Further, deliberative principles that incorporate elements of justification and reasoning can also enhance ways of learning and improvement, allowing agencies “to reflect upon their policies and procedures and to improve upon them” (Bovens, 2007: 466). This would not only apply to the police as ‘account-givers’ but also to the epistocratic arrangement as an accountability forum.

Deliberation can encapsulate *participation* and make an epistocratic arrangement, and the police, more *responsive* to the reasonable demands of the public. Deliberation is distinguished from other forms of interaction in network-based governance such as consultation, engagement, and negotiation. Research has shown that in traditional consultation, public bodies interact with the public on a pre-defined agenda, to fulfil an official requirement, the outcomes of the consultations in such circumstances are often unchangeable, leading to no deviation in policy (Escobar, 2014b: 97). Further, “traditional consultation often lacks clear impact on, and connection to, decision making processes” (Escobar, 2014a: 26). An epistocratic arrangement could engage with the public on specific issues. However, in order not to succumb to the pitfalls of partisanship and majoritarianism, the proposed epistocratic arrangement will need to act as an intermediary between the police and the public. By virtue of available knowledge, or evidence, an epistocratic arrangement may refuse certain public demands, however, principles of reason-giving and justification would also apply here. For instance, if there is public pressure to open more 24/7 police stations in a particular area, an epistocratic arrangement could intervene on behalf of the police and refuse such demands, for reasons that may potentially involve a lack of resources.

Finally, the inclusion of *deliberation* to the framework also serves to strengthen the other components. For instance, in relation to *knowledge*, whatever the composition of the proposed 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. Deliberative procedures with an “epistemic element” involving many experts with different expertise and skills, will ensure that best decisions are achieved (Forcehimes, 2010: 75; Landemore, 2013a: 152; also, Estlund, 2008; Landemore, 2013b; Brennan, 2016). Through horizontal

deliberation with professional peers, members of the proposed arrangement could draw on external expertise in order to fill the knowledge gaps in its own composition. Deliberative principles would also allow the proposed epistocratic arrangement to *negotiate* the lines of power and influence, particularly if its formal powers are not clearly defined or subject to competing interpretations. However, this may result in informal and piecemeal arrangements, blurring the lines of responsibility and accountability of decision-makers (Crawford and Jones, 1995), therefore, robust mechanisms of horizontal accountability (Schillemans, 2011) between other key stakeholders and to democratic representatives (Holst and Mollander, 2014) would help ensure that epistocrats can also be held to account for potential misuses of power, ineffective governance and malpractice.

The above discussions provide a conceptual framework, outlining how an epistocracy could be institutionalised in the context of police governance and how it could implement effective mechanisms of proactive scrutiny and retrospective accountability whilst promoting principles of democratic governance. I argue that, assuming all the components are in place, the proposed arrangement could potentially resolve the perennial problems of police governance, outlined in Chapter 2.

#### 5.4 - Discussion: The framework and the 'perennial' problems of police governance

In Chapter 2, I argued that the notion of operational independence of senior officers, and the perpetual tussle between the local and the central for democratic control of the police are 'perennial' problems that successive police governance arrangements have not been able to resolve. As part of my contribution to the study of police governance, the conceptual framework proposed above aims to resolve these problems.

In regards to the operational independence doctrine, this notion has evolved over time to reflect the professional autonomy of senior police officers (Jones, 2008; also, Chapter 2; Chapter 4, 4.4.1). Traditional claims to police professionalism have often rested on the technical expertise of the police (Fyfe, 2013). The proposed epistocratic arrangement, through its ability to draw on expertise and knowledge can bypass the limitations that previous accountability mechanisms have encountered (Chapter 2 and

3), particularly in relation to *questioning* and *debating* police information. Through knowledge and expertise, epistocrats can counterbalance police professional expertise. Knowledge plays a crucial role in contentious policy arenas. Boswell (2009) has argued that 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). Through claims to their own sophisticated expertise, police legitimise their actions and control information (Harkin, 2015), often claiming to represent the public voice. In the absence of public input, the claims of representing the public view and protecting the public are simply “rhetoric, and at best vapid and unrealistic” (Kitcher, 2006: 1220). As expressed earlier, the EU security agenda is “crowded with expertise and counter-expertise” (Eriksen, 2011: 1176) which begs the question as to why the public police that is highly reliant on public consent and resources from the public purse continues to shield itself from processes of public accountability by drawing on professional expertise.

A suitably empowered epistocratic arrangement will compel the police organisation to take part in deliberations, instead of shielding operational policies from external scrutiny. Without this underlying power and shadow of hierarchy, deliberations are likely to always end with senior police officers justifying their decisions with reasons such as ‘this is in the domain of our operational independence’. Through power, and drawing on external evidence and expertise, an epistocratic arrangement will induce better reasoning and justifications from the police organisation. As noted earlier, the powers of the previous local police authorities, were “vague and self-contradictory at crucial points” (Reiner, 2010: 227; Chapter 2). This not only translated in weak and ineffective mechanisms of organisational accountability, but consolidated the operational independence of chief constables (Chapter 2). Through demanding reasons and justifications for police operational policies, the proposed epistocratic governance arrangement can counter, and even circumvent, the notion of operational independence altogether. This does not mean that epistocrats would be able to influence specific police operations. Police officers, by virtue of their common law powers, have discretion in their day-to-day policing role. But the aspect of operational independence of the chief constable, which has been invoked in the past to shield police operational

policies from scrutiny, would be bypassed through *proactive scrutiny*. Meaningful deliberations between the police and the proposed epistocratic arrangement, at various stages of policy development, can ensure that policing is delivered fairly and equitably across the broad.

The definition and the status of the operational independence doctrine and what it precisely means in a network-based governance landscape will need to be addressed. I undertake this task in the context of the SPA and the post-2012 governance arrangements in Chapter 7.

In relation to the perpetual tussle between the local and the central, an empowered, suitably independent, and non-partisan epistocratic arrangement can balance the interests of local government and central government, and act as an intermediary between the police, and the politicians. The strongest criticism of the previous local police authorities, in the policy discourse leading up to the 2012 Act, was that they were ineffective in directing the police resources towards local priorities, and they were under no legal obligation to consider national objectives (Chapter 3, 3.3.2). The proposed epistocratic arrangement will need to ensure that policing policies take cognisance of local priorities as well as national objectives. This could be achieved through horizontal deliberations with central and local government stakeholders. However, the principles of justification and reasoning would often need to be invoked at these forums to ensure policing policies are insulated from majoritarian or partisan interests. It would be crucial for epistocrats to draw on available knowledge and evidence to politely *refuse* the demands of the local and central politicians, if they are deemed as unreasonable, or unachievable due to limited resources. At the very least, an epistocratic arrangement, through deliberative mechanisms of proactive scrutiny and retrospective accountability, ensure that policing policies are not unfairly affecting certain local areas, or communities, whilst ensuring the broader national objectives are being met.

In conceptual terms, the proposed epistocratic and deliberative approach to police governance can potentially resolve the perennial problems of police governance,

however, the analysis of the SPA, through the framework, will provide an empirical basis for the above discussions. I now outline how this framework will be utilised in relation to the evaluation of the SPA.

### 5.5 - The framework and the SPA

I drew on the notion of epistocracy in cognisance of the conceptual model and vision for the SPA, a body with a professional base, its members appointed on the basis of specific skills and competencies (Chapter 4, 4.3). The above sections provided a framework for how an epistocracy could be institutionalised, and how it could encapsulate the principles of democratic governance into its processes of accountability, whilst resolving the perennial problems of police governance, in conceptual terms.

The SPA's model and vision as a body composed of professional members, provides an expert, or *epistocratic* dimension to the broader landscape of police governance and accountability. Whilst the framework is grounded in literature (as outlined in sections 5.1-5.3), its development was fluid and iterative and the data collection aided the refinement of the various components outlined above (see Table 5.1). This has allowed for the framework to be utilised as a thematic toolkit to examine the SPA, its potential as an expert body, and its approach to police governance and accountability, as it developed as an organisation. In Chapters 8 and 9, I will specifically present my evaluation of the SPA in relation to the framework. Focusing on the first three years since its inception, the analysis will examine the SPA's *composition* to ascertain what knowledge and expertise its members possess, as well as, analysing whether its membership reflects a broad demography. In relation to *power* and *autonomy*, I will assess if the SPA had the capacity to establish its role as an accountability forum, without impositions and interference. The findings will also contribute further 'lessons for the framework' and highlight issues specifically related to the SPA and the new governance arrangements, contributing further empirical insights for the framework. Further, I will examine whether *deliberative* principles were implicit in the SPA's approach to deliver organisational accountability of operational policies, and whether

this has resulted in effective mechanisms of proactive scrutiny. The specific questions that the analysis will focus on is outlined in Chapter 6 (see, 6.5.1).

## 5.6 - Conclusion

This chapter provided a prescriptive conceptual framework to resolve the underlying perennial problems of police governance. I showed, in conceptual terms, how an epistocracy could be institutionalised in the context of police governance and accountability, and how through mechanisms of accountability, underpinning deliberative principles, it could encapsulate key ideals of democratic governance.

I argued that the knowledge credentials of an institutional epistocracy would be reflected in its composition of experts representing a range of skills, competencies, and expertise. The members would be drawn from a diverse range of backgrounds to ensure an epistocratic arrangement is representative of the broader social demography. Further, the proposed epistocratic arrangement will need clearly defined powers so it can establish an accountability relationship with the police. It is particularly important for accountability mechanisms to include an element of sanction or consequences. In the absence of clearly defined powers, the proposed arrangement should be able to use powers of resource allocation or the threat of reputational damage as a bargaining tool to induce a change in police behaviour and a reversal of contentious policing policies. The proposed arrangement will also need to be sufficiently independent of the police, and local and central political stakeholders. Any perceptions of collusion, and a lack of independence would render such an arrangement ineffective and it would lose its legitimacy and purpose. Through deliberative principles, underpinned by justification and reasoning, the proposed arrangement could establish processes of proactive scrutiny, ensuring that police operational policies are fair and equitable. The deliberative principles would also allow epistocrats to draw on external expertise, and act as an intermediary between the police and the politicians.

The framework has been developed with an explicit focus on the SPA, its model as an expert body, and its potential to deliver police governance and accountability. The analysis of the SPA will provide further empirical support for the components of the



framework outlined in this chapter. In the next chapter, I outline my methodology and analytical approach that paved the way for the ensuing analysis of the SPA.

## **PART III – RESEARCH DESIGN**

### **Chapter 6 - Exploring the landscape of police governance and accountability**

In this chapter, I outline my research design, methods and the rationale for my analytical approach.

#### **6.1 - Research Questions**

When I started this study in September 2013, the new governance arrangements had only been in place for five months. The SPA was a fledgling organisation, and its organisational structure was still being negotiated. There was very little public facing information about the SPA and the new governance arrangements, this became a key factor in determining the research questions and the overall research strategy. The primary aims of this research are:

- i. Explore and analyse the role of the SPA in managing and delivering police organisational accountability in the new governance landscape. And,
- ii. To what extent, if at all, has the creation of the SPA, as an expert body, resolved, or exacerbated, the perennial problems of police governance?

The first research aim was to address the gap in knowledge, ensuing from the 2012 Act. Due to this gap in knowledge, the research was underpinned by an exploratory approach and a flexible research design that “allows the concepts to emerge naturally as they manifest” without prespecification (Robson, 2002 in Semmens, 2011: 58). The second research aim specifically emerged from the literature review, a natural starting point to gain orientation of the field (Francis, 2011: 21). The literature (Lustgarten, 1986; Walker, 2000; Donnelly and Scott, 2002a,2002b; Jones, 2008; Reiner, 2010) highlighted the underlying ‘problems’ of police governance and accountability, that had persisted during the previous governance arrangements (Chapter 2). These perennial problems became ‘the research problem’ for the thesis, situating the focus

on police organisational accountability and contributing to the development of the framework for analysis (Chapter 5). The subsequent data collection, and analysis was fluid and iterative. Both research aims, in conjunction, allowed for a rich descriptive account of the SPA's role, from policy to implementation, and a critical assessment in relation to the perennial problems. Further, through the analytical framework (Chapter 5, 5.5), I examined the SPA's institutional design, and its approach to implementing mechanisms of accountability in its formative years.

While the literature on police governance provided a strong foundation for the development of the research questions, my analytical approach diverges from the previous studies, that predominantly examined police governance arrangements through the perspective of constitutional law (Lustgarten, 1986; Walker, 2000). By incorporating *qualitative methods*, my research goes beyond the analysis of the governance arrangements, and focuses on the *perceptions* of those involved in operationalising those arrangements.

## 6.2 - Data Collection

This study takes into account all material up to March 2016, although in some places, where relevant, I have incorporated some later developments and these are signified by appropriate references. The SPA came into effect on the 01<sup>st</sup> of April 2013 and the SPA chair submitted the review of police governance to the Cabinet Secretary for Justice on the 23<sup>rd</sup> of March 2016. This development provided a natural cut-off point for data collection, allowing the subsequent writing and analysis to produce a coherent narrative of the SPA's evolution from inception to the first official governance review. The specific method of data collection is set out below.

### 6.2.1 - Policy Documents and Public Meetings

The official policy documents and the minutes of official meetings represented the largest, most readily available, and easily accessible sources of information regarding the reforms and the post-2012 Act arrangements. These were in the form of official government consultations prior to the reforms, minutes of parliamentary hearings and Justice Committee reports, official inspection and audit reports by HMICS and Audit Scotland, and the 2012 Act itself. These documents were accessed electronically,

organised chronologically and separated in two categories; pre-reform and post-reform (see, Appendix A).

The documents prior to the reforms largely consisted of Justice Committee hearings, Scottish Government consultations, HMICS reviews of policing, and Audit Scotland inspection reports on the local police boards. The analysis of these documents formed part of the policy review in Chapter 3, in order to understand the nuances behind the rationale for the reforms, and also to examine if any of the problems identified in the police governance literature (Chapter 2) were manifest in the official policy agenda for the 2012 Act. This initial process also allowed me to map the key actors and stakeholders in the Scottish police governance landscape for later interviews (see below, 6.2.2), and to draw parallels between the issues identified in the literature review, and the issues that dominated the policy circles. My analysis of the policy documents was very much in line with what Morrison (2012: 15) describes as “content” and “consequences”, rather than the sociocultural “processes of change”, due to limited time and the confines of my specific focus on the processes and mechanisms of *accountability in practice*.

The documents after the reforms specifically included selected minutes of meetings of the Justice Committee and the Justice Sub-Committee on Policing, HMICS and Audit Scotland inspection and audit reports of Police Scotland and the SPA, official documents by the SPA, Police Scotland and the Scottish Government related to the governance and accountability processes, Police Scotland consultation reports on select issues, reports by CoSLA, SPA and HMICS scrutiny reviews on stop and search and the standing firearms authority, and the governance review led by the SPA chair. Some of these documents raised issues that could be covered during the second phase of the data collection, whilst others served to triangulate the findings from the interviews. In particular, the minutes of the parliamentary committee meetings, and inspection reports by HMICS and Audit Scotland allowed me to compare perceptions and views of those I had interviewed (see below, 6.2.2) with the official institutional narrative given at public meetings and hearings.

Whilst I drew extensively from the minutes of the hearings held by the Justice Sub-Committee on Policing, previous academic research on police governance in Scotland incorporated visits to public meetings of local police boards as part of the data collection process (Etherson, 2013). I did not include a systematic review of the SPA's Public Board Meetings (PBMs) for several reasons. Firstly, and primarily, because of the broad maintenance role that the SPA has as the corporate employer of Police Scotland. A broad range of issues related to the governance and finance of Police Scotland and the SPA are conducted in the PBMs, and it is not specifically a forum for public accountability of police operational policies, which is the focus of my study. As a result, the PBMs can last several hours, this was also raised during my interviews (see below), as one MSP remarked:

“The meetings go on for far too long, I tend to go in and after 5 hours I gave up through boredom and exhaustion” - (Interview: MSP, Lab)

Further, in the first two years (2013 and 2014) PBMs were held in different regions across Scotland. Attending these meetings as an observer would have been time-consuming and costly. Although, all of the meetings were streamed online, and minutes were also available online to be downloaded and viewed at the researcher's convenience, a systematic analysis of these would have generated a large amount of data that would not have been relevant for my specific research focus. It has been argued “research design is an exercise in compromise, whereby the researcher seeks to trade off the strengths and weaknesses of different methods” (Davies and Francis, 2011: 282). Therefore, I remained open to the possibility of *some* relevant data emerging from the PBMs and decided on a trade-off by focusing on the PBMs held specifically to discuss operational policies, issues such as stop and search and the standing firearms authority. I also drew from the minutes of a selection of PBMs held on pertinent issues. These PBMs were identified during the interviews, informal conversations with stakeholders, SPA's own official web site and publications, and through the evidence given at the hearings of the Justice Sub-Committee on Policing. Despite not undertaking a full systematic review of all of the PBMs held by the SPA,

I ensured coverage of a broad range of data emanating from different sources and key institutions embedded in the broader landscape of police governance.

### 6.2.2 - Elite Interviews

A substantial part of the data collection process included semi-structured interviews with a cross-section of actors across the police governance landscape. As part of this phase, I conducted thirteen interviews with individuals representing the key institutions (for a breakdown, see Appendix B). Ten additional interviews were conducted across three local authorities for a separate, funded research project on local governance arrangements (see below, 6.2.3). Some of the data generated from these interviews was used in this PhD to complement existing data, but the bulk of the findings were drawn from the initial round of interviews specifically carried out for this study.

Targeted interviews with a carefully chosen sample of respondents can generate rich, insightful data (Francis, 2011: 25). As my focus was on the SPA, six of those interviewed were from within the organisation including two executive officers of the SPA's Senior Management Group, and four non-executive board members, of whom two had prior experience of the previous arrangements and two had no prior policing or local government background. I also interviewed a former Minister and two opposition MSPs representing the two second largest parties in the Scottish Parliament at the time (prior to the 2016 Scottish Parliamentary elections), two senior officers of Police Scotland, one senior official from HMICS, and a civil servant who played a key role in the lead-up to the reforms. Most of the interviews were conducted between March 2015 and February 2016, one interview was conducted in May 2016 due to availability of the respondent.

The individuals identified for the interviews, represented the elite group of practitioners who were responsible for the implementation, interpretation and operationalisation of the new governance arrangements. During the fieldwork, I found that there was close proximity between the actors representing the various institutions. For a small country like Scotland, this is not uncommon as the policy elite work

collaboratively with practitioners and other researchers have had to tread carefully when identifying key individuals for their research (Morrison, 2012). By examining the organisational structures of Police Scotland and the SPA on their respective web sites, navigating the policing and policy networks (see below, 6.3) and highlighting the key actors during the policy analysis, I deployed a combination of purposive sampling and snowball technique to identify participants. The MSPs were specifically identified through the policy analysis as their statements and engagements demonstrated an interest in policing, and police governance, making them suitable participants.

The interviews lasted between an hour to an hour and a half and were conducted at locations in Edinburgh and Glasgow, convenient to both the researcher and the participants. Along with a list of pre-specified questions tailored for each respondent (Appendix D for a sample interview schedule), participants were also asked about their views, perceptions and experience of dealing with the events that represented crises of accountability (see below, 6.4.5), an approach similar to a Critical Incident Technique (CIT). A CIT is a qualitative interview technique which “facilitates the investigation of significant occurrences (events, incidents, processes, or issues, the way they are managed, and the outcomes in terms of perceived effects” (Chell, 1998: 56). A CIT interview allows the respondents to review and reflect upon a number of key issues and events and focusing on these issues during the interviews allows the respondents to reflect not only on the incidents but the lessons learned. CIT also enables “focused discussion on critical issues as well as facilitating identification of critical issues which are of importance to the respondent” (Chell, 1998: 68). It is to be noted here that Chell (1998) carried out semi-structured interviews, followed by a separate CIT interview for a select group of interviewees. I combined the CIT within the semi-structured interviews as the events that reflected ‘accountability crises’ were already well documented, and in the public domain. Participants were asked explicitly, and through probing, about any other events or incidents, unsurprisingly, due to the sensitive nature of the research, the participants did not raise any incidents which were not already in the public domain. However, some respondents did raise issues that might be construed as politically sensitive, these are discussed in the subsequent findings chapters.

As observed by Morrison (2012: 18-19), politicians were much more open about their views but, as expected, their views were broadly in harmony with their official party line. I found that members of the SPA and officers from Police Scotland, as well as other interviewees were also generally open and supportive of the research, and engaged with the questions in detail. However, interviews tend to result in a “response bias” where respondents’ view represent their specific agendas, or they give responses that the researcher wants to hear (Francis, 2011: 25). I remained alive to this throughout the fieldwork and undertook the analysis with critical reflection. Other sources of data, detailed throughout this section were drawn upon in support of my findings and great care was taken to ensure I was not forwarding a specific agenda. In particular, the public meetings and parliamentary hearings provided an excellent resource to compare what some of my respondents had told me in the interviews and their official narratives in a public forum. Such comparisons have been found beneficial in similar research in terms of triangulating, and corroborating the overall findings (Morrison, 2012; Etherson, 2013).

### 6.2.3 - Partners in Scrutiny – Research on Local Scrutiny Arrangements

In September, 2015, I participated as a co-investigator in a small research project headed by Dr. Alistair Henry and alongside Dr. Andy Aydın-Aitchison. The research was funded by the Scottish Institute for Policing Research and aimed to map the local police scrutiny arrangements across Scotland, and to carry out an in-depth study of the local scrutiny arrangements in three local sites. An Advisory Board consisting of members of the SPA, HMICS, Police Scotland, a local councillor and an independent academic from the University of Edinburgh was formed to support the research team in order to provide comments on the draft proposal and feedback on the finding reports, as well as assisting with access arrangements. The research was carried out between 1 October 2015 and 26 January 2016, with the first briefing paper published in February 2016. I undertook the fieldwork and visited the three sites and carried out ten interviews as part of the study. Participants included convenors of the local scrutiny committees, lead officers of the local scrutiny committees, local Divisional and Area commanders, and a representative of the third sector (Appendix B; also, Henry *et al.*,



2016). All of the participants were given consent forms for this research and additional consent was gained in writing for the data in the form of anonymised quotes to be used in my PhD study. Clearance for the use of the data in both research projects and further scholarly articles was gained through the completion of a University of Edinburgh Law School Level 2 ethical clearance form. The data and findings from this research project (Henry *et al.*, 2016) is referenced appropriately, as published work.

While most of the interview questions were relevant for the partners in scrutiny research project, I tailored some questions specifically for my PhD, focusing on the role of the SPA in police accountability particularly on matters of local concern. This data was treated as my other interviews and anonymised quotes were used where applicable.

### 6.3 - Politics of policing research in Scotland: Negotiating Access and Ethical considerations

*When I arrived in a participants' office, his colleague who I had interviewed moments before was also in attendance, as an observer. Before the interview started, the participant informally reminded me that the topic of my research was "extremely sensitive and political". In response, I assured him (something I had already explained to the participant I had interviewed before) that my research was self-funded and fully independent, I did not represent any political party in Scotland and my interest in the new arrangements was purely academic. (Field notes, March 2015)*

The above excerpt from my field notes is to emphasise that this research took place in a politically sensitive and highly contentious time for Scottish policing that was compounded by an increased media and political interest in the post-reform policing landscape (Terpstra and Fyfe, 2015; Murray and Harkin, 2016; Murray, 2017). In circumstances that may be considered less contentious, "gaining access to an organisation requires skills, patience and perseverance" (Chell, 1998: 57). However, this research was taking place just as Kath Murray's PhD study had exposed Police Scotland's contentious use of stop and search policy (Murray, 2014a) and shortly thereafter the Highlands Council led by the Liberal Democrats were mounting a political challenge against the use of armed officers on routine patrols. Add to this, the

backdrop of austerity following the Christie Commission report (2011) and resistance from several local authorities against centralisation of the police (Chapter 2 and 3) provided for a turbulent first three years for the new policing and police governance arrangements.

Against this backdrop, gaining access to the potential interviewees posed distinct challenges, not least because research of this nature can “uncover unwelcome truths for some groups that are very welcome truths for others” (Hughes, 2011: 309). A previous PhD study into the local police boards also had to navigate through comments like “*a Government research programme that is closely related to matter of political controversy*” (Etherson, 2013: xxxiv). In the following sections, I set out how I negotiated access and the ethical considerations involved in research of this nature.

### 6.3.1 - Networking as a Scribe

An initial request to conduct an institutional ethnography of the SPA was politely refused due to the level of access such an approach would have required, at a time when the SPA’s organisational structure was still developing and the internal and external roles and responsibilities were still under negotiation. I revised the research design to include semi-structured interviews with key members of the SPA, and other stakeholders in the police governance landscape (as above, 6.2.2). Recognising that I would need to get a feel of the landscape, and build trust and rapport with potential participants, my supervisor Dr. Alistair Henry arranged for me to work as a scribe at ThinkTanks organised by the Scottish Institute for Policing Research jointly with the Scottish Police Authority and Police Scotland. The Chatham House rule meetings served as avenues for knowledge exchange, and informed debate between practitioners and researchers on the challenges to Scottish policing. I could not use any of the issues discussed as data for my PhD, however, as a paid scribe my task was to take notes and prepare a report thereafter (see Appendix F for the terms of reference). Crucially, however, I was able to network with attendees, identify potential interview candidates and tell them about my research. I met several participants who I interviewed as part of this study at these ThinkTanks. The first of these ThinkTanks was held in

November, 2014 and the second one in March, 2015 by which time I had sent out the first interview requests.

I wrote to all participants by sending an initial email requesting an interview (see Appendix C for sample interview request letter) and sent a one-page information sheet outlining my research, emphasising that it was an independent academic study. I also attached an interview consent form and reiterated that the research was being conducted in accordance with the ESRC's ethical guidelines with due regard to the anonymity and confidentiality of participants (Appendix E for information sheet and consent form). Despite a sensitive political climate, gaining access to Police Scotland's senior officers proved to be the easiest which is consistent with previous research being conducted on criminal justice policy making in Scotland. Morrison found that the "criminal justice practitioners were the group which were most happy to grant interviews" (2012: 18).

Gaining access to the SPA was a different story altogether. The interview requests to both Police Scotland and the SPA were sent out in January 2015. While I had already received a reply and had my first interview with Police Scotland in the diary, I still awaited a response from the SPA. I finally received a response from one of the executive officers of the SPA in March 2015, and after an initial meeting over a coffee where I explained my research to her in detail reiterating that this was an independent academic study, she agreed to an interview. Following this, I was able to interview other executive and non-executive board members of the SPA as and when they became available. Access to other interviewees was much more straightforward and I promptly received a reply with a suggested date for a meeting.

Throughout my fieldwork and during the write-up, I regularly attended events organised by SIPR, and continued working as a scribe at Executive Sessions, established Chatham House rule meetings similar to the earlier ThinkTanks. At these events, I would often meet participants who I had interviewed or spoken to informally about my research, they would ask about my progress and offer their perceptions and views about ongoing developments, which signified the degree of trust they held in

me. SIPR's platform proved to be extremely helpful for me to navigate the policing policy circle and to build trust and rapport during a tumultuous and politically challenging time for both Police Scotland and the SPA.

### 6.3.2 - Research Ethics

Prior to the fieldwork and attending the ThinkTanks, University of Edinburgh School of Law level 2 ethical clearance was obtained. All interview participants were given an information sheet and informed consent was obtained via a consent form before the interviews (Appendix E). While all interviews were conducted after a degree of anonymity and confidentiality was assured, it is to be noted that in a small country like Scotland, most actors involved in policy making know each other (Morrison, 2012). This has also been recognised by those involved in policing research; "to those outside the police world... relationships may appear just too cosy and almost incestuous at times" (Scott and Wilkie, 2001: 64). It was often the case, particularly with the SPA that some members knew that I had interviewed their colleagues but I did not reveal any participant's identity. I assured all interviewees that their details will be kept confidential and the data will be used as anonymised quotes. However, as Morrison (2012: 19) has noted that despite all reasonable steps to ensure anonymity, sometimes job roles and titles can make it fairly obvious who the participants might be. This was clearly explained to each interviewee. Some participants would ask me to pause the voice recorder during the interview if they wanted to raise a sensitive issue 'off the record', to which I would promptly agree. The transcripts of recorded interviews were kept in password protected folders and no one had access to any of the interview data.

The issue of confidentiality and anonymity was particularly pertinent in the context of a highly sensitive topic of this nature. In the case of the non-executive board members of the SPA, it was evident that they were particularly concerned about negative publicity and possible reputational damage both to the organisation and to themselves. Some participants expressed that any politically contentious comments about the current arrangements, if attributed to them, could have negative consequences. Yet some participants spoke about some very sensitive issues freely both on and off the record. I had to be mindful that these were just their perceptions and the story that

they wanted me to hear. I treated the data with a degree of critical reflection but in such a politically contentious climate it is often difficult to separate facts from perceptions, as I explained above, other sources of information proved useful for further corroboration or identifying contradictions in narratives. In cases where respondents were not forthcoming, appeared cagey or focused too much on a single issue, I had to continue to “establish rapport, trust and an open exchange through sensitive probing” to ensure understanding and to prevent the interview from becoming a “monologue” (Chell, 1998: 70). I ensured no one else had access to sensitive data and that names of individuals were not published or revealed. All quotes were anonymised and only non-specific job titles were used for attribution.

I now outline the rationale and a justification for my chosen analytical approach and methodology.

#### **6.4 - Analytical Approach and Methodology: Qualitative research**

Following Yang (2014: 161), I concur that qualitative methods are most conducive to “tracking and mapping the changes and dynamics across time” when studying emergent processes of accountability. I adopted a qualitative approach due to the paucity of information available about the SPA and how the new arrangements were being negotiated in practice. Yang (2014) mounts a defence of qualitative research on accountability in public administration and his argument rests on five reasons, these are taken in turn below and considered in relation to my research strategy.

##### **6.4.1 - Understanding Accountability**

*Firstly*, Yang (2014: 161) argues that accountability is “ill-defined and not well understood”. As set out in Chapter 4, ‘governance’ and ‘accountability’ are deployed interchangeably in police ‘governance’ literature. The 2012 Act does not define accountability, nor does it specify how the SPA should deliver it. Yang’s defence of qualitative research is on the basis that through qualitative inquiry, the meaning of accountability can be understood and conceptualised following inductive methods. However, having a pre-determined framework setting out what accountability means from the outset, allowed me to undertake a more deductive approach to analysis (see below, 6.5) As the focus of my research is on police organisational accountability, as

opposed to financial accountability, or individual accountability to law, the reasons for which have been explored elsewhere (Chapter 2 and 3), a focused definition of accountability as a *mechanism* (Chapter 4) allowed for a deeper exploration of the ‘how’ question, and an assessment of the actual processes and mechanisms of accountability, in relation to the underlying problems of police governance. Rather than engaging in circular conversations about what accountability means, the focus of my research remained on exploring and understanding the processes and mechanisms of organisational accountability, which was made possible through qualitative inquiry.

#### 6.4.2 - Accountability in practice

*Secondly*, accountability structures and processes are “constantly changing and shifting as actors act and interact” (2014: 161). Yang argues:

“Sometimes the changing accountability relationship reflects a cat and mouse game between principals and agents. When the principal designs an accountability system, the agent does not simply comply but learns how to game it. Observing the agent’s gaming, the principal will revise the system, leading to further gaming. Thus, understanding an accountability system requires one to track the mutual adaptation process.” (2014:161)

The problems and the shortcomings of the previous tripartite governance arrangements are well-documented in the literature (also, Chapter 2 and 3). The new governance arrangements, particularly a single police service and a centralised oversight body represent a paradigm shift. Developing Yang’s reference to gaming, in the context of the new governance arrangements, not only the rules of the game have changed, the playing field has shifted from local government structures to a centralised arena. There are new actors too, albeit a number of individuals in the SPA and Police Scotland hierarchy had extensive experience of the previous arrangements.

Recent studies have highlighted unintended consequences arising from implementation gaps following a new policy, and it is often the case that the subsequent structures do not mirror intended policy (Souhami, 2014; Terpstra and Fyfe, 2015). In the context of the 2012 Act, the new governance arrangements were unsettled and untested, with very little academic coverage. Notable exceptions were

the early analyses of the 2012 Act by policing scholars Fyfe and Henry (2012) and Scott (2013a,2013b). Understanding how the powers and policies set out in the 2012 Act translated into actual practice, required a qualitative approach. Further, in a network governance approach, lines of responsibility are blurred. With several non-hierarchical actors, placed on a horizontal spectrum, as in the post-2012 police governance landscape, it is difficult to ascertain the power relations, which can be “complex and uncertain” (Yang, 2012: 256), particularly in terms of who is responsible, and in turn, accountable for what. In regards to the previous tripartite arrangements, it was argued that

“the real power in Scottish policing is probably revealed where those elements in the tripartite system interact. How the system actually works, as opposed to what the constitutional formalities say, is the crucial - and unseen - factor” (Scott and Wilkie, 2001: 58).

Therefore, a qualitative approach was necessary to understand the emerging processes of accountability and how the SPA’s legislative functions were interpreted and operationalised.

#### 6.4.3 - Accessing Perceptions

*Thirdly*, Yang argues that: “while accountability is sometimes understood as a virtue or an institutional arrangement, its manifestation or implementation cannot be separated from actors’ values, perceptions, interpretations, and strategic responses.” (2014: 162)

Despite the scarcity of academic scholarship on the new institutional arrangements, the nature and scale of the reforms meant that most of the information was available in the form of official policy documents, consultation reports, minutes from public meetings, and the 2012 Act itself. The process of reform had also garnered considerable interest from local and central politicians, and received extensive coverage in the Scottish press. All of these sources of information contributed to the data collection (as above, 6.2). However, accessing the perceptions of those involved in the reform process and the new governance arrangements was a crucial factor in my analytical approach. Amidst all the political and media attention on the reforms and

the “heating up of policing discourse” (Murray and Harkin, 2016: 2), those were the silent voices that I wanted to give a voice to. It was particularly important to understand how the practitioners themselves perceived their respective roles and responsibilities, and the challenges and obstacles they faced.

Whilst the focus of my research is on the practical processes and mechanisms of accountability, it was important to get a sense of the rationale behind the reforms, other research on criminal justice policy-making in Scotland followed a similar qualitative approach (Morrison, 2012). A qualitative approach, and elite interviews allowed me to access the perceptions of those involved in the new governance arrangements and ask them about their views specifically regarding the perennial problems of police governance. For instance, the notion of operational independence of the chief constable has been repeatedly identified by police governance literature as one of the perennial problems of police governance (Chapter 2). The status of this notion in constitutional law has received thorough attention in some of the most seminal contributions on police governance (such as Lustgarten, 1986; Walker, 2000). Much of the earlier writings on this issue have either focused on the constitutional law perspective, or the perspective of the chief constables. It was crucial for this research to capture the perceptions of, not only the senior police officers of Police Scotland, but also the wider network of stakeholders involved in police governance, specifically the members of the SPA about how *they* perceived the notion of operational independence (see, Chapter 7)

#### 6.4.4 - Accessing Elite networks

*Fourthly*, Yang argues that “accountability information is often sensitive and can only be collected from individuals or groups that have a special role in society such as public figures and leading professionals who are directly involved in accountability relationships” (Yang, 2014: 162). Accessing this information requires access to those individuals and professionals involved in accountability relationships, and a degree of trust (see above, 6.3), which cannot be achieved through quantitative methods.



Before the 2012 Act, there were eight local police forces and as many local police boards, however, the reforms have led to a convergence of those making policing policy, and holding the police to account into small elite networks such the corporate executive of Police Scotland, and the executive officers and non-executive board members of the SPA. Those who introduced the reforms, i.e. MSPS, and Civil Servants also represent already established policy elite (Morrison, 2012). The questions that my research poses required access to information that only these elite actors possessed.

#### 6.4.5 - Identifying crises of accountability

*Finally*, “insights about accountability are often gained from accountability crises, which are special and naturally occurring events that usually cannot be replicated” (Yang, 2014: 162). Yang’s final point about accountability crises was helpful in determining the analytical strategy for this research. It has been argued that “like riding a bike, policing is the sort of activity that is thought about mainly when the wheel comes off. When things are running smoothly it tends to be a socially invisible, undiscussed routine” (Reiner, 2000: 9). As the post-2012 Act arrangements came into effect, a catalogue of incidents and scandals marred the first two years of Police Scotland and the SPA. The revelations of excessive use of non-statutory stop and search powers against minors (Murray, 2014a, 2014b) and the deployment of armed officers on routine patrols in the Northern areas of Scotland (Henry *et al.*, 2016) signified those crises of accountability that Yang (2014) alluded to.

Both of these issues also served to justify my focus on organisational accountability. As the later analysis will show, despite complying with legal obligations, both operational policies were deeply controversial and contentious, and reminiscent of the state of affairs that the tripartite arrangements were often criticised for. Other ‘crises’ of accountability also emerged during the study particularly around the decisions made centrally by Police Scotland that had negative consequences for the local communities such as the withdrawal of traffic wardens support and the raids on sex-for-sale saunas in Edinburgh (see Chapter 7). These ‘crises’ put the spotlight firmly on the role of the SPA. The timing of my fieldwork coincided with these events, as they were unravelling, and my data collection and analysis, therefore, took these events into

account as case studies to assess the SPA’s approach to police governance and accountability.

All of the above arguments posed by Yang (2014), provide a strong justification for qualitative inquiry in the study of accountability and, as I have argued above, fit in well with the aims of my research. Below, I outline my specific approach to data analysis.

### 6.5 - Analysis

I conducted thematic analysis and used qualitative analysis software to aid the process. In thematic analysis, it is often the case that a researcher makes conscious *decisions* to ensure the “theoretical framework and methods match what the researcher wants to know” (Braun and Clarke, 2006: 80). The initial literature review identified key themes in the police governance literature, - i.e. operational independence and the tensions between the local and the central (Chapter 2). These two themes were cast as ‘perennial’ problems and as argued above (6.1) contributed to ‘the research problem’. These two trends became key themes for the entire analytical process. Whilst it has been argued that “the keyness of the themes is not necessarily dependent on quantifiable measures” (Braun and Clarke, 2006: 82), these two themes were prevalent in all of the studies on police governance in Britain. (For instance, Marshall, 1965; Lustgarten, 1986; Reiner and Spencer, 1993; Walker, 2000; Donnelly and Scott, 2002a,2002b; Jones, 2008; Scott, 2011; Reiner, 2010, 2013).

A qualitative data analysis software NVivo was used to organise these two themes, along with others that emerged through the literature review (see fig. 6.1).

○ Trends in Police governance literature	0	0
○ 1. Constabulary-Operational Independence	9	20
○ 2. Professional Expertise	4	15
○ 3. Weaknesses in democratic governance	5	13
○ 4. Imbalance of Power between local and central	7	12
○ 5. Information Flow	2	2

**Figure 6.1 - Themes identified during the literature review**

In fig. 6.1, the numbers in the last two columns represent prevalence in sources, and the number of times each theme was mentioned, however, NVivo was not used solely as a method for thematic analysis. As Gibbs has noted “a major function of the software is to help *organize* the analysis” (2013:277, emphasis my own). Whilst I used NVivo to organise electronic sources such as journal articles and policy documents, I used other more traditional methods of thematic analysis in conjunction with NVivo, such as manual labelling, and coding. Due to the pre-identified themes and trends, and the specific focus of this study on police organisational accountability (see above, 6.4), a deductive approach to analysis was my primary *modus operandi*. Braun and Clarke have argued that “researchers cannot free themselves of their theoretical and epistemological commitments, and data are not coded in an epistemological vacuum”, however, this may produce analysis that is “less a rich description of the data” but a more “detailed analysis of some aspect of the data” (2006: 84).

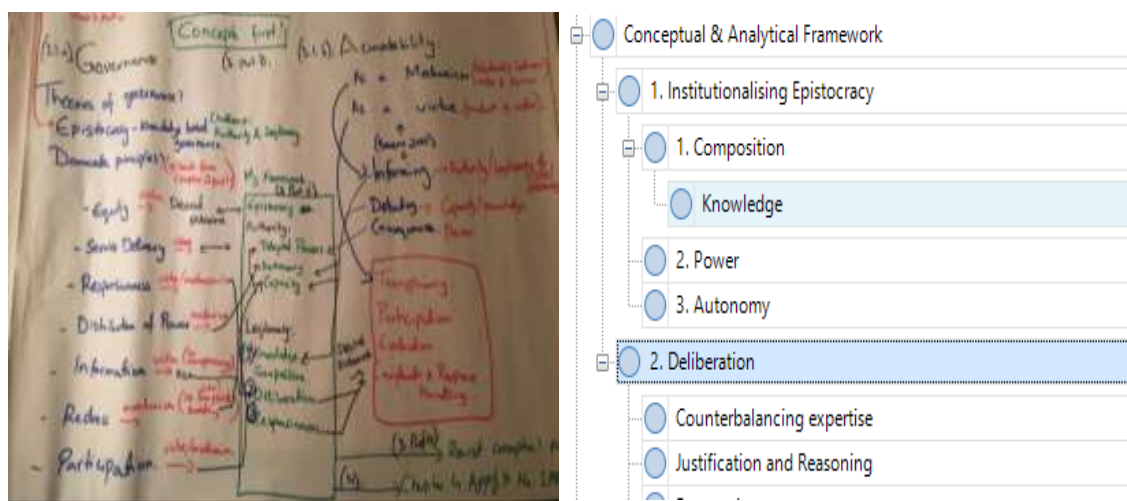
All interviews were fully transcribed and the quotes most relevant to the pre-defined themes were coded as such. However, during this stage of the analysis, the demarcation between ‘deductive’ and ‘inductive’ analysis became blurred. Some new themes became prevalent during the analysis, that did not fit into the existing pre-defined themes. For instance, in fig. 6.2 below, whilst ‘operational independence’ and ‘local v central tensions’ were pre-defined themes, other more specific themes emerged such as ‘Ministerial Involvement’ and ‘Turf Wars’. These were often raised explicitly by the interviewees.

● Trends in Police governance (identified by the interviewees)		0	0
● 1. Operational Independence		7	24
● 2. Police Professional Expertise		8	21
● 3. Local v Central tensions		7	19
● 4. Information flow		7	18
● 5. Ministerial Involvement		3	15
● 6. Public Confidence, Legitimacy		7	12
● 7. Turf Wars		5	12
● 8. Balance between democratic governance and independent expertise		7	10
● 9. Partisanship		3	5
● 10. Powers of Sanction		3	4

**Figure 6.2 - Themes identified by the interviewees**

In order to ensure that these key themes were not just the perceptions of my interviewees, I drew on other data such as policy documents and official sources such as Audit Scotland’s inspection reports. This ensured greater validity as I was able to corroborate what my interviewees were saying with the discourses at the time.

The development of the conceptual and analytical framework outlined in Chapter 5, was also fluid and iterative and took place over a period of time. The initial themes for the key characteristics of the proposed epistocratic arrangement were drawn from the literature as I argued in Chapter 5 (5.4), however, the ongoing analysis of the interviews helped mould and shape the framework (see fig. 6.3 below).



**Figure 6.3 - Left: Development stages of the conceptual and analytical framework, Right: NVivo screenshot of the developed version of the framework**

The issue of ‘Ministerial Involvement’ for instance, was raised by several interviewees particularly from the SPA (discussed in Chapter 8), this helped consolidate and confirm ‘*Autonomy*’ as a key characteristic for the proposed framework, which had already emerged from the notion of ‘distribution of power’ as a key principle of democratic governance (Chapter 5, 5.1). Similarly, during my interviews and the ongoing analysis of the SPA, it became clear that deliberative principles had become implicit in the SPA’s approach to police governance and accountability (Chapter 9), confirming and consolidating the pre-defined characteristic of ‘*Deliberation*’ in the framework.

Inherently, the conceptual framework for an ‘epistocratic and deliberative’ approach to police governance outlined in Chapter 5, is inspired by the vision and the conceptual model of the SPA. In conceptual terms, the framework has a strong theoretical foundation and may be adapted and applied in different contexts. However, in the context of police governance and accountability, the analysis of the SPA provides a strong empirical basis for the framework.

#### 6.5.1 - Presentation of the findings

Whilst the analysis was iterative, the findings will be presented in two structured ways. Firstly, I will present my findings on how the SPA tackled the perennial problems of police governance (outlined in Chapter 2) in its formative years, addressing the primary research question - i.e. *to what extent, if at all, has the SPA resolved, or exacerbated, the perennial problems of police governance?* These findings will be presented in Chapter 7. In particular, the analysis will focus on:

Operational Independence:

- *Did the manifestation of this doctrine result in tensions and weak accountability mechanisms, in the formative years of the SPA?*
- *What is the status of the notion of operational independence in the post-2012 governance landscape?*

Local versus central:

- *Has the SPA emerged as an intermediary between the local and the central by sufficiently balancing competing interests?*

Further, in Chapters 8-9, the analysis will provide an evaluative analysis of the SPA’s *Composition, Power, Autonomy* and examine the ways in which principles of *Deliberation* were manifest in its approach to delivering police accountability. Finally, I will focus on the more forward looking analysis of the SPA and examine if an ‘epistocratic and deliberative’ approach to police governance has the potential to

resolve the perennial problems of police governance. Specifically, as noted in Chapter 5 (5.5), the findings will focus on these specific questions:

Composition:

- *Does the SPA's composition reflect epistocratic credentials?*
- *If so, what knowledge, competencies and skills are reflected in its composition?*
- *Is the knowledge composition of the SPA sufficient for the purposes of police governance?*
- *Does the composition of the SPA reflect a broad demography?*

Power:

- *Has the SPA been able to implement its statutory powers into effective mechanisms of police governance and accountability?*
- *Does the SPA have sufficient influence to fulfil its functions to deliver police organisational accountability?*
- *Does the SPA have sufficient resources to carry out its statutory functions?*

Autonomy:

- *Is the SPA sufficiently independent of the Scottish Ministers, Police Scotland, and local government?*
- *Are the members able to fulfil their statutory functions without interference?*

Deliberation:

- *Are deliberative principles manifest in the SPA's approach to proactive scrutiny and retrospective accountability?*
- *Have deliberative principles resulted in better provision of information from the police?*



## **PART IV - FINDINGS**

### **Chapter 7 - The Scottish Police Authority and the perennial problems of police governance**

This chapter deals with the primary research aims. The first section (7.1) provides an overview of the SPA's organisational structure and analyses its initial approach to delivering police organisational accountability. Whilst the 2012 Act provided a legislative framework for the new governance arrangements, it did not prescribe how those powers should be implemented in practice. Instead the implementation of the new arrangements was left to negotiated agreement between the new stakeholders. As I argued in Chapter 3, the official reform agenda focused on strengthening financial accountability and national governance. Consequently, the perennial problems of police governance, i.e. the operational independence doctrine, and the tussle between the local and the central, were left unresolved. In section 7.2, I argue that these perennial problems that rendered the tripartite governance arrangements weak and ineffective (Chapter 2), manifested in the most abrasive fashion following the 2012 Act. A series of scandals and high profile cases highlighted shortcomings in the new governance arrangements. By drawing on the perceptions of stakeholders (see Chapter 6, 6.2.2 - *Elite Interviews*), I examine how these problems manifested at a time when the SPA was developing as an organisation, contributing to the SPA's inability to deliver effective mechanisms of police accountability in its formative years.

#### **7.1 - Demystifying the SPA's role in police accountability**

When the reforms came into effect, the SPA was a new organisation with very little public facing information about how it would carry out its role. Consequently, the first research aim was underpinned by the 'how' question, and this section deals with it explicitly by outlining the SPA's organisational structure, formal powers, and an analysis of how its powers of police accountability were initially developed and implemented into practice.



### 7.1.1 - Organisational structure

The SPA comprises of non-executive board members, including a Chair, with overall responsibilities of governance of the SPA, and Police Scotland. The board members are supported by executive officers, a full-time Senior Management Group (SMG), responsible for the day-to-day running of the SPA. When the SPA came into effect on the 01<sup>st</sup> of April 2013, it had thirteen non-executive board members, and it was led by the former Chair Vic Emery. The SMG comprised of executive officers in key roles that include a Chief Executive Officer, Director of Communications, Director of Forensic Services, Director of Financial Accountability, Director of Strategy and Performance, and a Director of Governance and Assurance.

The chair of the SPA is responsible for the organisation, and forms a link between other non-executive board members and the Scottish Ministers, and may be called to account by the Scottish Parliament (The Scottish Government, 2014: para. 11-12). The Chief Executive Officer is the designated ‘Accountable Officer’<sup>27</sup>, answerable to the Scottish Parliament for the organisational functioning of the SPA, including all matters related to financial management, regularity, and expenditure (The Scottish Government, 2014: para. 15). Whilst the financing of the previous local police forces was shared between central and local government (Chapter 2 and 3), under the new arrangements, the SPA has responsibility for the entire budget of Police Scotland. When both organisations came into effect, the SPA was allocated £1.1 billion for annual spending, and it was financially responsible for 24,000 people, including 17,496 police officers (Audit Scotland, 2013: 5). By the end of the reporting period 2015/16, 97 per cent of the SPA’s budgets were spent on policing, 2.3 per cent on forensics, and 0.4 per cent on the SPA’s own maintenance (SPA, 2016a). In effect, the SPA is the legal employer of all civilian and police staff of Police Scotland, however, while it can appoint the civilian staff, the recruitment of police constables is under the scope of the chief constable’s powers of direction and control of the police organisation. The SPA does have formal powers to appoint senior officers of rank

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<sup>27</sup> The role and function of an Accountable Officer is established in the Public Finance and Accountability (Scotland) Act 2000.

assistant chief constable or above, or senior civil staff for Police Scotland's Senior Executive Team, in consultation with the chief constable.

The purpose for this overview above is to highlight the complexity of the governance arrangements introduced by the 2012 Act. Whilst the SPA is the formal employer of Police Scotland, they are effectively two different organisations, with their own chains of command and management structures. Whilst an employer-employee relationship exists in formal legal terms, in practice the relationship dynamic between the two organisations is anything but hierarchical. In addition, whilst the SPA has financial leverage over Police Scotland, its own corporate resources are a fraction of the second largest police force in Britain. The impact of these issues on the SPA's own capacity, power and autonomy is examined in greater detail in Chapter 8. But the complexities of the new governance arrangements become even more pronounced when considering the ambiguities in the legislative framework (also, see Chapter 3, 3.4), particularly in relation to the SPA's role in managing and delivering organisational accountability, as explained below.

#### 7.1.2 - The Legal Ambiguities

As I argued at length in Chapter 3 (see 3.4), whilst the reform agenda focused on enhancing national governance, and financial accountability, there was a distinct lack of focus on enhancing the organisational accountability mechanisms. This omission became apparent in the ambiguities in the 2012 legislative framework. The only explicit reference to 'accountability' in the 2012 Act is framed as a duty on the SPA to 'hold the chief constable to account for the policing of Scotland' (see Box 7.1).

### Functions of the SPA

(1) The Authority's main functions are—

- (a) to maintain the Police Service,
- (b) to promote the policing principles set out in section 32,
- (c) to promote and support continuous improvement in the policing of Scotland,
- (d) to keep under review the policing of Scotland,
- (e) to hold the chief constable to account for the policing of Scotland (including, in particular, the chief constable's carrying out of the duties imposed by or mentioned in section 17).

#### **Box 7.1 - Section 2(1) of the Police and Fire Reform (Scotland) Act 2012**

There was no accompanying guidance or a public facing policy white paper outlining how the SPA would manage and deliver accountability, and much of it was largely left to negotiated agreement. This appears to be a conscious decision on part of the reform team:

“we didn't want to prescribe too much ... you've got to set out that [legislative] framework in sufficient levels of detail but without being too prescriptive ... it would be about the practice of that” – (Interview: Civil Servant)

In addition to leaving the interpretation of the Act open to negotiation between the stakeholders, it appears that the wording of the 2012 Act was also left broad,

“The maintenance of the police force, and all that, that statutory language I think it's pretty much the same as before, in relation to police governance responsibilities” – (Interview: Civil Servant)

In replicating the language of the Police (Scotland) Act 1967 in key areas related to police governance and accountability, the 2012 Act has also repeated the vagueness and ambiguities associated with the patchy governance arrangements that preceded it (Chapter 2 and 3). The 2012 Act, much like its predecessor, is decidedly vague and unclear about how the SPA's powers could translate into actual processes and mechanisms of accountability. An opposition MSP indicated that the ambiguities in the legislation were identified when the Bill was being discussed in the Parliament:

“I think the governance is weak, we argued from the outset that there were shortcomings in the Bill that would lead to problems, we didn’t realise the scale of the problems but have always been very concerned about the governance, about the relationship between the government, the chief constable and the board [the SPA] and also the lack of accountability locally” - (Interview: MSP, LibDem).

The above quote by a Liberal Democrat MSP, notwithstanding the fact that the Scottish Liberals vigorously opposed the centralisation of the police (see for instance, Scottish Liberal Democrats Manifesto, 2011: 72), highlights several key strands such as weak structures of governance and accountability and a lack of clarity in terms of how the ‘new’ tripartite relationship would play out in practice. These issues are discussed in-depth below (section 7.2), and throughout the findings chapters (for instance, see Chapter 8, 8.2 - *Power*). However, I first outline below how, despite the legal ambiguities, the SPA developed its own accountability role after it came into effect.

#### 7.1.3 - Accountability Structures

When it came to the implementation of accountability mechanisms and processes, the SPA framed its initial approach to accountability in terms of ‘scrutiny’ and agreed on a three-pronged approach at a board meeting in June, 2013 (SPA, 2013a) which was consolidated in a later document (Whyte, 2013). Drawing on the definition of scrutiny by the Centre for Public Scrutiny, the accountability function of the SPA was framed as ‘a critical friend’ in the policy making stage (further explored in Chapter 9), and the ‘holding to account against stated aims’ in the more formal public accountability stage (Whyte, 2013: 23). In practice, the SPA agreed that its accountability processes would be implemented in three ways:

- a) **Scrutiny Discussion:** Important points would be added as a standing item on the agenda and discussed at a private or a public meeting, depending on the sensitivity surrounding the issue. Any information regarding the topic would be requested from Police Scotland, and other stakeholders and the non-executive members of the SPA will be able to ask questions, any action points for the police to take forward would be noted in the minutes.

- b) **Scrutiny Inquiry:** Between two or three non-executive members would conduct an inquiry on a specific matter of concern. Members may be able to consult with a cross-section of stakeholders and produce the findings within the agreed timescale in front of the whole SPA board for discussion.
- c) **Scrutiny Review:** A brief, more specific review into any matter of concern can be conducted by a short-term working group. The group can consult or seek advice from external stakeholders, and a final report is submitted to the board and other stakeholders.

(SPA, 2013a: para.6).

In light of the above, the public accountability of policing is managed by the SPA through **scrutiny discussions** that take place at the Public Board Meetings (PBMs). Similar to the proceedings at the previous local police boards, a performance report is published on behalf of the chief constable, which is then scrutinised by the non-executive board members. The Chief Constable is required to attend the PBMs, along with the relevant senior officers of the senior executive team, and answer questions on pertinent issues, as well as apprising members of the SPA of any significant events since the last PBM. The frequency of the PBMs is varied, in 2013, 14 meetings were held across Scotland, whereas 9 meetings were held in 2014 and 8 meetings were held in 2015, including a ‘Special Board Meeting’ on Stop and Search. When the SPA came into effect, the PBMs were assisted by four working committees focusing on the different work streams identified by the SPA board. Between April 2013 and March 2016, the committees were Audit and Risk Committee, Complaints and Conduct Committee, HR and Remuneration Committee, and Finance and Investment Committee. All committees were composed of non-executive board members, and were open to the public with issues of a sensitive nature discussed in private. However, following the governance review in 2016, the complaints and conduct committee was discontinued and it was decided that the committees should be designated as “working

committees” rather than “decision-making committees” and it was recommended that these meetings be held in private<sup>28</sup> (Flanagan, 2016: 30).

In addition to the PBMs, the SPA has carried out a **Scrutiny Inquiry** into armed policing (2015) and a **Scrutiny Review** on Stop and Search (2014). Both matters are discussed in detail below (see, 7.2.1). In addition to the three formal scrutiny stages, there are continuous informal, private meetings between executive officers of the SPA and senior officers from Police Scotland and other stakeholders such as HMICS, and civil servants, pointing towards a more deliberative style of proactive scrutiny as the new governance arrangements have continued to develop and evolve in the last three years (see Chapter 9).

Despite the legal ambiguities, the SPA’s initial efforts in establishing mechanisms of police organisational accountability reflected considerable scope for proactive scrutiny, as well as retrospective public accountability. However, during the three years since its inception, there was a consistent view across the Scottish political landscape that the SPA had failed in its duties to implement effective mechanisms and processes of police accountability (CoSLA, 2014: paras. 24-25; Justice Sub-Committee, 2016: 5, paras. 18-19). The political opponents of the SNP Government had no qualms in expressing that the SPA had failed in its governance role, and did not deliver any meaningful accountability:

“There was such a gap in accountability that the parliament moved to set up the Sub-committee within a year of the police [reforms] we had set up, we felt that there was so little accountability that the parliament itself had to actually take steps and we constituted the policing sub-committee which is a cross party group. It doesn’t carry a government majority interest, we made a point of setting it up in a way that it was hoped that we would operate in a non-political way but in a very serious scrutiny role and I think it has served that role quite well. And I think it has

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<sup>28</sup> This decision has caused considerable controversy for the SPA recently. One non-executive board member resigned after raising concerns around transparency at a PBM on 15<sup>th</sup> December, 2016. The matter was discussed by the Scottish Parliament’s Public Audit and Post-legislative Scrutiny Committee on the 2<sup>nd</sup> March, 2017 and concerns have been raised by HM Chief Inspector for Constabulary in Scotland in a letter addressed to the Chair of the SPA. At a PBM on the 22<sup>nd</sup> of March 2017, the SPA board agreed to keep the matter under review.

highlighted the shortcomings of the SPA, because each and everything that we actually brought the police to account on, the SPA hadn't considered"  
- (Interview: MSP, LibDem).

"...oversight is absent at local level and there is no direction which delivers national accountability for the executive, no genuine governance... they [the SPA] knew what the issues were but they failed to take responsibility seriously, and to ask the difficult questions, and to stand up and be counted"  
- (Interview: MSP, Lab).

The consensus among some of the most prominent policing scholars, and politicians from all sides of the political spectrum in Scotland was that the SPA was failing in its statutory duties to hold the chief constable to account (Murray, 2015a; Pearson, 2015). Critics of the SPA labelled it a "toothless" organisation (McDonald, Daily Record, 2015), a term that had been routinely employed in the past to describe the local police authorities (Chapter 2), and a former leader of the SNP called for the abolition of the SPA (Sanderson, Herald Scotland, 2015).

The perception that the SPA's processes and mechanisms of accountability were inadequate prevailed because of a series of high profile scandals and controversies, or to use Yang's (2014) term, 'crises of accountability' within the first two years of the reforms. The perennial problems of police governance, that existed prior to the new governance arrangements, were exacerbated following the 2012 Act. There were clear indications that at least in its formative years, the SPA had not been able to resolve the underlying problems of police governance.

## 7.2 - The perennial problems revisited

I argued in Chapter 2 that organisational accountability mechanisms during the previous tripartite governance arrangements were weak and ineffective due to the perennial problems of police governance, i.e. the operational independence doctrine and the perpetual tussle between local and central government for control over the police. These problems were predicated in the inherent ambiguities in the previous legislative framework that formalised tripartism (Chapter 2). The police reform agenda

and the subsequent 2012 legislative framework, did not address these concerns (Chapter 3, also see above). Consequently, the perennial problems of police governance manifested more profoundly following the 2012 Act. Several highly contentious operational policies, outlined below, indicated an apparent intent of the then Police Scotland's senior executive team to maintain, and at times vigorously defend the sanctity of, the operational independence doctrine. Further, whilst the SPA had an overall legislative duty to hold the Chief Constable to account, the duties of local scrutiny were delegated to the local authorities. This separation of roles and responsibilities created two complex tripartite relationships. Firstly, between the SPA, Police Scotland and the Scottish Government (discussed in Chapter 8), and secondly between the Local Scrutiny Committees, Police Scotland and the SPA (discussed below, 7.2.2). The manifestation of these unresolved problems, following the 2012 Act, marked a turbulent first three years of the SPA and Police Scotland, as both organisations became subject of heightened political and media interest, and controversy (Murray, 2015a; Murray and Harkin, 2016; Lennon and Murray, 2016). The analysis of the SPA, in relation to the conceptual and analytical framework outlined in Chapter 5, will delve deeper into the reasons for the SPA's own shortcomings (Chapter 8), and examine the recent developments that indicate a more positive turn towards a potential resolution of these problems (Chapter 9). The following sections give an overview of the incidents and scandals that caused the crises of accountability, followed by the perceptions of my interviewees in relation to the perennial problems in the post-2012 police governance landscape.

#### 7.2.1 - Operational Independence

In the lead-up to the reforms, the issue of operational independence was not raised in the official policy circles, except by HMICS (Laing and Fossey, 2011), as one that needed resolving (Chapter 3) despite the extensive coverage this notion has received in police governance and accountability literature in Britain (Marshall, 1965; Lustgarten, 1986; Walker, 2000; Donnelly and Scott, 2002a; Jones, 2008; Scott, 2011; Reiner, 2013). As recently as 2011, the general wisdom in the Scottish policing landscape held that "decision-making in operational policing" was "the preserve of the chief constable alone" (Scott, 2011: 123). After the 2012 Act had passed through the



Parliament, but prior to the reforms taking effect, the matter was picked up in the Justice Committee hearing on the 27<sup>th</sup> November 2012. To which, the previous Inspector of HMICS, Andrew Laing replied as such:

We are back in the muddy territory where we have always been in that regard. Members might recall that in the run-up to the 2012 act, I made a strong plea that we get a clear – or as clear as possible – determination about what I called operational independence and what John McNeill said was operational responsibility. The 2012 act has not covered that grey area, so it still exists (Andrew Laing, former HMICS, Justice Committee Hearing, 27<sup>th</sup> November, 2012: 2114)

The conceptual and legal ambiguities aside, the practical implication of leaving this notion undefined, and unresolved, became evident in the most abrasive manner once the single force became operational. On the 01<sup>st</sup> of April 2013, the then Chief Constable Sir Stephen House issued a Standing Firearms Authority to deploy armed officers attached to Armed Response Vehicles (ARVs) on routine patrols throughout Scotland. The presence of armed officers on routine patrols in Northern areas of Scotland, with traditionally low levels of crime, caused unprecedented levels of political controversy and extensive coverage in the local and national media (see for instance, Daily Record, 2014). The policy became operational without prior consultation with the SPA (Justice Sub-Committee, 2014: 481-482), or the local authorities of the areas affected. After intense media scrutiny, the senior officers within Police Scotland vehemently defended the Chief Constable's independence over operational decision making (Livingstone, 2014). The former Cabinet Secretary for Justice, Kenny MacAskill, responsible for the reforms, also defended the notion in the Scottish Parliament:

“The decision where and when to deploy resources has always been an operational matter for the chief constable, who has the power to make decisions about the necessary and proportionate use of firearms. That position has not changed with the introduction of a single force” - (Kenny MacAskill, Meeting of the Parliament, 20 May, 2014).

Similarly, Murray's research into the use of stop and search powers in Scotland (2014a, 2015a) also highlighted excessive use of non-statutory<sup>29</sup> stop and search. The target-driven culture instilled from the top signified how closely police operational policy is related to policing style and tactics, matters that would nominally be considered as 'operational'. Police Scotland's policy on stop and search had its roots in the previous Strathclyde Police force, led by the same chief constable, Sir Stephen House, and it was argued by observers that this represented a 'Strathclydisation' of policing culture in Scotland (Scott, 2014; Terpstra and Fyfe, 2015). The practical implications of this approach meant that the rates of stop and search in Scotland were four times higher than in England and Wales, and disproportionately targeted young children (Murray, 2014b: 3-4). Whilst the bulk of the data looked at the stop and search rates before the reforms, Murray's research showed that the use of non-statutory stop and search had increased markedly under the newly centralised Police Scotland (2014a: 3). The use of stop and search powers, and how it was operationalised and exercised, was also identified as an issue within the operational domain of the chief constable and the policy was defended initially by Police Scotland and the Scottish Government (Hutcheon, 2015). However, continued pressure, mostly arising from academics, the media and politicians led to an independent review (Scott, 2015), a subsequent change in legislation, and the abolishment of non-statutory stop and search powers (Murray and Harkin, 2016: 1-2).

The unresolved doctrine of operational independence cast serious doubts over the ability of the SPA to deliver organisational accountability of operational policing as it was highlighted during these 'crises of accountability'. These cases came to the fore at a time when the SPA was still negotiating its role and powers (see Chapter 8), and developing as an organisation. The intense media and political scrutiny of both Police Scotland's operational policies, and the SPA's inability to deliver effective mechanisms of accountability, created an opportunity for those in the Scottish policing landscape to engage more openly with the vague, yet sacred, operational independence

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<sup>29</sup> Non-statutory stop and search does not require reasonable suspicion; it is simply based on verbal consent. (Murray, 2014b: 10)

doctrine. However, my interviews generated mixed responses on the issue, as I explore further below.

#### *7.2.1.a - Perceptions of stakeholders*

The persistent ambiguity regarding the notion of operational independence was reemphasised during my research. All my interviewees were immersed in the Scottish policing landscape and represented elite policy circles (see Methodology, Chapter 6), yet none could offer a consistent definition or description of the notion of operational independence. Each respondent gave a different interpretation of what they thought operational independence means, and the most common explanation centred around the boundary between deployment of resources or specific police operations and general policing policy. I have argued in detail in Chapter 2, by drawing on Lustgarten (1986) and Walker (2000) that this is a false distinction and the perceived boundary between policy and deployment is blurred. Police policies determine where police resources are deployed, and how the operations are carried out, as well as specific policing style. The views and perceptions of those intimately involved in the implementation of the reforms, reiterated the complex and often undefinable nature of this concept that could have benefitted from some official clarity at a time of such wide-ranging structural reform, as noted by an opposition MSP:

“I called for a debate about whether or not the chief constable’s powers need to be codified, and like you, I get lots of different answers, people think that there is a framework but nobody can actually describe what that framework is” – (Interview: MSP, LibDem).

During my conversations with the stakeholders, the topic of operational independence often resulted in a deep sigh, followed by a very thoughtful and contemplative reply, as if I had touched on ‘something-that-everyone-knows-exists-but-no-one-quite-wants-to-talk-about’. Yet, everyone did make attempts to describe or define it. If placed on a spectrum, the definitions ranged from ‘everything in the domain of the chief constable, is an operational matter’, through the age-old ‘distinction between policy and deployment’, to the view that ‘chief constable, like any public figure is accountable and therefore all policy decisions that impact the communities should be

open to scrutiny and a change of direction'. Between those succinct definitions there were some rather peculiar descriptions:

"Now, it seems to me that policing is like a bus, the actual driver of the bus is in charge of deciding manoeuvres and getting through traffic, the route is decided by senior management at SPA. But they leave the driver to get on with driving the bus to the route. Policing is similar... the operational independence part of it is the bit about the bus driver. No one should or would tell a chief constable how to police the streets that's what professional policing is about. However, in deciding the tactics that are to be used and in deciding how he will deal with his resources I think it's quite proper that he should go to the committee [the SPA board] beforehand and say here's what my plan is, here's why I am planning to do it this way, here's how much it will cost and here's how I am going to use my staff, so if you could take a look at it and say that's sensible" – (Interview: MSP, Lab).

The latter part of the above quote indeed clarifies that everything in the domain of the chief constable should be open for discussion, the stance I took in Chapter 2. Perhaps the description closest to the traditional view of operational independence, unsurprisingly came from a senior officer:

"Well operational independence obviously is one subject we don't really like to discuss as you well know but operational independence for me is allowing the chief constable and his, we'll say his because it is a him just now, his command team to make those decisions that are decreed from all the information and intelligence available to be the right decision" – (Interview: Ch/Supt, Police Scotland)

However, the above view could arguably be superseded by a more measured response, from a more senior officer, who described the broad contours of the doctrine as such:

"I don't actually think there is a kind of defined bucket of activity that is purely the Chief Constable's autonomous area of work, there are clearly issues that the Chief and the Chief alone has to take **responsibility** for, when we are talking about sensitive policing tactics, or the dealing with serious and organised crime or terrorist matters child protection, some huge areas of vulnerability ... there's legislation to prevent us talking about them so this isn't mythical, there is a real reason there are checks

and measures there to make sure that there's one person who has that **responsibility**... these things are real, that said they are in the minority of areas and it is in the extreme end of the business and for the vast bulk of issues including stop and search and including firearms there is absolutely no reason that we should not be discussing that openly with our police authority colleagues and to some extent jointly developing policy in a very transparent and in a kind of clear cut way" – (Interview: DCC, Police Scotland, emphasis added.).

The use of the term operational *responsibility*, by the DCC, is in keeping with the long held position propagated by the Patten Commission (1999) that every public office holder was operationally responsible and not independent. The precise definition of operational responsibility is offered as such:

"Operational responsibility means that it is the Chief Constable's right and duty to take operational decisions, and that neither the government nor the Policing Board should have the right to direct the Chief Constable as to how to conduct an operation. It does not mean, however, that the Chief Constable's conduct of an operational matter should be exempted from inquiry or review after the event by anyone" – (Patten Commission, 1999: 32).

Following the armed policing controversy, HMICS conducted a review of Police Scotland's Standing Firearms Authority and along other recommendations, it also recommended that the SPA and Police Scotland should consider the notion of "operational responsibility" (HMICS, 2014: 10). Whilst Patten's recommendation, and the general notion of operational responsibility provides a safeguard against undue external influence in day-to-day operations, it does not offer sufficient clarity on the matter when considering *accountability* of police operational policies. In particular, the notion of operational responsibility does not provide clarity on whether accountability bodies can intervene before-the-fact, if prospective operational policies were deemed to potentially cause a negative public impact. For instance, consider the case of armed response vehicles being deployed on routine patrols without prior public consultation, or scrutiny. Such operational decisions would merit an intervention by legitimate accountability bodies, ideally on a proactive basis at the policy-making stage. Traditionally it is precisely this point where there has been increased likelihood that the notion of operational independence will be most rigorously invoked, as was

the case with the previous local police authorities (Marshall, 1965; Lustgarten, 1986; Oliver, 1987; Walker, 2000; Reiner, 2010).

Whilst the 2012 Act is decidedly vague on the matter, the most surprising aspect during my interviews was that the SPA, as a governing body, as a body with a formal duty to hold the chief constable to account, did not have an ‘organisational view’ on the matter. In the aftermath of the armed policing case, the former Chair Vic Emery came out publicly and stated that:

“The return of this phrase “operational independence” to the airwaves is one of the more unfortunate aspects of comment over armed policing. The term is nowhere in the legislation that underpins policing. In the past many have been seduced by the desire to define the concept. They failed. I hope that we do not get distracted down that road again” – (Vic Emery, 2014)

The statement by the former SPA Chair might have signalled a clear stance on the issue, however, at a Justice Sub-Committee hearing on armed policing, Mr. Emery acknowledged that the decision to deploy armed officers on routine patrols *was* within the operational independence of the chief constable, by virtue of his statutory responsibilities of ‘direction and control’ of Police Scotland (Justice Sub-Committee, 2014: 480). What contributed to this change of stance is discussed in Chapter 8 (see 8.2 and 8.3), but during my interviews with the SPA executive officers and non-executive board members, the breadth of the SPA’s lack of clarity on the issue became apparent:

“... there are such things as **tactical operations** which we would have no business knowing about because actually it is only the police who can run them, who have the knowledge to run them ... I don’t know because depending on the subject there would be different levels of interest and ultimately it depends on the **impact** in the end. So, I suppose **policy** vs **deployment**. - (Interview: Executive Officer A, SPA)

“...no one in the SPA who has ever thought about second guessing operational responsibility or the decisions within the operational responsibility of the chief constable. We have always had a strong view that the areas of policing in which there are

**policy** decisions and I think there's probably been confusion about the terminology as well, policing has used policy as **operating procedures** and SOPs ... and the police regard them as policies, for those of us who don't come from a policing background we wouldn't see it as policy. - (Interview: Executive Officer B, SPA)

“...the Chief Constable has quite a lot of control and independence over day to day operational **movement of the force**. And I think that's right, it should be that way we shouldn't be interfering in any **individual operation** that's absolutely clear. I think what we need to do though is get to a stage where we are better able to scrutinise the sum total of results of what is going on and say well how are you using your resources across the board...” - (Interview: Board Member A, SPA)

“Well there's a question! I think it's really interesting, I don't think you can define it easily it's almost a case by case thing. We have had again in the public domain issues played out where the Chief Constable has felt that something was an **operational** matter and we have felt that it wasn't operational it was **strategic** so examples would be things like traffic wardens...” - (Interview: Board Member B, SPA)

“Where there is a **policy** decision, it is absolutely legitimate for the government and politicians, and parliament, and the local authorities and for the SPA, to have a view and the police must give due regard to that view. I think the police would say it's all **operational**, it's not, it's **policy**, sending out armed officers with guns was a policy decision” - (Interview: Board Member C, SPA)

“Of course there has to be operational independence but it has to be written around the spirit of **co-operation, mutual understanding** and **respect**...even though you have operational independence, there is a higher order duty called **common sense**”  
- (Interview: Board Member D, SPA)

The purpose for outlining a summary of responses by *all* members of the SPA that I interviewed, alongside the perceptions of those involved in the Scottish policing and policy landscape, is to glean a sufficient understanding of what the notion of operational independence means in the context of the new police governance landscape. It is not the purpose of this study to put forward a definitive definition of the doctrine, as Vic Emery's quote above 'many have tried and failed'. However, the

responses highlight some key ideas that could perhaps contribute to a clearer more forward-looking understanding of the concept

#### 7.2.1.b - Discussion: 'Operational Accountability'

The most complete description on the matter, consistent with my arguments in Chapter 2 and above, came from a senior police officer who was serving at HMICS at the time:

“HMI has a very clear view on this...operational independence is a red herring ... Chief Constables have from time immemorial used operational independence as a way to say butt out I'm going to do what I want to do ... it's about **operational accountability** and, everything that chief constable does, he can be asked questions about, by legitimate individuals whether it's the SPA or the Parliament” - (Interview: HMICS)

Taking the term 'operational accountability' and based on the key ideas that emerge from the perceptions above, the broad contours of operational independence and principles of organisational accountability in the contemporary police governance landscape can be sketched out. Firstly, in agreement with the DCC's quote (see above) and the notion of operational responsibility, I accept that a chief constable would ultimately have responsibility for areas of high sensitivity such as intelligence-led operations, and counter-terrorism. Disasters and emergencies too would require an immediate response from the police, in which case the command and control machinery would be activated with the chief constable along with the senior executive team at the helm of affairs. Potentially faced with tough choices under difficult circumstances, the experts at dealing with risk (Ericson, 1994) will have to draw on their skills, resources and capacity to respond to situations. In those exceptional cases, it would be unreasonable to expect a chief constable to gain clearance from the police authority, or from any local or central politician. The unfortunate shooting of Jean Charles De Menezes took place following an intense manhunt for a suspected suicide bomber. Whilst the subsequent Stockwell One report (IPCC, 2007) and the Metropolitan Police Authority's own scrutiny report (MPA, 2008) made wide-ranging recommendations, there was no question that operational decision-making during the incident was within the scope of responsibilities of the senior officers of the Metropolitan Police.



Secondly, *specific* police operations that involve an arrest, or investigation, a response to a *specific* crime or a public order event, may also require tactical operations, for which it would not be appropriate for the SPA, or a local or central politician to interfere, in essence maintaining the traditional notion of ‘constabulary independence’. A caveat to such a notion would be that the Lord Advocate does have powers to instruct the police to carry out investigations pertaining to its powers of prosecution.

*Thirdly*, there are permanent “ethical and legal obligations” that prevent the police to share specific information particularly related to individual cases (Harkin, 2015: 733). However, in all those cases, it would be entirely appropriate for legitimate accountability forums, to seek answers and explanations, reasons and justification, after the event.

In all other cases concerning day-to-day policing, deployment of specialist resources, policing tactics, strategy, priorities, or indeed the movement and allocation of forces, or any policing operation or policy that could potentially cause a public impact, must be open for both proactive scrutiny, whilst the policies are taking shape, and retrospective accountability. It is a democratic responsibility of central and locally elected representatives to seek answers about the number of police officers available for the policing of their local area or constituency, or to ask the police to review policing tactics such as stop and search, if those tactics are deemed to be causing an adverse effect in the community. The principle of democratic policing requires the police to be responsive to *reasonable* demands of the electorate (Jones *et al.*, 1996; Aitchison and Blaustein, 2013). It is essential to distinguish between proactive scrutiny of prospective policing policies, and *interfering* in the course of duty of a police constable in exercising their discretion. The long held legal view that the difference between a constable and a chief constable is one of rank alone (Lustgarten, 1986: 60-61) needs to be revised in light of the wide-ranging responsibilities of the senior executive of the police in shaping police organisational policies. As summed up by an MSP:

“it is entirely appropriate, I think, for politicians to discuss strategic and policy issues about how our police service operates within a democratic country, about what kind of style of policing we will have so whether we want armed officers on every street corner, whether tasers should be utilised across Scotland. I don’t see those as operational issues because those impact on communities, just like stop and search used at an industrial scale, it was no longer a day to day operational issue ... they were infringing civil liberties and there were questions about human rights, and questions about the legitimacy of what they were doing, that’s not an operational matter anymore, that’s a matter for the politicians” - (Interview: MSP, LibDem).

There is a lot of credence to Lustgarten’s (1986: 47-48) view that traditionally the notion of operational independence has been invoked, predominantly against the local police authorities, and rarely against central directives. This view is supported by Reiner’s (2010) observation that the calculative and performance based accountability, driven centrally, made operational independence illusory, yet the influence of the local police authorities remained inadequate (as discussed in Chapter 3, 3.3.2).

My analysis in Chapter 8 (see 8.2 and 8.3) reinforces Lustgarten’s view as I show that in the new tripartite relationship, the notion of operational independence was invoked to insulate police operational policies from the SPA, on key matters such as armed policing the Chief Constable would bypass the SPA and apprise the Justice Minister directly. In essence, and specifically in relation to the operational independence doctrine, the SPA not only inherited the powers of the previous local police authorities, but also it inherited the same problem. However, the dynamic and fast-changing nature of the post-2012 Act governance arrangements mean that as the SPA continues to evolve and develop, there has been a steady move towards a more deliberative approach to proactive scrutiny, that may have rendered the traditional notion of operational independence obsolete, I examine those developments in Chapter 9. I now turn my attention to the second perennial problem of police governance in the context of the SPA in the new governance landscape.

#### 7.2.2 - Local vs central: the perpetual struggle

Despite the history of Scottish policing being rooted in localism, I argued in Chapter 2 and 3, that during tripartism the local police authorities were often reduced to a

bystander in the face of encroaching centralisation and the operational independence of chief constables. One of the stated aims of the police reform was to strengthen local policing and local democratic accountability (Scottish Government, 2011c) and local policing was made a statutory requirement (Chapter 7, 2012 Act). However, in the aftermath of the 2012 Act, the local government not only had to contend with losing its powers over police maintenance, and resource allocation, but it also lost any oversight over policing policy. While the SPA, in its formative years was mostly reactive, and the Justice Sub-Committee may have been hyperactive, the local authorities appeared to be rendered dormant by the new power relations introduced by the 2012 Act. The SPA has oversight over all of policing, but the responsibility to negotiate processes of local accountability, and to formulate local policing plans in cognisance of the local priorities technically lay with the local authorities and the local police commanders (Chapter 3, 3.1.7). But whilst the previous local police authorities had a chief constable to negotiate with, this new relationship dynamic was further complicated because, since the reforms, all of policing policy was determined centrally by the Police Scotland's corporate executive. Therefore, while historically during tripartism, the perpetual tussle for control over policing was between local government and central government (Chapter 2 and 3), after the reforms, and highlighted by several cases, the local versus central debate manifested in the local authorities seeking oversight and explanation of Police Scotland's centralised policies. The 'new' tussle between the local and the central focused on policing policies that had a perceived negative impact on local authorities. I outline the cases that caused contention between the local authorities and Police Scotland's central executive below.

Shortly after the reforms, over 100 officers carried out raids in Edinburgh's sex-for-sale saunas (Donnelly, The Herald, 2013). The legacy Lothian and Borders police and Edinburgh Council had previously adopted a policy of tolerance towards the sex-industry, however, the 'strategic' decision to carry out the raids signified a shift away from the localised settlement towards an approach reflected in other parts of the country. During the consultations prior to the single service, it was argued that a "loss of local knowledge" would diminish local service delivery and negatively impact local police democratic accountability (Bryan *et al.*, 2011: 42; Chapter 3). The decision to

raid the saunas was implemented without any engagement with the Edinburgh Council, and without prior warning to any other organisation in the city (Terpstra and Fyfe, 2015: 535). This centralised policy became a matter of controversy locally, amid fears that the new Police Scotland would take a ‘Strathclyde’ based approach of policing.

“A lot of these things took place in quite early terms, a lot of the senior police officers have acknowledged that that thinking was probably misjudged ... If you come from a background in which that had been a prevailing policy for multiple years then I think it’s an understandable misjudgement” - (Interview: Executive Officer B, SPA).

Further, the withdrawal of traffic warden support (Police Scotland, 2014a), the closure of approximately 60 frontline police stations (BBC News, 2014), and the decision to reduce the contact, command, and control centres from eleven to five across Scotland (Police Scotland, 2014b) all took place within the first year of the new arrangements. Recent research into the impact of these decisions on local policing found that Police Scotland had not consulted the local authorities (Terpstra and Fyfe, 2015; Henry *et al.*, 2016). Where consultations had taken place, for instance on the traffic warden issue, the views of the local authorities were not taken on board (CoSLA, 2014). Looking at the local scrutiny arrangements in three sites across Scotland, we found that there was no formal avenue for the local authorities to escalate issues back to the senior officers of Police Scotland, either through their local police commander or through the SPA (Henry *et al.*, 2016: 12-13).

The Chief Constable’s ‘operational’ policy of armed officers on routine patrols caused controversy in the north of Scotland where it was felt that the centralised policy had taken effect without consulting, or even notifying the Highland Council, or the SPA (see above, 7.2.1). The then Independent MSP, John Finnie, raised this issue in the Parliament in May 2014, and the issue was discussed and raised subsequently by the Highlands Council in June, 2014. The pressure on Police Scotland mounted through the intervention of the Justice Sub-Committee on policing, that conducted a public hearing on the matter in August 2014. In October 2014, whilst the chief constable withdrew the deployment of armed officers on routine patrols, the extent to which the

Highlands Council played a part in this reversal is unclear. The previous local police authorities were routinely criticised for failing to balance the competing demands of local policing, and broader national strategic objectives (Tomkins, 2009; also, see Chapters 2 and 3). However, these centralised policy decisions highlighted that the reforms did leave an obvious gap in police accountability and local oversight, manifesting in “structural disconnects” (Henry, *et al.*, 2016: 9-13) between central decision making, primarily by the senior officers of Police Scotland, and the impact of those policies on local authorities. While the tensions between the local authorities and the central executive of Police Scotland were transpiring, the SPA instead of calling the chief constable to account and driving through a change in policy, at best, could only act as an intermediary. This is examined further below.

#### *7.2.2.a - The SPA as an intermediary*

The traditional tripartite relationship consisted of central government, chief constables and police authorities. The new governance arrangements have created two sets of complex tripartite relationships; between the SPA, the Chief Constable and the Scottish Government (explored further in Chapter 8, see 8.2 *and* 8.3) and between the SPA, Police Scotland’s central executive, and the local scrutiny committees. The SPA, is apparently located at the centre of both relationships, ideally situated to form the role of an intermediary.

Since the reforms, concerns were raised locally about the SPA’s inability and a perceived lack of interest to raise local issues at the national level (Henry *et al.*, 2016). While the previous local police boards had a clearly defined role over the maintenance of local police forces, they were often criticised for not exercising their powers to hold local policing to account. The SPA’s role in relation to local accountability under the new arrangements is also ambiguous. The 2012 Act, places a duty of engagement, consultation and scrutiny on local authorities and local commanders, and the operationalisation of these arrangements, much like everything else in the 2012 Act, was left to negotiated agreement:

“...there was a definite sense that, the government didn’t wish to be too prescriptive on local arrangements, but actually in the process of consultation there was a communication, with local governments saying we would like you to be a bit more specific ... So, in the end there was description, broadly of what the rights and responsibilities were for local scrutiny engagement, and that description was very deliberate, because we knew that governance was really sitting with the SPA. But we wanted to give as much opportunity at a local level for that, you know the local policing plan, scrutiny of that local policing plan, consultation on priorities, agreement on the plan and so on” - (Interview: Civil Servant)

The local scrutiny arrangements have manifested in the creation of local scrutiny committees in all of the *thirty-two* local areas of Scotland, all operating in a “diverse set of ways” (Henry *et al.*, 2016: 4). The SPA has set up channels of communication with each of the local scrutiny committee by allocating a board member to three or four local authority areas. This communication channel was welcomed by the members of the local scrutiny committees I spoke to, however there were indications that the processes needed further development:

“I meet with the SPA representative often and he comes to at least 50 per cent of our scrutiny meetings to listen and observe” - (Interview: Convenor, Local Scrutiny Committee, Site 2)

“We are very fortunate to have [SPA Board member] as a regular attendee at our local scrutiny meetings. There was an enquiry board because we were so upset about the issue of side firearms, so we made a representation to the SPA. But that’s one board member and one voice. There are things that need to be tweaked or fine-tuned” - (Interview: Member, Local Scrutiny Committee, Site 1)

The main point of concern locally was around a lack of *formal* powers, and escalation routes for the SPA to raise local concerns nationally (Henry *et al.*, 2016: 12). The 2012 Act does not give any formal powers to the SPA to scrutinise local police commanders, but paradoxically, it does have an oversight role over policing across Scotland. A point was made by a divisional commander regarding where he felt the powers of local accountability reside:

“accountability is a very interesting word because the Chief Constable is accountable to the SPA, so I am not accountable, strictly speaking to the local scrutiny committee, but I am scrutinised by them. As an individual, I feel accountable to the people of the [local authority area], so very much feel I am held to account by them although in legislation that is not the case” - (Interview: Divisional Commander, Police Scotland, Site 3).

Police officers feeling accountable to law, their communities, or their own conscience is a theme that is often repeated in empirical studies on police governance and accountability (see for instance, Day and Klein, 1987: 105-106; also, Reiner, 2010). However, the above quote also points to an inherent failing of the 2012 Act to provide clarity in terms of where the SPA’s powers of accountability lie, and whether or not the local scrutiny committees can actually hold local policing to account. When I asked an opposition MSP about what was required at the local level to improve local oversight of policing, the reply was: “empowerment” (MSP, Lab). Yet the SPA’s own position on where local accountability lies, appeared to be consistently clear. All of the members I spoke to, insisted that it was for the local scrutiny committees and the local police commanders, and Police Scotland’s central executive to negotiate what local scrutiny arrangements would look like, with the SPA providing broad oversight and support. The SPA members were of the view that local authorities could effectively implement mechanisms of local scrutiny through greater engagement with the local police plans:

“the greatest bulwark against an overly centralised, authoritarian, very inflexible police service is buy into those local plans, if we can tightly tie in the outcomes of a local plan to the community priorities, it provides a clear direction to the local commander to have to deliver against ... there is an ongoing work to promote the idea that actually just how much influence I think elected members, local councillors still have” - (Interview: Executive Officer B, SPA)

“They have to take responsibility for their own local scrutiny for performance in their area and for ensuring that the [local] policing plan that they are presented with by the Chief Superintendent actually fits their community’s needs ... I talk to colleagues about it I encourage them to try to have as much early influence over

that plan as they can, have it drawn up with their thoughts and priorities in mind rather than their priorities being slotted in at the end” - (Interview: Board Member A, SPA).

“The message I gave to all of them [LSCs] was be assertive in saying what you want from policing and be challenging ... you have a lot of influence and control because you have to sign off the local plan” - (Interview: Board Member C, SPA)

During the first three years of the reforms, the SPA has regularly hosted ‘partners in scrutiny meetings’, inviting the convenors, lead officers and other councillors involved in the local scrutiny committees across Scotland, to share their experiences and best practice. However, we found that there was a perception among some sites that the SPA’s initiatives did not have a “lasting impact on local practice” (Henry *et al.*, 2016: 18). It was not disputed that the local authorities are legally entitled to approve the plan, and some local authorities felt that they had sufficient input into the formation of the local police plan and that there was “sufficient flexibility to tweak priorities in the light of new information or emergent issues” (Henry *et al.*, 2016: 8), but it was felt by both local and central stakeholders that at least in the first year, the local police and the multi-member ward plans<sup>30</sup> did not take local views on board, and had in fact been issued centrally by the senior executive of Police Scotland with no local input.

“the police made a very strong symbolic move pre-1st of April 2013...to go for a plan for every ward in the country, you know what could be more local than multi member ward plans and we had no real time to be able to consult people around that. The reality is that in some parts of the country those area ward plans don’t reflect the shape of our already established area partnership plans” - (Interview: Executive Officer B, SPA).

“Each local authority was getting maybe 40 or 50 plans, some of them had over a 100 plans delivered to them ... I don’t know anybody in the south of Scotland who was consulted with on a plan and equally it was amazing that all these plans, and I know from my experience in policing, that they were created at headquarters by a resource unit whose dedicated duty was to

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<sup>30</sup> Police Scotland published a ward plan for 353 multimember wards across Scotland. Each ward relates to a geographical unit, through which local councillors are elected, within a local authority area (Henry *et al.*, 2016: 9).



deliver [ward] plans by a certain date. Done.” - (Interview: MSP, Lab).

Further, the local police commanders that I spoke to, also highlighted that the multimember ward plans had no traction locally and did not reflect or recognise the diversity within the wards:

“The initial challenge about the multi member ward plans and local plans are that they all look the same, we work to a similar template...the grouping of a ward, and you’ll see this across the country, [anonymised] is a very affluent area ... but it's part of Ward 1 which includes [anonymised] which is one of the poorest areas and it's an area where we have significant issues with violent crime. But they are clubbed together. - (Interview: Local Area Commander, Site 2).

“Each of the ward has a local ward plan that was the direction of the previous Chief Constable, that hasn’t really got any traction here locally. We have serviced them, gone through the mechanisms of producing them and updating them but local people are not really interested in them at all. So the primary focus here locally is on the local policing plan and nobody pays any attention to the ward plans” - (Interview: Divisional Commander, Site 3).

Since the SPA came into effect, it has made attempts to play the role of an intermediary by encouraging the local authorities to influence local policing and local accountability through the local police plans. However, most of the problems affecting local accountability were due to the inward-looking and highly-centralised policy making by the Police Scotland senior corporate executive (CoSLA, 2014, 2015; Henry *et al.*, 2016).

#### 7.2.2.b - Discussion: The local v central tussle reimaged

As argued above (7.2.1), at least in the first two years of the new arrangements, the SPA had very little influence over police policies and operational decision-making. Under such circumstances, Police Scotland’s organisational policies, whilst criticised in retrospect, were not being scrutinised before-the-event, although this has started to change as the SPA continues to evolve in a dynamic landscape (see Chapter 9). The impact of policies such as the withdrawal of traffic warden support, and closure of

contact centres has continued to vex local authorities (Henry *et al.*, 2016). It is apparent that the new governance arrangements have manifested in a complex set of relationships between the various stakeholders. In the reimagined tripartite relationship between the SPA, Police Scotland and local scrutiny committees, the balance of power, at least in the first two years of the reforms, remained firmly tilted towards Police Scotland's senior executive team.

An SPA member, quoting a senior officer, remarked that under the stewardship of the former Chief Constable Sir Stephen House, Police Scotland's senior executive operated on the principle of "DAD – decide, announce, defend" (Interview: Board Member C, SPA). Further, under Sir House, Police Scotland's centralised decision making was zealously obsessed with targets, and that also had a negative impact on local policing for instance, stop and search (Murray, 2014a, 2014b, 2015a; Lennon and Murray, 2016), and roads policing (Henry *et al.*, 2016: 13). The target driven culture, not only affected local police accountability, but also had implications on the discretion of local police officers, as observed by an SPA board member and a representative of HMICS:

"At a meeting in [one local area], a senior officer said we are now moving to do more enforcement in policing roads, and I asked when did that become a policy - more tickets were being issued, people were getting tickets because officers felt they had lost discretion" – (Interview: Board Member C, SPA)

"I think to be fair, officers don't feel they have discretion, because the performance framework was so savage" - (Interview: Representative, HMICS)

In addition, the allocation of specialist units such as roads policing, public order policing and armed response units, under the domain of the assistant chief constables, did not always consider the views of the local scrutiny committees, and *local commanders*, exacerbating a "*disconnect within Police Scotland*" (Henry *et al.*, 2016: 12-13, emphasis my own). These centralised policies, without taking local policing culture and knowledge into account, only consolidated the early fears of a "one size

fits all approach” that would follow the creation of Police Scotland (Terpstra and Fyfe, 2015: 535).

In my conversations with the local commanders, a perceived divide between ‘us’, i.e. all local stakeholders vs. ‘them’, i.e. Police Scotland’s central executive became apparent. In one local area, after an interview with a local divisional commander, the officer pointed outside the window at a riot van and remarked “you see that riot van out there, that is the problem, prior to centralisation one of those wouldn’t be seen in this area, they were never needed”. In the three local sites, we found that the relationships between the local commanders and local scrutiny committees were positively developing and there seemed to be a degree of mutual trust (Henry *et al.* 2016: 8). However, it was particularly acknowledged by the local commanders that the criticisms of Police Scotland were often focused towards the centre:

“I keep emphasising that the police officers who work in [name of the local area] are largely the same who worked [here] before... we are a part of the community not some other alien force that is being visited on them. Same people as before and they all know them. As a result of this, an interesting dynamic starts to evolve where locally you're ok, it's the Police Scotland thing that's wrong”. (Divisional Commander, Site 1)

“So here comes the conflict between national and local. And I am the piggy in the middle because I have a personal view which I will speak about behind closed doors, I have a corporate view in which case I am the person that conveys the corporate piece of Police Scotland and privately I don't necessarily agree with it. So, it was quite challenging to convey that corporate message as it's not a separate police force up here, it is Police Scotland and we are just a small portion of that”. (Divisional Commander, Site 3)

The perpetual tussle between the local and the central has been exacerbated by the 2012 Act and it has manifested in two ways. The traditional struggle for powers of police governance between local and central elected representatives has continued to feature strongly since the reforms. In addition, there have been persistent tensions between local authorities and Police Scotland’s central executive over policies that are developed nationally, but have local ramifications. The SPA is situated at the centre of both tripartite relationships. As the new arrangements continue to develop and evolve,

recent developments suggest that the SPA is ideally placed to effectively act as an intermediary between local and central democratic stakeholders and the police, and serve as a conduit between the police and the public (see Chapter 9).

### 7.3 - Conclusion

My analysis in this chapter has shown that the SPA, in its formative years, had not been able to resolve the perennial problems of police governance. These problems that predated the 2012 Act, manifested in the most abrasive fashion after the reforms. All the cases, scandals and controversies discussed in this chapter point to weaknesses in organisational accountability mechanisms, particularly in relation to police operational policies, confirming my argument that the pre-2012 Act policy discourse had missed an opportunity (Chapter 3, 3.4).

The 2012 Act did not clarify how police organisational accountability would be achieved, and the notion of operational independence had been left undefined, as before. There was no subsequent guidance on how the SPA could implement its powers of holding the chief constable to account into actual mechanisms and processes of accountability. Further, by leaving the local authorities and local commanders to negotiate local scrutiny arrangements, the new governance arrangements created two complex tripartite relationships. Despite the SPA's early attempts to act as an intermediary between Police Scotland's central executive and the local scrutiny committees, the target driven culture during the former Chief Constable's tenure made proactive scrutiny of policing policy an impossible task in the first two years of the new arrangements.

In the following chapters, I present further analysis of the SPA through the analytical framework outlined in Chapter 5 (5.5). More specifically, I focus on the SPA's *composition*, and its *power* and *autonomy*, in relation to the traditional tripartite relationship with Police Scotland and the Scottish Government (Chapter 8). In Chapter 9, I will argue that developments following the high-profile cases such as stop and search, and armed policing, point towards a more deliberative approach to police

governance that may have started to resolve the perennial problems of police governance.

## **Chapter 8 - The SPA's credentials as an institutional epistocracy: Broad Composition, Power and Autonomy**

This chapter is the first of two chapters that presents my analysis of the SPA in relation to the conceptual and analytical framework outlined in Chapter 5. It is to be reiterated that this study has looked at the SPA in its formative, and perhaps most turbulent years since its inception and the findings chapters (7-9) capture the developments from the passing of the 2012 Act to the SPA's Governance review in March 2016. Needless to say, this has been a constantly evolving landscape. In cognisance of the conceptual model of the SPA, and its creation as a body composed of independent members with professional skills and competencies, I drew on the notion of epistocracy and proposed a prescriptive conceptual framework (Chapter 5, 5.3). I argued that for an epistocracy to be institutionalised, it needs a *broad composition*, *power*, and *autonomy* (Chapter 5, 5.1). Further, an epistocratic arrangement will need to weave in principles of deliberation in its approach to delivering police accountability mechanisms (Chapter 5, 5.2). I proposed that if all components of the framework are in place, an 'epistocratic and deliberative' arrangement will be able to resolve the perennial problems of police governance and deliver effective mechanisms of police organisational accountability (Chapter 5, 5.4).

I have shown in Chapter 7, that in the formative years of the SPA, the perennial problems, - i.e. the operational independence doctrine, and the perpetual tussle between the local and the central remained unresolved and manifested in the most abrasive fashion, representing weaknesses in police organisational accountability mechanisms. In this chapter I argue that the SPA's inability to deliver effective mechanisms of accountability were compounded due to weaknesses in its *composition*, differing interpretations of its role and *powers*, and external impositions resulting in a lack of *autonomy*.

### **8.1 - Broad Composition**

I argued that *knowledge* is the defining characteristic of epistocracy, and it would be reflected in the composition of an institutionalised epistocratic arrangement. Further,

epistocracy is subjected to a demographic objection (Estlund, 2008), and the proposed epistocratic arrangement will need to reflect a broad demography (Chapter 5, 5.1). In order to utilise the framework for the analysis of the SPA, I raised the following questions:

- *Does the SPA's composition reflect epistocratic credentials?*
- *If so, what knowledge, competencies and skills are reflected in its composition?*
- *Is the knowledge composition of the SPA sufficient for the purposes of police governance?*
- *Does the composition of the SPA reflect a broad demography?*

I deal with these in turn below.

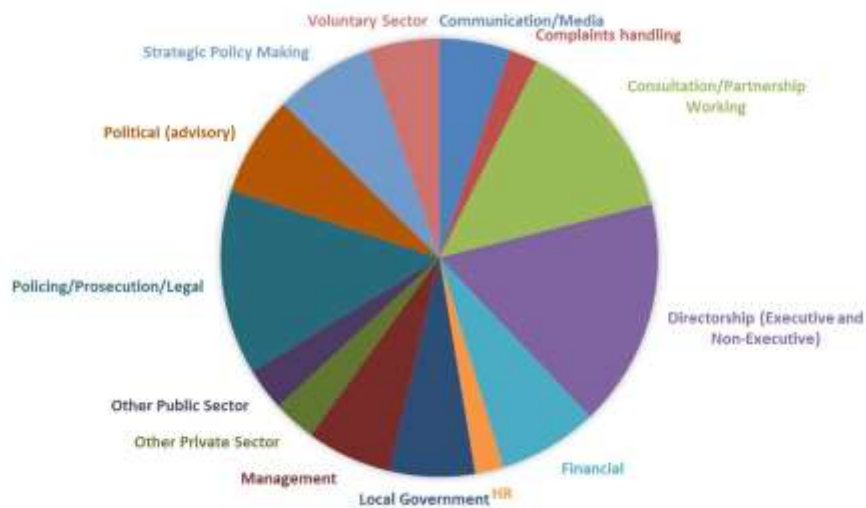
*Q. Does the SPA's composition reflect epistocratic credentials?*

*Q. If so, what knowledge, competencies and skills are reflected in its composition?*

As March, 2015, when the fieldwork began, the SPA was composed of 14 non-executive board members, including the chair, six permanent executive officers and an interim Chief Financial Officer appointed in February, 2016 (SPA, 2016a: 21). It has generally been accepted that all of the members were appointed on the basis of specific skills, expertise and competencies (Scott, 2013a). As with everything else in the 2012 Act (see Chapter 7), the precise knowledge requirements necessary for the SPA as a police governing body was not specified and the Act left it for the Scottish Ministers to appoint persons they consider to have the “relevant skills and expertise” (Schedule 1, s.2(2)). During the extensive consultations that took place prior to the reforms, it was identified that professional directorship experience, expertise in HR and finance, and a professional base was lacking in the previous local police authorities, and it was recommended that any new governance arrangement should seek to incorporate those competencies (Laing and Fossey, 2011; also, see Chapter 3, 3.3.2.c).

The SPA has been constantly evolving throughout the duration of this study and there have been numerous changes in its composition since March, 2016. A recent drive to appoint new non-executive board members for the SPA by the Scottish Government gives a more general indication of the competencies needed to carry out the role. The list of required competencies includes leadership skills, experience of corporate governance, an understanding of performance management, and personal effectiveness which includes communication, working collaboratively and resilience (SPA, 2016b: 12-13). The legal status and the broad organisational structure of the SPA follows the same pattern as other non-departmental public bodies operating across the public sector in Scotland (for a list, see Audit Scotland, 2010b). But the SPA's composition based on a broad range of knowledge, skills, experience and competencies (see fig. 8.1), also resembles the myriad EU institutions, expert groups, and regulatory authorities formed on the basis of a blend of expertise and skills (Héritier and Lehmkuhl, 2010; Rosenvallon, 2011; Eriksen, 2011; Holst, 2012; Cross, 2015). All of these compositions represent a dimension of epistocracy, due to the broad application of the concept (Holst, 2012, 2014; see Chapter 4, 4.5).

**BREAKDOWN OF THE RANGE OF COMPETENCIES AND SKILLS OF THE CURRENT NON- EXECUTIVE BOARD MEMBERS (14) AND EXECUTIVE DIRECTORS (6) OF THE SPA**



**Figure 8.1- Expertise, Competencies and Skillsets of the SPA hierarchy. More than one competency is shown for each member. (Source: The SPA Board, as of January 2016)**



The credentials of the SPA, as an expert body were accepted by all of my interviewees, and the senior officers of Police Scotland particularly welcomed the fact that the SPA members came from different professional backgrounds rather than representing party political interests, a DCC noted that “at least in formulaic terms” the SPA added a professional and expert dimension to the new governance and accountability landscape.

Despite being located centrally, the initial SPA board also consisted of a few members who were councillors and had previous experience of working in the local police authorities, this blend of experience and knowledge, it was envisaged, would enhance police governance:

“several of the councillors used to serve in the previous joint police authorities, so again in terms of that knowledge and expertise, and holding policing to account ... we've got that knowledge and we also have a range of external private sector expertise so there's people with IT background, entrepreneur, business development, financial background there's people with HR background and we also have one member who is an ex-police officer. So we seem to have covered all the kind of key criteria and together it helps them form an opinion ... of various things and I suppose in terms of councillors across the mix we have also got councillors from the different political parties so there is no one political persuasion that's ever seemed to be linked with the SPA, so it's a good balance” - (Interview: Executive Officer A, SPA).

The diversity of knowledge, competencies and skills reflected within the composition of the SPA does conform to the broad application of the notion of epistocracy. As I noted in Chapter 5, claims to knowledge and expertise do not necessarily mean specialisation in a specific field (Collins and Evans, 2007: 77). Particularly in relation to policing and police governance, the reliance on knowledge will not be limited to technical matters. It is granted that with powers over police budgets and resources, the SPA undoubtedly needs professionals with finance, audit and HR background, however, the inclusion of members with local government experience underpins that the knowledge of the previous arrangements, partnership-working and co-production was also valued.

I proposed that the knowledge composition of an epistocratic arrangement would be determined by the specific knowledge demands of a given field (Chapter 5, 5.3.1.a). Based on what we know about the SPA's initial composition, I now examine whether the SPA's composition reflected a broad demography, before addressing whether the composition as a whole was sufficient for the intended purposes of police governance and accountability.

*Q. Does the composition of the SPA reflect a broad demography?*

As I argued in Chapter 5 (5.1), Estlund (2003, 2008) raised a demographic objection to an epistocracy, fearing that such an arrangement may inherently be biased in terms of gender, social class, knowledge or race. I responded to this criticism by arguing that achieving a demographic balance is easier where members are appointed, as opposed to relying on an election (Chapter 5, 5.3.1.b). For instance, the demographic breakdown following the PCC elections in England and Wales, gives credence to this view. In relation to the 2015 PCC election nominations, the Police Foundation noted: "the pool from which our new PCCs will be drawn is highly unrepresentative of the population as a whole and is less representative than when these elections were last fought in November 2012" (Muir, 2016). Similarly, other research into the previous local police authorities, that comprised solely of elected councillors, has shown that out of 149 councillors in the various local police authorities across Scotland, only 28 (19%) were female (Etherson, 2013: 107).

In the SPA, as of March, 2016, *four* of the *eleven* non-executive board members, and *two* out of *six* executive officers were women (SPA, 2016a: 37). One of the female non-executive board members also belonged to a BME group. The Scottish Government has made a public pledge to appoint more female board members on public bodies, and aim to achieve a 50-50 gender balance on all public boards by 2020 (Scottish Government, 2016). There is currently no similar plan to encourage BME candidates to be appointed on public boards, even though BME groups represent 4% of the Scottish population (Scotland's Census, 2011).

In relation to democratic policing, governance and accountability, the issue of race and policing is a pertinent one, however, it has not featured profoundly in the public debate in Scotland, as it has in England and Wales (Walker, 2000; Henry and Fyfe, 2012). Whilst I found no evidence of bias based on race, gender, or educational qualification, in the composition of the SPA, a demographic objection in relation to an epistocracy *within* an established democratic order may not be that pertinent. The threat of elitism could be countered through principles of deliberation (Chapter 5, 5.3.4) and horizontal accountability to professional peers (Schillemans, 2011). However, I raised concerns in Chapter 4 (4.3), by drawing on Bevir, that the legitimacy of ‘experts’ traditionally comes into question, if they are perceived as “self-interested actors intent on advancing their own careers” (2012: 58-59). Some interviewees expressed concerns in relation to the SPA’s composition, claiming that it was served by the same people who served at different public boards across Scotland. For instance, an opposition MSP indicated that:

“Currently we have got a whole load of familiar faces from other governance areas, familiar wee faces who all come together and don’t want to rock the boat” - (Interview: MSP, Lab).

I will examine this point in detail below in relation to *Autonomy* (8.3). I now turn to analysing the perceived weaknesses in the SPA’s knowledge composition.

*Q. Is the knowledge composition of the SPA sufficient for the purposes of police governance?*

The SPA’s composition reflects a broad coverage of the different governance related skills and competencies (see, fig. 8.1 above), however, during my interviews with the stakeholders it was felt that the SPA had not been able to deliver effective mechanisms of police accountability because its board members lacked a nuanced understanding of policing, and despite having some local representation on the board, there was a loss of local knowledge. I examine these strands below.

### 8.1.1 - Lack of policing knowledge

At the time the SPA came into effect, there was one ex-police officer who was appointed as a non-executive board member, however, it was felt by my interviewees that the overall membership of the SPA lacked a nuanced understanding of policing. Practitioners from across the spectrum said that more *recent* policing experience may be beneficial for the overall knowledge composition of the SPA:

“one of the members does have a police background but he retired as a sergeant many years ago ... therefore, they have no real up to date knowledge and expertise in policing” - (Interview: Ch/Supt, Police Scotland).

“I think as soon as you are removed from policing ... your knowledge becomes less and less relevant in time ... it probably would be quite useful to have somebody else with a policing background you know just to give a different perspective... it is maybe a double-edged sword but somebody with recent experience would probably be quite helpful” - (Interview: Executive Officer A, SPA).

“one of the challenges for the SPA is, or has been over the last three years, a lack of understanding of policing” - (Representative, HMICS)

In an inspection of the police reform process, in 2013, Audit Scotland also observed that while some of the SPA staff had experience of the creation of the former Scottish Police Services Authority, none had experience of operational policing at a senior level (Audit Scotland, 2013: 18). A senior police officer compared the SPA with the Scottish Fire and Rescue Service and argued that:

“the Fire Board is well informed because Jimmy Campbell who sits on that was a chief fire officer in Fife and he was a chief fire officer at Lothians and now sits on the Fire board. Now that again doesn't make him an absolute expert but allows him to bring some context to a lot of the discussions that take place, now yes we in policing can bring context if we go and meet with them [the SPA] but when they have their private meetings, there's no policing knowledge sitting in that world” - (Interview: Ch/Supt, Police Scotland).

When probed further on what kind of policing knowledge was missing from the SPA's composition, it was suggested by the respondents that it was essential for a police governance body to have an overall understanding of police corporate management and organisational decision making, pertaining to the complex nature of modern police organisations. In June 2015, a former Chief Constable of the legacy force, Northern Constabulary, was appointed to the SPA board to plug that gap in knowledge. It was observed by a HMICS representative that this inclusion had further strengthened the SPA:

"So an ex-chief constable on the board, he's run a force, he knows how things should work and did it very successfully, so he knows the right questions to ask, and he knows what governance is about, and he also knows when to keep his nose out of minutiae and things like that. So, I think over time we will see the competence and the capabilities grow in the board" - (Interview: Representative, HMICS)

Whilst the inclusion of a senior ex-police officer was welcomed on the basis that it would enhance the breadth of knowledge within the SPA's composition, concerns were also raised about the need for the SPA to be sufficiently independent of the police:

"I think having police knowledge at the SPA board, can be helpful but equally ... could sometimes be a dangerous thing" - (Interview: Former Minister)

"It is absolutely essential that those who are on the committee of the SPA should represent the public, not the police" - (Interview: MSP, Lab)

"Well you've got a national police force that has an enormous amount of power ... so you need a strong board and you need a board that brings a lot of different experience to it" - (Interview: MSP, LibDem).

It was not only recognised by politicians from across the spectrum that the SPA board should be independent of the police (see quotes above), but an SPA board member also raised concerns about an ex-police officer bringing in a perspective that may not be *independent*:

“I think what we **all** lack is expertise in policing and I think that’s a big disadvantage, however, having said that you don’t want a whole load of ex-coppers because they have a different perspective and it's not an independent perspective so I don’t know how you balance that. We have recently appointed an ex-police officer and in fact we had one already so now we have got two, and I think that creates **potential conflicts**, as well as bringing in some positive stuff about **operational understanding which we don’t have**, it brings in a potential of: are you really going to criticise the thing that you dedicated thirty years of your life to” - (Interview: Board Member B, SPA, emphasis added).

A body responsible for police governance and accountability, to be composed of ex-police officers raises obvious concerns. I argued in Chapter 5, that it is pertinent that an epistocratic arrangement is not perceived to be colluding with the police or the politicians and its members will need to be sufficiently *autonomous* and independent. I deal with autonomy in relation to independence from political actors below (8.3), but here, in regards to the presence of ex-police officers within the SPA’s composition, the potential concerns I raised in Chapter 5 (5.3.3) regarding regulatory capture are reiterated (Zinn, 2002; Carpenter and Moss, 2014; Kwak, 2014). Savage (2013) has argued that the effectiveness of police complaints mechanisms, within the context of police accountability rests on the independence of such mechanisms from the police. Through the empirical analysis of three *independent* complaint handling bodies: The Office of the Police Ombudsman for Northern Ireland, the Independent Police Complaints Commission in England and Wales, and the Garda Síochána Ombudsman’s Commission in the Republic of Ireland, Savage found that the notion of independence in the context of police accountability and complaints handling encompassed *impartiality, distance from the police, and objectivity* (2013: 101-103). Particularly in relation to *distance* from the police, one interviewee referred to it as “*not feeling any sort of attachment to the police*” (quoted in Savage, 2013: 102). The research also raised concerns of investigators “adopting the language and ‘mindset’ of the police they investigate” (Savage, 2013: 104).

The concerns raised by the SPA board member above, indicating potential conflicts, may refer to the senior ex-police officer *potentially* showing empathy towards the police. However, Savage found that in police complaints bodies, investigators with a non-policing background, would often end up joining the police, reflecting a sense of “cultural ‘empathy’ with the police” (2013: 105). Whilst I cannot empirically establish whether the appointment of a senior ex-police officer had improved the SPA’s governance in *practice*, or indeed, if it had resulted in decisions being dominated by one or two perspectives, this issue has raised the potential of regulatory capture *within* the composition of the proposed framework, either through the appointment of ex-police officers or through members showing empathy towards the police.

The potential threat of regulatory capture could be minimised if the composition of an epistocratic arrangement reflects a broad range of knowledge and expertise. I argued in Chapter 5 (5.2) that deliberative principles of justification and reason-giving should be weaved into the mechanisms of accountability. The same principles would serve as a check in the internal decision-making of an epistocratic arrangement, manifesting as an exchange of reasons and evidence in private meetings. In addition, horizontal accountability to professional peers (Schillemans, 2011; Romzek *et al.*, 2012) can minimise the potential threat of just one perspective dominating discussions and decision-making. Forcehimes (2010: 73-74) argues it is indeed the responsibility of epistocrats to be willing to engage in “reasons, arguments, and evidence” and that one perspective should not be privileged over the other, but instead epistocrats should be open to subjecting their own views to “rational scrutiny” (Forcehimes, 2010: 76).

The perception that there was a lack of policing knowledge within the composition of the SPA was further compounded by the lack of training offered to new members, particularly those with no prior experience of working in a governance and accountability role.

#### **8.1.2 - Insufficient Training**

I found that it was the deficiency in training and development of the members, and not the absence of ex-police officers, that had compounded the perception that the SPA

board, as a whole, lacked policing knowledge. The non-executive board members, particularly those who had previously not worked with the police in any capacity, showed their dissatisfaction with the training provided to them.

One of the reasons for the insufficient training was the pace of the reforms, from the moment the Act was passed to the arrangements coming into effect. This was confirmed by Audit Scotland's inspection of the police reforms (2013) and highlighted by several respondents:

“Looking back ... anecdotally just seems that everybody was so focused on creating Police Scotland that they had almost forgotten about what was actually required for the SPA” - (Interview: Executive Officer A, SPA)

“...starting to move from appointment of chair and the support staff including a handful of early seconded people I was struck by how little planning had been done into establishing an authority in comparison to what now we have done ourselves” - (Interview: Executive Officer B, SPA).

“In my own view the appointments were far too late ... we were appointed in October, we had a training session in December and the new service was up and running in April so the entire focus was on getting the new [police] service up and running” - (Interview: Board Member C, SPA)

In relation to training and development of the new members, it seemed that, as noted by a civil servant, “they would learn on the job”. It was, therefore, left to the SPA executive officers, and Police Scotland to develop training for the non-executive board members:

“part of the issue with the authority was that they only had a very light touch induction training ... its only through proactive engagement by Police Scotland have we started to have development days with them so that they start to understand policing” - (Interview: Ch/Supt, Police Scotland).



“...[on presentations by senior officers] ... was very much a case of you know this is what we do, here are the challenges, this is what we plan to do, and they were very sharp very focused but at the right level ... so actually when papers come before [the board members] in any of the committees they actually have some background knowledge of the topic so they can ask intelligent questions” - (Interview: Executive Officer A, SPA).

What specific knowledge areas were covered in those training and development days was not immediately apparent, however, some sessions would include visits to specialist support units, “dogs and puppies” (Ch/Supt, Police Scotland) or “beauty parades of armed officers” (Board Member B, SPA), but quite often, some training and development days also included briefings on strategic issues:

“The members have, I think quarterly or six monthly briefings on different key topics, so things like cybercrime, trafficking, counter terrorism and really the idea is that it’s part of the information sharing to make sure they are aware of that policing landscape and equally it is also to say what are the challenges, what are the issues and what Police Scotland is doing about them” - (Interview: Executive Officer A, SPA).

As I argued in earlier chapters (Chapter 2 and 3), a reliance on the police for information by the previous local police authorities, strengthened the operational independence of chief constables, and senior officers would often present the information they would like to be scrutinised on. The SPA’s approach, in its initial years, had been no different. The lack of meaningful training for the new SPA members meant that they could not develop a sufficient understanding of policing from an operational accountability point of view, which manifested in a lack of confidence to raise issues of public concern, as noted by an MSP:

“They have always lacked that confidence or the ability to challenge the chief constable and they need to very quickly harden up and be able to face the chief constable and not scrutinise the things he wants them to scrutinise but scrutinise the things that they recognise as a future challenge” - (Interview: MSP, LibDem).

A crucial phase for an accountability mechanism is the information phase (Bovens, 2007, 2010), as I argued in Chapter 4 and 5. Board members highlighted that when

they were appointed, they were not sure about: a) what sort of information they could request from the police, and b) their own ability to interpret and challenge that information. An executive officer emphasised that while policing knowledge was not necessary for them to carry out their duties, members needed to be able to understand the information that was presented to them, and ask robust questions around that information. But a board member highlighted that it was not always clear whether the information being presented to the SPA was impartial:

“If we’re being presented with data, how do we know what that actually means? A chief constable has a vested interest in presenting the best spin on what those figures mean... how independent is that analysis? Cause that must be a difficult role you know, if you're analysing data for the most powerful police officer in the country and it says not quite what he wants it to say, is there any pressure? We don't know” - (Board Member B, SPA)

Whilst the inclusion of a former chief constable to the SPA board was envisaged as strengthening the knowledge base of the SPA, in the longer term, the existing members needed training on what constituted operational policing. In the formative years of the SPA, instead of an independent objective criterion on what elements of police function members should be scrutinising, the members relied on the police to train them, and to provide them with the information that formed the basis of scrutiny. This form of an arrangement amplifies the threat of collusion that can lead to regulatory capture, as I argued above. The existing knowledge composition of the SPA needed to be *complemented* with specific knowledge and training on what constituted police accountability and scrutiny, and how the information presented by the police could be interpreted, analysed and challenged. Later analyses of the SPA in relation to *deliberation* shows that as the new arrangements evolved and developed, the SPA did start to strengthen its epistocratic credentials by drawing on external knowledge and evidence, particularly through established networks such as the Scottish Institute for Policing Research, as well as through horizontal deliberation with other expert institutions such as Audit Scotland and HMICS (also, see Chapter 9).

### 8.1.3 - Lack of local knowledge

My analysis so far suggests that the SPA did not understand the complexity or the impact of police operational policies on local communities, and that is one of the reasons why it was not able to sufficiently balance local interests against centralised policies (Chapter 7, 7.2.2). The appointment of local councillors on the board was propagated by CoSLA. During the consultations, it made representations to the Scottish Government and strongly suggested that a new centralised governing board should include a set number of representatives from local authorities (CoSLA, 2011). Whilst the Scottish Government did not set a quota for local representation, it did appoint several board members with knowledge of local governance (see, fig. 8.1 above). When I asked a former Minister about why CoSLA's request of a quota for local membership on the SPA's board was not entertained, the reply was blunt:

“this idea that the police committees under the old regional services were great, they were frankly useless. Some worked better than others but most of them were not particularly good and the idea that you just got on it because you are an elected councillor and it would also have given you another way to add to your wages - unacceptable. You were only going to go on if you were capable of contributing significantly ... It does not depend on the political affiliation it depends on the what you bring to the institution”. - (Interview: Former Minister)

In the run-up to the reforms, there were fears that centralisation of the police forces would lead to a loss of local knowledge (Chapter 3), this argument has often underpinned the perpetual tussle between the local and the central. However, as I have established in Chapter 7 (7.2.2.a), the reforms created two complex tripartite relationships: one between the Scottish Government, Police Scotland and the SPA, and the other between Police Scotland, local scrutiny committees and the SPA. Under the previous arrangement, there was a direct relationship between the chief constable and their respective local police authority. One MSP noted that the targets driven culture associated with the early days of Police Scotland, could have been tackled had that direct relationship remained intact:

“while you might say they didn’t investigate perhaps the finance of the organisation or some of the things as well as they might have done. What they did was they created a culture for their police force. So of course, they appointed the chief constable, who met the kind of cultural needs that they had for that area” -  
(Interview: MSP, LibDem).

It was felt that by removing the powers of governance from the local police authorities, an essential element of local knowledge, and trust between the police and local authorities, that had built over decades of tripartism would be eroded. One board member with experience of the local arrangements also felt that the local police authorities were effective at raising local concerns with the police:

“I think the old boards had a good focus on what was needed in local communities or even on a wider regional base about what the difficulties were. You got that up through councillors from the grass roots, what experiences the public were seeing and feeling and ... that would make its way to the board quickly and the chief constable would answer around that and so it became a focus of discussion and a priority for improvement” - (Interview: Board Member A, SPA)

A HMICS representative shared a similar view, arguing that despite the reports by the previous Chief Inspectors being critical of the local police authorities (Chapter 3), they did not reflect the diversity in arrangements and practice across Scotland:

“I wouldn’t agree wholeheartedly in the then HMI view around previous boards. I think it varied...some boards had people with twenty years’ experience as councillors of scrutinising policing. They knew exactly the right questions to ask, ... and some boards actually did hold the service to account far better than others” -  
(Interview: Representative, HMICS).

The criticisms and weaknesses of the local police authorities have been covered in detail in the previous chapters (Chapter 2 and 3). However, the perception that local police authority members had strong claims to ‘local’ knowledge can also be disputed. Research into the previous local police authorities found that “95% of the 109 respondents indicated that they had resided in their Police Board area for greater than 10 years” and this formed the basis of their claims to local knowledge (Etherson, 2013:

126). As I have argued in Chapter 4 (4.4.2), the local police authorities were *regional*, and members were drawn from the various localities within that region. As noted earlier, of the 34 members in the Strathclyde Joint Police Board, only eight represented Glasgow (Scottish Government, 2011d: 16, para. 2.19). If we were to apply the same principle to the SPA, for instance, and ensured that eight of its members represented the former eight local police authority regions, would the SPA then be able to make strong claims to ‘local’ knowledge? I have previously argued that ‘local’ knowledge should form part of an ideal epistocratic composition in relation to police governance and accountability (Chapter 5, 5.3.1.a). However, it is more problematic to identify the criteria through which claims to local knowledge can be established. With regard to the SPA’s composition, just as ex-police officers were appointed to fill the gaps in policing knowledge, it appears the rationale for appointing some local councillors was specifically to fulfil the perceived lack of local knowledge:

“in a sense their democratic background is a competence. So, they are not there as a representative of any particular area, but they bring the fact that they are local elected members, they have that kind of democratic competence they bring that into the SPA” -  
(Interview: Civil Servant).

A reliance on local councillors to bring in local expertise can also lead to unintended consequences of partisanship as I have alluded to earlier (Chapter 4, 4.4.2). As highlighted by the local divisional commanders, some local scrutiny committees were often dominated by partisan interests:

“There is a particular lens through which the councillors tend to look at things particularly if they are independents, they are not SNP, they are already motivated to think ill of all things Police Scotland. So, it becomes political quite quickly and it is evident in the scrutiny meetings. It is very obvious the parties that councillors represent, and it is very predictable the stance taken by individual councillors based on political allegiances” - (Interview: Divisional Commander, Site 1)

“they will challenge but sometimes there is political point scoring. You can see if one member of one party asks a question, the other party doesn’t agree, they challenge each other in that open forum, and we think don’t get personal in that forum, it’s about what’s best for the community, it’s about how the police are performing

and holding me and my team to account” - (Interview: Divisional Commander, Site 2)

Whilst there was no evidence that members with local government experience took a party-political view in the SPA board meetings, drawing on my arguments above in relation to regulatory capture, a broad knowledge composition would ensure that a range of views and perspectives inform decision-making. The inclusion of members with local government experience did not resolve the tensions between the local and the central, as I have established in Chapter 7, in a similar vein as how the inclusion of senior ex-police officers did not address the lack of training in relation to the scrutiny of operational policing, as argued above.

Lustgarten has articulated the virtues of centralism and localism effectively arguing that central control is needed for greater “co-ordination and uniformity” and to “compensate for local inequalities” (1986: 178). Conversely, local actors lay a strong claim to knowledge of local areas and local needs by virtue of being representatives of their respective electorates, allowing for avenues of greater local participation (Lustgarten, 1986: 177). Therefore, policing policy would need to be adaptable to the various concerns and needs of various localities, for instance, urban areas may have different policing needs than rural areas and so forth. The SPA’s status as a central actor in the two tripartite relationships ideally situates it to play the role of the intermediary, - i.e. between the Scottish Government and Police Scotland, and between the local scrutiny committees and Police Scotland. Under such an arrangement, ‘local knowledge’ within the SPA’s composition is less essential given its broad strategic role. Whilst my analysis shows that in its formative years, the SPA was unable to form an effective bridge between the local and the central (Chapter 7, 7.2.2), recent developments (see Chapter 9) have allowed the SPA to enhance its role as an intermediary, often acting as a conduit between the local and the central. By showing greater awareness and an understanding of problems affecting local authorities, the SPA may be able to fill this particular gap in knowledge, and ensure greater connectedness between central objectives and local demands.

#### 8.1.4 - Discussion: The SPA's composition and lessons for the framework

My analysis of the SPA's initial composition shows that when it came into effect, its members were appointed on the basis of a broad range of experiences and skills. Further, its members sufficiently represented a broad social demography, particularly in comparison to the membership of the previous local police authorities in Scotland, and the current PCCs in England and Wales. The SPA's composition corresponds well to my proposed institutional epistocracy (5.3.1). However, the analysis of the SPA's composition in relation to its ability to deliver effective mechanisms of police governance and accountability provides empirical insights through which the framework can be enhanced.

In relation to the knowledge composition of the SPA, my analysis above shows that there had been a distinct focus on appointing members with 'professional' expertise and experience. This included governance, HR, and finance background, policing knowledge, experience of local government, and directorship experience (see fig. 8.1 above). However, this knowledge composition did not enhance the ability of the SPA to scrutinise police operational policies, or to effectively act as an intermediary between the local and the central (see Chapter 7). Other reasons for this are examined below (8.2 and 8.3), however, specifically in relation to the knowledge composition, the analysis above shows that the members did not receive sufficient training, and relied on the police to provide the information, and to train them on how to scrutinise it. As I will show below (8.2), the SPA has a broad 'governance' role and whilst the professional skills of the members may have been relevant for other roles such as the allocation of funding, resourcing, and HR, for the purposes of *accountability*, their existing skills were deemed as insufficient. On that basis, a case could be made for an inclusion of lay members with non-professional backgrounds to the existing knowledge composition of an epistocratic arrangement.

Holst's application of epistocracy (2011, 2012) certainly involves all variations of knowledge and does not specify technical or professional expertise. It would be plausible to include lay members representing local communities, without any 'professional' experience in an epistocratic arrangement. It is not suggested that the

whole board should consist of members with no professional experience, but a careful balancing of different variations of knowledge can strengthen the processes of police accountability, with the caveat that no single perspective would be preferred over others. As I argued above and elsewhere (Chapter 5, 5.3.4) principles of reasoning, justification, and evidence should inform the overall decision-making process. There is no specific “technical” knowledge or expertise that would serve as a pre-requisite for police *accountability*, as one MSP suggested that it was about asking the “daft laddie questions”:

“They are there in my view to ask the daft laddie questions and get an explanation. Even where it might seem to officials it’s quite evident why we are doing things that we are doing, a member of the public, - i.e. member on the authority should have the authority to say to a chief constable I don’t understand why you patrol the way you do. And for the chief constable to produce a paper that explains the reason for it. A paper which has substance and not merely a set of words which amount to only headlines. So, I think that the actual board members should quite properly represent the general public” - (Interview: MSP, Lab)

A former Minister told me that he had in fact propagated the inclusion of a lay person on a board, but it was turned down by the civil servants:

“that is my grievance as a Minister, there is a head teacher of a primary school here who is a remarkably good woman who I kept suggesting she should be put on the various boards and would never be put forward because she didn’t fit their ‘person who sits on quangos and public boards kind of perspective’. She had done a remarkable job and met all the criteria but never got put on a board and still couldn’t get through this civil service bureaucracy that skips honest people like her and puts some serial quango kings and queens who sit on numerous boards and actually haven’t contributed to any of them” - (Interview: Former Minister).

Traditionally, the local police authorities were reluctant to scrutinise police operational policies because they often deferred to the professional expertise of the senior officers (Chapter 4, 4.4.1). Lustgarten (1986: 170) argued that “the unbridled professional dominance” had been challenged in some professions such as teachers, through the inclusion of parents as school governors. With reference to Lustgarten (1986) and



Walker (2000), I argued that police operational policies are often based on political priorities, rather than professional expertise, despite the claims to police professionalism (Fyfe, 2013) and operational independence (see Chapter 2, 2.4). Therefore, the inclusion of lay members, drawn from various communities may serve to enhance the epistocratic credentials of my proposed governance arrangement.

There are difficulties around how lay persons would be appointed and what standard or competence would merit one person's selection over another. The process could be entirely randomised, and selections could be made on a rotational basis. Deliberative democrats have found ways to circumvent the requirements of mass participation (Fishkin, 2009; Lafont, 2015) by proposing inclusion through randomised (Landemore, 2013b), or stratified sampling (Escobar, 2014a). Landemore argues that random selections can improve the cognitive diversity of a group, and enhance the quality of deliberations (2013b: 1218-1219). Landemore summarises Hong and Page's (2004) complex model of cognitive diversity as such:

“a diversity of ways of seeing the world, interpreting problems in it, and working out solutions to these problems. It denotes more specifically a diversity of perspectives (ways of representing situations and problems), diversity of interpretations (ways of categorizing or partitioning perspectives), diversity of heuristics (ways of generating solutions to problems), and diversity of predictive models (ways of inferring cause and effect)” - (Page, 2007: 7 in Landemore, 2013b: 1211).

Landemore argues that while cognitive diversity is not limited to a diversity in professions, age, and background, those characteristics do contribute to cognitive diversity (2013b: 1216). As I have included deliberation as a check on the proposed epistocratic arrangement (Chapter 5, 5.3.4), the inclusion of randomly selected lay persons, with the caveat that not a single perspective would dominate others may have the potential to enhance decision-making, and improve police accountability.

The epistocratic credentials of an arrangement composed of 'lay' members might be questioned, particularly in relation to the capacity of those members to understand, interpret and access appropriate knowledge and information. However, as I have

argued in my discussions on *knowledge* (Chapter 5, 5.3.1.a) claims to knowledge and expertise do not necessarily mean specialisation in a specific field (Collins and Evans, 2007: 77). The more pertinent objection to the inclusion of non-professional lay members would be their ability to objectively recognising the validity of knowledge and available research (Cross, 2015: 91). The SPA's model provides a solution for this. As I will show in Chapter 9, the SPA's executive officers were instrumental in negotiating partnerships and engaging with Police Scotland at various institutional levels to establish its governance and accountability role, whereas board members had overarching responsibilities of decision-making and public accountability. It is in fact the executive officers who worked with Police Scotland to develop training initiatives for the SPA board members to be able to understand and scrutinise police information. Through a division of labour between members with professional expertise, and non-professional 'lay' members, an ideal composition may be achieved whereby lay members are given a more public scrutiny role, supported by expert executive officers, and professional board members focusing on other areas of expertise such as Audit, Finance, IT, remuneration, and procurement.

The above analysis of the SPA provides empirical insights and lessons for the conceptual framework, however, a broad composition is one component of the framework. I proposed the framework as a holistic approach to police governance and accountability (Chapter 5) and therefore *power* and *autonomy* are also crucial components that determine the overall *capacity* of an institutionalised epistocracy to undertake its functions effectively. In addition to the weaknesses in its composition, the inability of the SPA to deliver robust mechanisms of police governance and accountability, particularly in the first two years of the new arrangements was also due to misinterpretations in its role and power, as I examine below.

## 8.2 - Power

I argued that for an epistocracy to be institutionalised and situated within an established democratic order, it will need clearly defined delegated powers, so it can establish an accountability relationship with the police (Chapter 5, 5.3.2). Drawing on Zimmerling (2005), I treated power as legally defined formal powers, and influence as

informal power resulting from negotiated agreement. With statutory powers to govern Police Scotland and to hold the chief constable to account, the SPA resembles a formalised institutional epistocracy that draws its authority from legislation, and is situated within a democratic order. I raised the following questions for the analysis of the SPA in relation to my conceptual framework (Chapter 6, 6.5.1), and I examine them below:

- *Has the SPA been able to implement its statutory powers into effective mechanisms of police governance and accountability?*
- *Does the SPA have sufficient influence to fulfil its functions to deliver police organisational accountability?*
- *Does the SPA have sufficient resources to carry out its statutory functions?*

My analysis of the SPA's role so far shows that the powers of the SPA were not clearly defined, and the 2012 Act left the implementation of its role and function to negotiated agreement (Chapter 7). As one civil servant noted that during the legislation process, the idea was to set up the SPA, and allow it to negotiate its own functions, scope of duties, training and knowledge requirements:

*“the SPA in the end will be a set of people who will have to discharge their duties, and how they discharge their duties, is how they choose to discharge their duties” - (Civil Servant).*

Following the appointments of the then Chief Constable Sir Stephen House and the SPA Chair Vic Emery, the Scottish Government, the SPA and senior officers of Police Scotland began negotiations to determine the roles and responsibilities of the SPA, and what its governance role would look like in practice, determining the “boundaries of tolerance” (Executive Officer B, SPA). The ‘new’ tripartite actors were involved in the negotiations by virtue of the formal powers afforded to them in the 2012 Act, giving semblance to the old tripartite relationship with the SPA replacing the local police authorities. I argued in Chapter 7, that the language of the Act was vague and unclear, and it created new ambiguities resulting in practical delays in the implementation of the new governance arrangements. The ambiguity regarding the

SPA's formal powers, and how its precise role would be operationalised, resulted in a period of intense negotiations between the SPA, Police Scotland and the Scottish Government. During the negotiations, the debate often rested on competing interpretations of the language of the Act itself. For instance, the early negotiations centred around the meanings of "may and shall" (Justice Committee, 2012: Col. 2116), "prescriptive and permissive" (Col. 2117), and "mandatory and discretionary" powers (Col. 2125). As surmised by one respondent:

"The first Chief Sir Stephen House and the first Chair Vic Emery had very different interpretations of the Act. And there was significant friction around what does 'maintain' and 'support' and 'scrutinise' mean. And there were months of fighting over, was it the SPA that ran HR and finance, or did Police Scotland have any function in that. So, we lost a lot of time in that conflict" -  
(Interview: Representative, HMICS).

In the Scottish policing and political circles, this came to be known as the *turf war* between the SPA and Police Scotland, the outcome of which determined not only the boundaries of tolerance, but the new boundaries of influence.

#### 8.2.1 - Turf Wars

The formal powers of the SPA in relation to the maintenance of Police Scotland were subject to early contestations particularly from senior officers of Police Scotland, the civil servants and the Scottish Government (Audit Scotland, 2013). As part of its maintenance role, the SPA sought to deliver all the support functions including HR, Finance, ICT, and Procurement to Police Scotland by incorporating these services within its own organisational boundary. This would have given a considerable level of influence to the SPA over Police Scotland's corporate functions. Initially, it was acknowledged by the Scottish Government that any "business partnering agreement" between Police Scotland and the SPA, was within the scope of the formal powers of the SPA (Audit Scotland, 2013: 16). One board member suggested that the chief constable had initially agreed to such an arrangement:

“The Chief Constable agreed after a lot of debate, signed an agreement with the SPA that all of the services needed to maintain policing would be under the auspices of the SPA” - (Interview: Board Member C, SPA)

However, the passing of the corporate functions of Police Scotland to the SPA was perceived to come into direct conflict with the chief constable’s powers of direction and control of the police. The then Chief Constable Sir Stephen House, in giving evidence to the Justice Committee in November 2012, remarked that:

“Is there a 100 per cent meeting of minds on the governance structure between the Police Authority and the police service? No, there is not 100 per cent yet...my belief is that our agreement is that, on a day-to-day basis, the directors of finance and HR will work at the police headquarters - in, as I have put it, the same corridor as myself – and will come to my morning meetings and be part of my senior management team”  
- (Stephen House, Justice Committee Hearing, 27th November, 2012: 2106-2107).

During the Justice Committee evidence session, the extent to which this turf war was about influence, in general, and not just about the corporate functions became clear. The Chief Constable, reminded the members that the 2012 Act places the direction and control of the “entire Police Service” under his domain, and not just the police constables (Stephen House, Justice Committee hearing, 27<sup>th</sup> November, 2012: 2126). In the same session, in an explicit question about who leads policing in Scotland, his reply left no doubts:

“To be clear, I lead the police. I do not believe that there is any doubt about that in anyone’s mind” - (Stephen House, Justice Committee Hearing, 27th November, 2012: 2116).

The extent to which the drawing of informal lines of power was an immediate priority was exemplified by the revelation that both the previous SPA Chair and the Chief Constable sought independent legal advice, at public’s expense, in regards to the interpretation of their respective roles and responsibilities. To the dismay of the MSPs present at the Justice Committee, neither approached the Scottish Government, who had written the legislation (Justice Committee, 2012: Col.2117-2122). One SPA board

member indicated that the confusion regarding the legislative functions of the SPA and how they would be interpreted was also apparent among the MSPs:

“Parliament passed an Act, you could argue whether the politicians who passed it really read it, I would argue sometimes from the comments they made they didn’t understand what they passed, but the Act was very clear that the SPA was responsible for the maintenance of policing” - (Interview: Board Member C, SPA).

The Chief Constable’s insistence on integrating all of the corporate functions within his direction and control also reflected the desire within Police Scotland’s hierarchy to maintain the operational independence over the day-to-day running of the police organisation, and to have input on matters not necessarily related to law enforcement or order maintenance (Chapter 7, 7.2.1). The Chief Constable’s stance over the maintenance role of the SPA ensured that his influence over the organisational decision making would not be corroded. This was the understanding from within the SPA, particularly as it was felt that the senior officers of Police Scotland might have been threatened by the SPA’s *potential* influence:

“Any chief constable in the legacy forces obviously had complete power over what they did with the force, so with the creation of Police Scotland I think they [Police Scotland] had a particular view on how it would be run which would just be a bigger version of the previous forces. However, the introduction of the SPA whilst it was similar to the previous joint police boards actually technically had more power in legislation and a greater oversight role”. - (Interview: Executive Officer A, SPA)

Despite the SPA having a greater governance and oversight role in statutory terms, the Chief Constable, following an intervention from the Scottish Government (also, see 8.3), managed to maintain his own influence, whilst weakening the SPA’s position, a reminder of the lop-sided tripartite arrangements (Chapter 2) and exacerbating the perennial problems of police governance (Chapter 7). Following extensive negotiations, the Cabinet Secretary for Justice formally asked the SPA to relinquish its maintenance role only two months after the reforms had taken effect (Audit Scotland,

2013: 17). This was subsequently agreed upon by the SPA in a public board meeting, effectively rubberstamping a change in direction:

We now believe that it is time to move on to be a much more scrutinising, policy and strategy organisation than a delivery organisation. If you remember – in fact, I doubt that you would ever forget – we had two roles in the beginning: a maintenance role and a governance role. What we are basically saying is that the maintenance role will pass back to the Police Service of Scotland. (Vic Emery, former SPA Chair, Justice Sub-Committee hearing, 27 June, 2013: 151-152).

Following this change in direction, the control of corporate functions was transferred over to the Chief Constable. The SPA subsequently announced its “good governance vision” focusing on “strategy, policy, scrutiny, and engagement” (SPA, 2013c: 4). This might have meant that the SPA would focus on its accountability role with a renewed vigour, but the turf war to decide the boundaries of tolerance had in fact shaped the new boundaries of influence, in favour of the Chief Constable. This episode also marked the beginning of an interventionist approach undertaken by the then Cabinet Secretary for Justice, particularly evident in the first two years of the new arrangements. I examine this further below (see 8.3), however, another reason for the lack of influence of the SPA since its inception was due to its limited resources.

#### 8.2.2 - Resource divide

The ambiguities surrounding the informal lines of power between the SPA and Police Scotland were not just limited to semantics, but also because both organisations were two separate legal entities (Audit Scotland, 2013: 16). It comes as no surprise that immediately following the reforms, both organisations were vying for influence. While Police Scotland was a culmination of the previous eight legacy forces, with all the resources, expertise, and experience, the SPA “had a cold start from nothing” (DCC, Police Scotland). Yet the SPA’s organisational capacity has been capped at 50 staff, whilst it has oversight over effectively two organisations totalling an overall staff capacity of 23,954, as of March, 2016 (SPA, 2016a: 37).

While Police Scotland have a large team of analysts working on a permanent basis and a Senior Executive team that is much larger in size than the SPA's own executive, the existing non-executive members I spoke to, highlighted that even with the right expertise, the time constraints placed on them by the Scottish Government has limited their capacity to operate effectively:

“If you operate according to a taxi meter, then you are fundamentally disregarding the requirements of the board member” - (Interview: Board Member D, SPA)

The passing of the maintenance functions to Police Scotland was supported by the view that the SPA should focus on strategic oversight, and such a move was supported by opposition MSPs:

“the SPA was trying to build its own empire ... It was there to hold the police to account for how they were policing and how they were using their resources and it didn't do that, it wanted to run the police force. So they didn't understand it's role properly” - (Interview: MSP, LibDem)

“Vic wanted to be in charge of finance and he wanted to be in charge of all the civilian staff involved in policing. So that meant he wanted to get his hands on the steering wheel of the bus. He also wanted to sit at the back and watch how he drove. He cannae do that. So, what he should have been doing right from the outset is saying we'll give you the money for the diesel, we'll give you all the staff that you need to drive this bus and we'll sit at the back and we'll see if you're doing it right” - (Interview: MSP, Lab)

With over 97 per cent of the budget allocated to the SPA being spent on policing, and only 0.4 per cent on its own organisational maintenance (SPA, 2016a), the SPA's ineffectiveness thus far can also be attributed to its limited resources. The non-executive board members are appointed on a part-time basis. In the first two years, there were no limits on the amount of time the non-executive members could spend in their roles and subsequently claim expenses for. However, following the Clutha helicopter disaster, the Chair of the SPA, and several board members were revealed to have claimed expenses to attend the funeral of the three police officers who died in the crash (Greenaway, 2015). Following intense criticisms in the media, the Scottish



Government imposed a limit on the non-executive members to claim a maximum of £300 per day for a time commitment of up to five days per month (Scottish Government, 2015b). Members felt that this cap on how much time they could spend on SPA business had further hampered their ability to carry out their responsibilities effectively. One member noted that following the new restrictions, only the time spent attending the committee meetings would be paid for, and not the time spent on preparation and travelling.

As the position of non-executive board members is not a voluntary post, there does not appear to be any incentive, irrespective of their professional integrity, to prepare extensively for scrutiny meetings. Such time and financial constraints could plausibly have contributed to a limited capacity of the SPA to deliver operational accountability effectively. Consequently, limited resources can also limit the opportunities for the board members to develop a nuanced understanding of policing from a governance and accountability point of view.

### 8.2.3 - Discussion: Power and lessons for the framework

I argued in Chapter 5 (5.2) that accountability mechanisms consist of three phases: information phase, debating phase and consequences phase (Bovens, 2010). For an accountability relationship to be established, the account-giver must feel an obligation to present information to the accountability forum, denoting an element of *power*.

My analysis of the SPA above shows that due to the contestations around the SPA's role and powers, and the subsequent turf-war between the previous Chief Constable, and the former SPA Chair, the SPA was not able to establish itself as an effective accountability forum. The lack of information, particularly in the first year of the reforms, contributed significantly to its overall ineffectiveness:

“it has been a pretty combative relationship between the SPA and the Chief, not collaborative...you are only as good as the information you have, asking for information was a real battle, so the members didn't have information to help them hold the police to account. And I think you will see in some HMI reports the way we worded it is that the police service should help others hold the service to account and that's about being open and transparent

around, here's the information, here are the issues here to challenge, not what questions would you like to ask?" - (Interview: Representative, HMICS).

As noted earlier in Chapter 5 (5.3.2), “unclear power relations create a space for competing interpretations” (Olsen, 2015: 427). Based on my analysis in this chapter and elsewhere (Chapter 3 and Chapter 7), one of the strongest criticisms of the 2012 Act is that it left too much to negotiated agreement. The powers of the SPA were vague and ambiguous and whilst it had a duty to hold the chief constable to account for the policing of Scotland, there was a lack of clarity on how those powers could be implemented. The SPA was mostly late to react to the high-profile cases such as stop and search and standing firearms authority. In both instances, the Justice Sub-Committee called in the senior officers of Police Scotland, and the SPA, and took the lead on delivering public accountability by asking questions, seeking clarifications, and demanding further action to be taken. There was a perception that the SPA lacked purpose, and it was acknowledged by one of the board members:

“who can blame the Scottish public in thinking this is a waste of time, this body. Because eventually politicians were making statements on these issues, and HMICS were doing something. And at the end of the day, the SPA limped into view almost because it had no other option...as soon as it became obvious there was public concern then we should have occupied that territory and said we will look at this objectively and fairly and come to a view” - (Interview: Board Member D, SPA).

The analysis of the SPA empirically supports the inclusion of power as a key characteristic to my proposed framework. Power is not only essential for an epistocracy to be institutionalised, it is crucial for the accountability mechanisms to be effectively implemented. In the previous tripartite governance arrangements, the local police authorities were often called toothless due to the perception that they rubberstamped key decisions taken by their respective chief constables (Scott and Wilkie, 2001; also, Chapter 2 and 3). The SPA was subjected to the same criticisms while it was developing and evolving as an organisation (Chapter 7). In addition to power, it is also pertinent that the proposed epistocratic arrangement has the resources to carry out their functions effectively.

Without clearly defined powers, the capacity of the proposed epistocratic framework to resolve the perennial problems of police governance or to provide robust mechanisms for police organisational accountability would be severely limited. However, my analysis in Chapter 9 shows, in the absence of clearly defined powers, through *deliberation*, the SPA managed to restore some influence, establishing mechanisms of proactive scrutiny under the ‘shadow of hierarchy’.

### 8.3 - Autonomy

*Q. Is the SPA sufficiently independent of the Scottish Ministers, Police Scotland, and local government?*

*Q. Are the members able to fulfil their statutory functions without interference?*

I proposed in Chapter 5 (5.3.3) that an institutional epistocracy must be able to carry out its functions independently, within the confines of its delegated powers. It is the essence of democracy that too much power should not be concentrated in a single place (Jones *et al.*, 1996). I argued that epistocrats should be non-partisan and impartial, any perception of partisanship or partiality would result in a loss of legitimacy and purpose. Further, for the proposed epistocratic arrangement to resolve the perpetual tussle between the local and the central, it is crucial that it is suitably independent and balances the competing local and central interests through deliberation, on the basis of knowledge, expertise and evidence (Chapter 5, 5.4).

My analysis of the SPA shows that as well as a loss of power and influence, the outcome of the turf war in favour of the Chief Constable also increased the perception that the SPA, was in fact an extension of the Scottish Government, its members merely acting at the behest of Scottish Ministers, rather than governing through expertise and knowledge. The strongest perception of a lack of autonomy to manage and deliver the police governance and accountability, came from *within* the SPA board:

“To some extent, I think, in a system where there is a great deal of political oversight and talking as we are, I could say that there have been occasions when governments view has been through the civil service quite forcibly put to us as a potential direction on matters” - (Interview: Board Member A, SPA).

“I’m an experienced board member, I have sat on a lot of boards, I have never had more contact with Ministers than in this role so I think that in itself is very interesting... there was a real interaction when the new Cabinet Secretary took over we were, I was going to say invited, called to St. Andrews house so that he could eye ball us all actually and set out his expectations” - (Interview: Board Member B, SPA).

“The central government throughout the entire process has been far too heavily involved ... rather than having a separation of duties between government, SPA, police we very much had the government and the police, and the SPA almost as onlookers, and in that environment, it was never going to work” - (Interview: Board Member C, SPA)

“That [central government involvement] has always been the fear of the SPA in the three years we have been in existence so whilst there is no day-to-day interference with what we are doing, I think there has been a perception and the threat that if we overstep our responsibilities or if we were to upset the chief constable then the Cabinet Secretary would intervene to stop us from whatever it is we were doing, and that perception has had an effect on the ambitions of Police Scotland.” - (Interview: Board Member D, SPA).

The above comments may not be representative of the whole SPA board, but in the aftermath of the turf war, and in relation to the inadequate processes and mechanisms of police operational accountability (see Chapter 7), there was a growing perception that the SPA was not allowed to develop as an independent governing body. As I outlined in Chapter 3 (see, 3.1), the 2012 Act affords considerable powers to the Cabinet Secretary for Justice to appoint the chair, and to influence the final composition of the SPA board, and the way it operates. The Scottish Ministers also have formal powers to give directions to the SPA, so long as those directions are not related to police operations. This direct involvement may be acceptable and even welcomed in other areas of public service administration, for instance, a 2010 Audit

Scotland report found that the chairs of the NHS bodies regularly met with the Cabinet Secretary, and enjoyed a “close relationship with Scottish Government” (Audit Scotland, 2010: 16). However, the official justification for the creation of the SPA was for an arms-length governance body to sit between policing and central government (Scottish Government 2011c: 13, para. 3.9). A former Minister, I interviewed, confirmed that “we were quite clear that there would have to be a body in-between”. Yet there was a growing perception that the weak accountability mechanisms were in fact due to consistent Ministerial interventions:

“Every time we try to bite, the government removes a tooth ... I have been shocked, absolutely shocked at the level of government interaction” - (Interview: Board Member C, SPA).

The perception among most of my interviewees was that due to the proximity between the former Cabinet Secretary for Justice and the Chief Constable, the SPA was often bypassed on key decisions. The case of deployment of armed officers on routine patrols across Scotland highlighted that the Chief Constable did not share this information with the SPA:

“MacAskill reported to me when I asked him that when the Chief Constable decided that his officers would patrol with firearms, the chief constable came and briefed MacAskill privately. He didn’t brief the convenor of the [SPA] board. He bypassed the board and went to the Minister” - (Interview: MSP, Lab).

The close contact between the former Justice Secretary and the former Chief Constable was also acknowledged by a HMICS representative who indicated that the level of contact between the two had left the SPA outside the loop on big decisions, particularly at a time when the SPA was still developing as an organisation:

“the previous Cabinet Secretary for Justice Kenny MacAskill was incredibly close to Sir Stephen House, they had a very high regard for each other and they were in daily contact all the time. So, that doesn’t help an SPA that’s fledgling and trying to find its strategic space” - (Interview: Representative, HMICS).

As I outlined in Chapter 3, the consultations prior to the reforms, the 2012 Act and the subsequent centralisation of the police forces and the creation of the SPA were overseen by the Scottish Government led by the SNP. In the aftermath of the reforms and following the publication of Murray's findings on the use of stop and search powers in Scotland (2014a), policing became a politically sensitive matter (also, see Chapter 6, 6.3). In fact, upon publication of the stop and search report, the Scottish Government held an event, which was attended by the former Cabinet Secretary of Justice, with a view to defend the tactic and to promote its benefits (Murray, 2017: 7). The event coincided with the SPA's own inquiry into the use of stop and search. One board member who was involved in the Scrutiny Review told me that:

“Before Kath did her report, the police had a pre-emptive strike at a session at Glenrothes. Kenny MacAskill came and said this is a good thing, I was sitting about to lead the review of stop and search and thought I'm about to look at the facts and figures and produce an evidenced based report, the Cabinet Secretary for Justice has already made up his mind” - (Interview: Board Member C, SPA).

The above quote underlines the influence of the former Justice Minister in matters pertaining to policing. Such level of involvement not only raised question marks about the independence of the SPA, but also its purpose. The board members I interviewed, all raised concerns about the level of Scottish Government influence, hampering their abilities to perform their functions independently. Some members also highlighted fears of reprisals, if they did not follow Ministerial directions:

“we are there by gift of the Minister, the Cabinet Secretary, if we don't do what we are expected to do, I think there's a very good chance that we won't get reappointed” - (Interview: Board Member B, SPA)

“if you stand against the government you might not get reappointed” - (Interview: Board Member C, SPA)

The appointments of non-executive board members in Scotland are regulated by the Commissioner for Ethical Standards who sets out a code of practice for the Scottish Ministers and civil servants in relation to all public appointments. However, because

of this underlying motivation to get reappointed, it is plausible that certain board members would take a similar view to the one proposed by the Justice Minister, increasing the likelihood of undue Ministerial, and central government interference. This has the capacity to severely undermine the epistocratic claims of the SPA, if on key decisions, the SPA board members follow Ministerial line, rather than base their decision-making on available evidence and expertise.

### 8.3.1 - Discussion: Autonomy and lessons for the framework

The analysis of the SPA, above, provides a strong empirical foundation for the inclusion of *autonomy* in my proposed framework outlined in Chapter 5. I argued that for an epistocracy to be institutionalised, it is imperative that such a body has delegated powers, and that it does not serve narrow partisan interests. If the experts, appointed for a specific purpose, were not able to carry out their functions independently then such an arrangement would lose its legitimacy and purpose (Rosenvallon, 2011).

The process of appointments of board members, coupled with an underlying potential of reliance of board members on the Justice Minister, for reappointments, raises problems and question marks about impartiality of experts. There are suggestions among MSPs, particularly from the opposition benches that the members of the SPA should be appointed by the Parliament, for direct democratic oversight and greater distance from central government. One MSP emphasised this point:

“While the legislation was going through, we had amendments down which would have meant that the appointments were made by Parliament or by a commission, in particular the appointment of the chair of the board would not have been the appointment of the Justice Secretary but a commission in the way we appoint the Human Rights commissioners or something like that. And that was rejected” - (Interview: MSP, LibDem)

Such an arrangement would create some distance between the Scottish Government and the SPA, allowing the board members to carry out their functions within the confines of their delegated powers. However, one civil servant raised a pertinent counter-argument to the influence of the Scottish Government in matters related to the SPA’s role:

“So people argue for democratic accountability and then argue against political control, so if you had the Chief Constable reporting to the Cabinet Secretary for Justice, that would be a bad thing, that would be political control, but if you had a Chief Constable reporting to locally elected members then that’s democratic accountability. Well that’s exactly the same thing, so people were not being consistent, in the way they look at it, if you’re going to have democratic accountability, and that’s about accounting to people who are elected, they are politicians, then the possibility of political control is inherent” - (Interview: Civil Servant)

The above quote touches at the heart of the issue of the “regulatory puzzle” and the “paradox of police governance” as conceived by Walker (2000: 4-5). I argue that by appointing experts, and delegating powers of police governance to them, the democratic state should seek to limit its own influence in policing policy, for reasons explored in Chapter 2 and Chapter 4 at length (Chapter 2, 2.4.1; Chapter 4, 4.4.2). It is for that institution then, an epistocracy - to undertake its delegated functions within the confines of its powers.

An institutionalised epistocracy is accountable to the democratic state (Holst and Mollander, 2014), however, undue central government influence in its approach to police governance and accountability can lead to perceptions of partiality and partisanship. A lack of autonomy can further perpetuate the tensions between the local and central government, resulting in lop-sided governance structures, as was the case previously during tripartism. The SPA, as an institutionalised epistocracy with delegated powers, situated at the centre of two tripartite relationships, has the potential to serve as an impartial and non-partisan intermediary between the local and the central, and between the public and the police. However, it needs to establish some distance from the Scottish Government if it is to achieve its potential. As I have argued in relation to the framework, if the SPA is perceived as an extension of central government, merely carrying out ministerial duties, instead of drawing on expert evidence and knowledge, it would lose its legitimacy and purpose.



#### 8.4 - Conclusion

The tribulations of the SPA in its first two years, as examined in this chapter and in Chapter 7, were summed up by one board member:

“We have created an image for ourselves as being ineffective, not being proactive, being reactive, being in the government’s pocket, being in Chief Constable’s pocket, being useless, being on a gravy train, you know all of those things, they are really hard to overturn” - (Board Member B, SPA).

The analysis of the SPA so far provides a strong empirical foundation for my proposed conceptual framework. In particular, it shows that the inclusion of a *broad composition*, *power* and *autonomy* are key characteristics that contribute to the overall *capacity* of an institutional epistocracy to deliver effective mechanisms of police organisational accountability.

This chapter has highlighted that the inability of the SPA to implement effective processes and mechanisms of operational accountability were due to weaknesses in its knowledge composition resulting from a lack of training, and insufficient time given to board members to develop an understanding of operational policing. The powers of the SPA were not clearly defined and the differing interpretations led to a turf war that resulted in the SPA losing much of its influence at a time when it was still developing as an organisation. Finally, the Scottish Government, through the Justice Minister, did not allow the SPA to carry out their functions independently, leading to the perception that it was an extension of central government. Board members in particular, raised concerns about reappointments, if they did not follow Ministerial directions.

The analysis of the SPA stresses the importance of a *broad composition*, *power*, and *autonomy*, for an epistocratic approach to police governance. I will argue in Chapter 9 that all of these components are strengthened by the inclusion of *deliberation*, which provides a crucial democratic character to the proposed epistocratic arrangement. All of these components are interdependent, and provide for a holistic approach to police governance and accountability, as my analysis of the SPA in relation to *deliberation* will show in the next chapter.

## **Chapter 9 - The SPA's approach to police accountability - The deliberative ideals**

This is the second of the two chapters that presents the analysis of the SPA in relation to my proposed conceptual framework outlined in Chapter 5. In this chapter, I argue that since the high-profile cases of stop and search and armed policing, the deliberative principles have become implicit in the SPA's approach to governance and accountability, and this has helped alleviate some of the problems the SPA encountered in its formative years. As the new governance arrangements have continued to evolve, the SPA has gradually established an accountability relationship that encompasses proactive scrutiny as well as retrospective accountability, and it is underpinned by deliberative principles of justification and reasoning. This has also resulted in an improved provision of information from the police.

I conclude the findings chapters (7-9) by arguing that despite weaknesses in its composition, a lack of clarity in its power, and impositions resulting in a lack of autonomy (Chapter 8), the SPA's approach to police governance and accountability is evolving and encapsulating the ideals of an 'epistocratic and deliberative' approach to police governance. These developments have the potential to resolve the 'operational independence' doctrine, or at least render it dormant, until invoked by an overzealous chief constable, as well as enhancing the SPA's potential to strengthen its position as an intermediary, to provide a balance between the local and the central.

### **9.1 - Deliberation and accountability mechanisms**

*Q. Are deliberative principles manifest in the SPA's approach to proactive scrutiny and retrospective accountability?*

*Q. Have deliberative principles resulted in better provision of information from the police?*

In outlining my proposed framework in Chapter 5, I argued that *deliberation* refers to the way police governance and accountability mechanisms are operationalised

(Chapter 5, 5.3.4). By drawing on a restricted definition of accountability as a *mechanism* (Bovens, 2010; see Chapter 5, 5.2) I argued that the three phases of accountability, i.e. information phase, debating phase, and consequences phase can be achieved through my proposed ‘epistocratic and deliberative’ approach to police governance (Chapter 5, see Table 5.1). I argued that the most crucial phase of accountability mechanisms is the *debating* phase as this is where accountability takes place in practice (Day and Klein, 1987; Mulgan, 2000; Bovens, 2010). The inclusion of deliberative principles of justification and reasoning during this phase can allow proactive scrutiny of policing policies as they are being developed, as well as retrospective exchange of reasons and justification *ex post facto* (Chapter 5, 5.2). This argument is confirmed and consolidated by the analysis of the SPA’s emergent approach to police governance and accountability that is underpinned by deliberative principles, as I examine below.

Following the turf-wars (Chapter 8), the SPA restated its accountability role in terms of scrutiny and oversight. However, this led to renewed tensions between the SPA and senior officers of Police Scotland. In the first two years of the new arrangements, there was a strong sense within the Police Scotland hierarchy that the SPA did not have any business scrutinising police operational policies, particularly on a *proactive* basis (see Chapter 7). The SPA’s attempts to establish a proactive scrutiny relationship with Police Scotland unsurprisingly met with resistance, causing further confusion about the SPA’s role, at a time when the organisation was still at an embryonic stage. As I argued in Chapter 7 and 8, the case of the standing firearms authority represents one of many examples where the SPA was bypassed during the operational decision-making processes. However, the then SPA chair stated a desire for the SPA to have a more proactive role in scrutinising police policies:

“There is a maturity in our arrangements with the police on the extent to which the SPA becomes involved in the chief constable’s decisions. Our scrutiny role is very much after the fact, and that is not really my view of governance ... we need to move to a situation in which we are consulted in advance of policy decisions being made instead of simply scrutinising those decisions after the fact” - (Justice Sub-Committee hearing on Armed Policing, 21 August 2014: 481).

In 2016, in his governance review, the new Chair of the SPA, reemphasised that the SPA needs to take “*responsibility for reviewing policing policy ... this should be a proactive process and done collaboratively with Police Scotland*” (Flanagan, 2016: 21, Recommendation 20). I found that following the initial period of upheaval and uncertainty (discussed in Chapter 7 and 8), the SPA has made considerable progress in achieving a degree of proactive scrutiny, however, there was some early resistance from Police Scotland.

The resistance against proactive scrutiny was largely due to what the previous SPA’s chair referred to as ‘scrutiny after the fact’. That was the primary *modus operandi* and a legacy of the previous tripartite governance arrangements in Scotland. This type of ‘explanatory and co-operative’ governance mechanism (see Chapter 4, 4.2.2) allowed for a culture of retrospective accountability that did not impede on the operational decision making of the senior officers, whilst also allowing the police forces to fulfil a statutory obligation<sup>31</sup> to give an account of their performance to locally elected representatives. A recent research study spanning all eight local police boards, noted that it was common for the chief constable to present an annual report on force performance, and whilst this sometimes triggered questions, or requests for further information from local board members, the reports were mostly accepted without further discussion, dialogue or scrutiny (Etherson, 2013: 147). A council officer who currently assists a local scrutiny committee, in one local authority area, gave me her insights on how she perceived the police board meetings took place during the previous arrangements:

“On occasion I attended the previous joint board ... it was the weirdest experience for me... [the current local] scrutiny committee meetings can be bruising if the members are not happy, but in the previous joint board the same councillors from our authority, who can be very challenging and tough, were absolute lambs in an environment where the Chief Constable was there in his full regalia and his officers were all there with all of their stuff on, there was no scrutiny that was evident. I saw police officers congratulate themselves on how well they were providing services and members almost applauding. I could not believe that

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<sup>31</sup> Section 15(1) of Police (Scotland) Act 1967.

it is the same members who scrutinise other public services in such a different way” - (Interview: Lead Officer, LSC, Site 3).

While the experience of this officer may not be representative of all local police board meetings that took place in other police areas, it potentially highlights the kind of accountability the senior officers of Police Scotland, who had all served in the previous legacy forces<sup>32</sup>, may have been accustomed to, and perhaps comfortable with.

The creation of the SPA, with a governance and oversight role, as well as a duty to hold the chief constable to account, represented a paradigm shift insofar as the existing mechanisms of accountability were concerned, introducing an added requirement for *proactive scrutiny*. This is examined further in relation to the annual police plans.

#### 9.1.1 - Annual Police Plans

In the absence of clear accountability mechanisms, the SPA’s early emphasis had been on assessing police performance in relation to the policing priorities, and the SPA’s own strategic police plan. Despite the 2012 Act being vague and ambiguous about what it meant by ‘the duty to hold the chief constable to account’, it placed clear expectations on both the SPA and Police Scotland about the need for policing in Scotland to adhere to the policing principles (see, Box 9.1).

The policing principles are—

- (a) that the main purpose of policing is to improve the safety and well-being of persons, localities and communities in Scotland, and
- (b) that the Police Service, working in **collaboration** with others where appropriate, should seek to achieve that main purpose by policing in a way which—
  - (i) is **accessible** to, and **engaged** with, local communities, and
  - (ii) promotes measures to prevent crime, harm and disorder.

#### Box 9.1 - Section 32 of Police and Fire Reform (Scotland) Act 2012

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<sup>32</sup> For instance, the former Chief Constable had served in the same role at Strathclyde Police, one DCC had also served in Strathclyde Police and two DCCs had previously served in the Lothian and Borders Police, before Police Scotland came into effect.

The policing principles form the basis for the strategic police priorities that are set out by the Scottish Ministers in *consultation* with the SPA and Police Scotland (s33). Once the strategic police priorities are published and laid out in front of the Scottish Parliament, the SPA then has a duty to prepare a strategic police plan (see, Box 9.2).

A strategic police plan is a plan which—

- (a) sets out the main objectives for the Authority and for the policing of Scotland,
- (b) **explains the reasons** for selecting each main objective,
- (c) describes what the Authority considers should be done by it or by the Police Service in order to achieve the main objectives,
- (d) where reasonably practicable, identifies outcomes by reference to which the achievement of the main objectives may be measured, and
- (e) includes any other information connected with the Authority's functions, or policing, which the Authority considers appropriate.

**Box 9.2 - Section 34 of Police and Fire Reform (Scotland) Act 2012**

In cognisance of the SPA's strategic police plan, and the strategic police priorities outlined by the Scottish Ministers, the chief constable has a statutory duty to prepare and publish an annual police plan (see, Box 9.3), setting out the policing arrangements for the whole of Scotland.

When preparing an annual police plan, the chief constable must—

- a) send a copy of a draft plan to the Authority,
- b) invite the Authority to comment on the draft plan within such reasonable period as the chief constable may specify, and
- c) **have regard to any comments received within that period**

**Box 9.3 - Section 35(3) of Police and Fire Reform (Scotland) Act 2012**

Crucially, as Box 9.3 highlights, the 2012 Act instructs the chief constable to send a copy of the draft plan to the SPA, inviting the SPA to comment on the draft plan, and to *give due regard to those comments*. The SPA itself has to give *reasons* for the strategic objectives set out in its strategic police plan. In practical terms, the annual police plan has to have regard to the strategic objectives outlined by the Scottish Ministers and the SPA's strategic police plan, which places a strong statutory impetus on the SPA to establish processes of *proactive scrutiny* during the policy-making

phase. But the language used in the act, with explicit references to *consultation*, *reasons*, *explaining* and *giving due regard* imply deliberative principles. I argued in Chapter 8 (8.2), that the 2012 Act left the precise implementation of the SPA's powers to negotiated agreement, however, a consequence of such a scenario was increased deliberation between the various stakeholders in the new police governance landscape. This not only included Police Scotland, the Scottish Government, and the SPA, but also HMICS, Audit Scotland, PIRC, CoSLA, and the local scrutiny committees (see Chapter 3, 3.1).

When the reforms came into effect, however, the SPA board members were prevented from having any involvement in the shaping of the annual police plan. One senior officer made it clear the SPA was only sent a copy of the annual police plan because the legislation *required* as such:

“The annual police plan has to go to the Police Authority for discussion because that's what the legislation says, it's not for approval and that's again something you've got to be careful of because there are some members of the authority previously were of the belief that they approved the police plan ... they have a legislative right to see the plan but not to approve it and even parliament don't have the right to approve it because it's the annual police plan decreed by the chief constable” - (Interview: Ch/Supt, Police Scotland).

The comment of a senior officer above indicates the kind of attitude that might have been prevalent in the hierarchy of Police Scotland in the first three years of the reforms. A representative of HMICS also alluded to this:

“I think the police service has lost its way in its first three years by being institutionally arrogant” - (Interview: HMICS)

Opposition MSPs had also raised concerns about the culture that had been allowed to prevail under the leadership of the previous chief constable, seemingly due to inadequate accountability mechanisms:

“One of the things that I think has been a big loss with the reform has been that the role of the chief constable, has no other peer of his equal in the profession in Scotland, and that is dangerous. So, in the past you had 8 chief constables and they were all of an equal standing and each of them carried out their role in a very different way and they were able to bounce things off each other and I suspect if there was someone doing something that seemed rather over the boundary the other chief constables would have felt able, and would have done, would have challenged them and who can do that in Scotland now?” - (Interview: MSP, LibDem)

“the chief constable and people around the chief constable seem to have got to a process in which they will do as they chose under the guise of their operational independence and that any notion of policing by consent was artificial and consultation was more about media handling rather than genuine consultation and it was an absence of the candour, genuine candour on the way in which policing was being conducted in the first three years of Police Scotland” - (Interview: MSP, Lab)

Despite resistance from the senior hierarchy of Police Scotland, the SPA members that I spoke to were clear that they continued to engage with the senior officers on the matter of the annual police plans and there was no doubt in their mind that this was a hook in for them to start to develop some form of proactive scrutiny of policing policy, recognising that the Act had placed an obligation on the chief constable to consult with the SPA on the issue:

“The act doesn’t require us to approve it. It places obligation on the chief constable to consult with us” - (Interview: Executive Officer B, SPA).

“There’s the top level outcomes that the Government has set, the priorities for policing, there is then what we set out in the strategic police plan and below that there is what the chief [constable] sets himself in his annual police plan. So, those things should all come together and we should be measuring [police performance] against all of that ... but it is a bit haphazard ... I would like to scrutinise the annual police plan as it is being developed” - (Interview: Board Member A, SPA).



However, the resistance from the senior police officers permeated in such a way that even the statutory obligation ‘to consult’ the SPA in relation to the annual police plan, was not fulfilled in the first year of the reforms.

“... there was a relatively limited amount of consultation done in truth that took place around that [the annual police plan] ... there wasn’t much dialogue” – (Interview: Executive Officer B, SPA)

“I think in fairness you know in the first year we probably didn’t do as much engagement with the police authority” – (Interview: Ch/Supt, Police Scotland)

The turf wars that had marred the relations between the former chair of the SPA and the former chief constable (Chapter 8, 8.2) undoubtedly had an effect on the level of engagement and consultation, and the provision of information in the first year of the new arrangements. However, despite early resistance from Police Scotland, the relationship between the SPA and Police Scotland appeared to be maturing and evolving at the time of my fieldwork. HMICS played a crucial role, as a facilitator, and in its numerous reports, it made recommendations that the SPA and Police Scotland should engage more often. For instance, in its report following the armed police controversy, HMICS advised Police Scotland to engage with the SPA in at least 7 out of 10 different recommendations (HMICS, 2014: 9-10). Further informal meetings and interactions between the SPA and the senior officers of Police Scotland, often facilitated, or attended by HMICS, became opportunities for deliberation, involving reasoning and justification, allowing the SPA to gain sight of prospective police policies at an early stage (also, see 9.3 below).

Members of the SPA and Police Scotland acknowledged that the relationship between the two organisations was improving due to more *dialogue*, *reasoning* and *justification*. While not explicitly mentioning deliberation, the benefits of these inherent deliberative qualities were realised in relation to the annual police plans in the second year of the reforms:

“...the annual police plan went through the whole process of **explaining** to the authority ... what they’ve done with their comments and why they haven’t done anything with them ... you have to **explain** that through to them ...” - (Interview: Ch/Supt, Police Scotland).

“by some earlier interaction and involvement and **discussions** ... by the time the letter was written, Police Scotland **were already reforming** the plan to fit with **what we were asking for**” - (Interview: Board Member A, SPA).

Further, a member of the SPA, also acknowledged that the involvement of HMICS may have helped this process:

“Well, the Inspector of Constabulary was around and about some of those discussions, I’d imagine that helped the discussions ... he was looking at undertaking a review of Police Scotland’s strategic planning at the time so it probably helped encourage those undertaking the work in Police Scotland rather than rushed, to plan together, think about what their I suppose, obligations were to other bodies in doing that” - (Interview: Board Member A, SPA).

Through ongoing deliberations, a more collaborative relationship between the two organisations had developed, and executive officers of the SPA played a key role in becoming an intermediary between the board members and the senior officers of Police Scotland. Whilst there was more consultation, the implicit deliberative nature of the new relationship also allowed the SPA to develop processes of proactive scrutiny. For instance, the executive officers, who according to a HMICS representative “did all the heavy lifting”, would regularly meet with the senior officers of Police Scotland and these meetings, in essence, became forums of ‘sense-checking’ before the more formalised forms of retrospective accountability such as the PBMs and working committee meetings led by board members:

“we are being proactive and that’s also backed up by the fact that all officers within the SPA, we are going out making sure that we are attending these meetings so that even if Police Scotland are talking about things at an early stage, we can help shape it” - (Interview: Executive Officer A, SPA)

“We have, I think, it is either weekly or fortnightly meetings to check things to come along what’s happening, what’s in the pipeline, what are the issues...” - (Interview: Executive Officer B, SPA).

As the principles of reasoning and justification became implicit in the nature of communication between the SPA and Police Scotland, there were signs that a holistic approach to police governance and accountability had started to evolve and this was exemplified by the signing of the joint policy engagement protocol between the SPA and Police Scotland.

#### 9.1.2 - Joint Policy Engagement

A second example of the SPA’s approach to proactive scrutiny, through deliberation, was the joint policy engagement protocol, signed in the aftermath of the armed policing controversy. It was recommended by HMICS that:

“Police Scotland should adopt a comprehensive stakeholder management process for major policy changes, apply community impact assessments as a matter of course and ensure this is supported by a detailed communications plan. In particular, there should be agreement between Police Scotland and the Scottish Police Authority around how significant national policy changes are communicated in advance” - (HMICS, 2014: 9).

This paved the way for the SPA members to engage with Police Scotland in advance of policy decisions being implemented, allowing significant scope for proactive scrutiny and better provision of information from the police. For instance, the document states:

“**Police Scotland** commits to **engage in advance** with the SPA on any policy or approach that is likely to raise significant **public interest** or on which they would require to communicate and **engage with partners** and the **public** on a **national** basis

**Together, SPA and Police Scotland** commit to ensuring that the key issues and outcomes of **engagement** are **discussed** with the Scottish Government in a timely manner, ensuring that the Government has an opportunity to provide policy input before decisions are finalised, and brought to **public attention** in an appropriate and timely way through the existing police

**governance and scrutiny meetings".** – (Joint Agreement on Police Policy Engagement – February, 2015, emphasis added)

In principle, the joint policy engagement protocol would ensure that the tendency of Police Scotland's senior officers to bypass the SPA, such as in the case of the standing firearms authority, was minimised. It also ensures that Police Scotland would engage in advance with the SPA, and crucially, allows other partners, (such as local authorities, HMICS, Audit Scotland and PIRC), to have an input in the deliberations before policies are finalised and rolled out in a public forum. Further, it also provides opportunities for the Scottish Government to have broad oversight over prospective policing policies that could likely cause a negative public impact. Such an arrangement not only exemplifies the interdependencies of different actors in a network-based governance setting (Rhodes, 1996; Bevir, 2010) but as I argued in Chapter 4 (4.5) it also allows the democratic state to 'steer' policing policy without direct intervention, or influence, providing overall democratic legitimacy.

There has been a perception within the SPA that the joint policy engagement protocol had changed the rules of the game and now there were opportunities for the SPA to have more of an input and oversight of policing policy, as it was being developed:

"That's a real fundamental piece and it has quietly developed and launched and that has some real potential... we sat together with senior policing figures in order to draw out what policies and operational decisions mean to us, and as a result we have signed the joint protocol agreement and that's something three or four years ago no observer in policing would have ever said the police would sign up to ... chief constable committing to engage not only with ourselves but actually much more widely on any issue in which there is a public interest" - (Interview: Executive Officer B, SPA)

As illustrated by the comment above, the potential of the joint engagement policy protocol is remarkable. I have argued at length in Chapter 2 and 7, about the need to ensure police operational policies are subject to scrutiny from respective governing bodies, with the caveat that specific operations are insulated from undue political interference. This protocol potentially renders the traditional notion of operational independence dormant, as any policing policy that can have an impact on local

communities would need to be discussed and deliberated on *in advance*. At least in principle, the joint policy engagement protocol means that there should be a better provision of information from the police, followed by deliberations and an exchange of reasoning and justification. It is here, through proactive scrutiny of prospective policing policies, that the SPA can utilise its epistocratic credentials by drawing on knowledge and evidence, both internally and externally through forums such as SIPR, to counterbalance police expertise, ensuring that future policing policies have a strong evidence base.

The joint policy engagement protocol, underpinned by horizontal deliberation, has also paved the way for the SPA and Police Scotland to jointly develop and publish a 10-year policing strategy document entitled *Policing 2026* that will inform future policing practice, organisational structure, strategic priorities, and operational policies (Police Scotland and SPA, 2017). The document has been developed through a period of interaction and deliberation between Police Scotland and the SPA, and it has benefitted from external academic and practitioner input, through the platform of SIPR, providing an evidence base for future policing strategy in Scotland. This recent development exemplifies that the SPA's emergent approach to police governance is underpinned by epistocratic and deliberative characteristics.

While the SPA's growing influence in shaping police operational policies as they are being developed is a positive step, it does raise concerns about the SPA's effectiveness as an accountability forum, particularly in relation to the third phase of accountability, i.e. the consequence phase. However, I found that deliberative principles had allowed the SPA to re-establish some influence after the initial turf-war, and the threat of reputational damage allowed it to establish a proactive accountability relationship under the 'shadow of hierarchy'.

### 9.1.3 - Deliberation and powers of sanction

Bovens (2007; 2010) has argued that an essential characteristic of an accountability relationship is the ability for the accountability forum to decide sanctions, or consequence. This is an essential phase of accountability as a *mechanism* and it

underpins the key democratic principle of *redress* (Chapter 5, 5.2). I argued that any contentious policing policy carries a risk of reputational damage due to negative publicity and research has shown that whilst it may be the “weakest possible sanction executives of public organisations are highly alert to perceived negative publicity” (Schillemans, 2011: 391). This was recognised by the senior officer of Police Scotland and the SPA board members:

“the media can be incredibly damaging to the thing that is our lifeblood which is consent. If the public confidence in us goes into decline, then that does affect policing. It affects the way people feel the fear of crime, people’s feelings of community, all of these things are really what we spend huge amounts of effort trying to build and in one fell swoop you know a series of headlines can do untold damage to it. So, can you ignore headlines? No, you can’t. Can you control them? No, you can’t. ... what we are seeking to achieve here is public consent” – (Interview: DCC, Police Scotland).

“policing guards its reputation very jealously and I think it does that because it knows that public confidence is important in the role that they undertake” - (Interview: Board Member A, SPA).

The members of the SPA were also acutely aware of their own reputations, due to the intense media pressure in the aftermath of the high-profile cases (see, Chapter 7, 7.2; also, Murray and Harkin, 2016).

“some of the more controversial subjects which perhaps have had media scrutiny which seem to have arisen out of nowhere and shouldn’t happen in the future so we are being proactive” - (Interview: Executive Officer A, SPA)

“There is a thing about Scotland’s media that now focuses about half of its resources down in the Scottish Parliament so therefore if something comes up there it becomes a national story and it runs” - (Interview: Board Member A, SPA)

“The issue of firearms was whipped up by the media” - (Interview: Board Member D, SPA)

As the above statements highlight, members of the SPA and senior police officers were aware of potential risks of negative media coverage. The nature of policing is such that the risk of reputational damage is omnipresent. The role played by the media in the context of the post-2012 Act policing landscape merits attention in its own right, and it would be outside the scope of this study to focus on the role of the media in delivering a dimension of public accountability of the police. However, the issues of stop and search and armed policing resulted in an intense period of political and media scrutiny with the Justice Sub-Committee on Policing and the Scottish press taking the lead on public accountability of the police and the SPA. The joint policy engagement protocol was developed as a result of what researchers elsewhere describe as “collective action” (Romzek et al., 2012: 446; also, see 9.3 below) following horizontal deliberations between the SPA and Police Scotland, and facilitated by other actors such as the Scottish Government, HMICS, Audit Scotland, PIRC and CoSLA. These developments exemplify that in the absence of clear lines of hierarchy, robust horizontal accountability mechanisms provide a check against the various stakeholders and provide learning stimuli that can lead to a change in behaviour (Schillemans, 2011). It also demonstrates that after an initial period of contestations and differing interpretations about the SPA’s role and powers of police accountability, following a turbulent period, Police Scotland did change their approach, allowing the SPA to gain sight of policing policies in advance. In his governance review, the current SPA Chair stated that the SPA was not a watchdog as it had no powers of sanction, “it has to govern essentially through its relationships and influence rather than having a direct ability to instruct” (Flanagan, 2016: para. 69). However, as the joint policy engagement protocol shows that the threat of reputational damage can often be used as a bargaining tool and even in the absence of formal powers of sanction, an accountability relationship can be established under the ‘shadow of hierarchy’.

These developments have contributed to the dilution of the traditional notion of operational independence and enhanced the SPA’s potential to scrutinise and shape police operational policies as they are being developed. Further, horizontal deliberation with other stakeholders such as the local scrutiny committees, the Justice Sub-Committee of Policing, and the Scottish Government, has allowed the SPA to

enhance its potential to act as an intermediary between the central and local government. This connectedness allows policing policy to be more responsive to reasonable demands of the elected representatives and local communities, as I examine below.

## 9.2 - Responsiveness through deliberation

Policing scholars have used responsiveness in the context of police governance as a key democratic characteristic, arguing that policing *policy* should be democratically responsive (Jones *et al.* 1996: 195, also, Aitchison and Blaustein, 2013). I argued in the context of my proposed framework that deliberative principles can encompass *responsiveness* and *participation* (Chapter 5, 5.2).

The joint engagement protocol allows the SPA to engage and consult with partners, and that includes local authorities. Whilst I argued that the SPA had not been effective in acting as an intermediary between the local scrutiny committees and Police Scotland's senior executive, (7.2.2.a), recent developments point to a more deliberative nature of engagement. Following our research (Henry *et al.*, 2016) and the SPA Governance Review (Flanagan, 2016), the SPA has participated in regular forums for convenors and lead officers representing the local scrutiny committees across Scotland (CoSLA, 2016).

In terms of engagement with local communities, the SPA members indicated that there were plans to consult the public on a number of issues, in particular the issue of body-worn cameras:

“there will be a lot more public attitude work and ideally on issues which have not yet developed a public debate at the right time would be about the body worn cameras ... it comes with a lot of interdependencies for me and wider concerns, there are some victim groups that support this and then there is another section...I think this is a classic area in which we need to test public attitudes” - (Interview: Executive Officer B, SPA)

“I would say depends on the issue but yes and the plan would be to do even more of that. Particularly around local authorities as our



first go to people, to gauge what local communities are thinking of policing. It has to be wider than that ultimately and especially on issues of major public concern. So for instance if there was a proposal ... to equip all the officers with body worn cameras. I think we'd want to go out to the wider public on that. But we'd probably start by going to the local authorities and saying what do they think on behalf of their communities then build from there and go to the stakeholders who had more specialist interest as well so obviously the Human Rights Commission but you might talk to representative groups from maybe civil liberties, disability, ethnic communities because it might be, what you do on something like that might be perceived differently by different sections of the community and it's not always obvious until you ask people what they think about that" - (Interview: Board Member A, SPA).

The SPA has also engaged with the public on various issues, its Scrutiny Inquiry into armed policing (SPA, 2014a) attracted 149 responses from members of the public, it also hired an independent firm to conduct a National Public Attitudes Survey and carried out face-to-face evidence sessions across Scotland. The quotes from the SPA members above, indicate that at least on issues of public concern and particularly in relation to operational policies that may have a negative public impact, the SPA has an intention to engage with the local authorities, as well as local communities. However, as I have argued in Chapter 5 (5.3.4), in order not to succumb to partisanship and majoritarianism, principles of deliberation mean that any unreasonable demands can be refused with reasoning and justification (Loader and Walker, 2007; Aitchison and Blaustein, 2013). The deliberative principles in the SPA's approach to police accountability are further exemplified by the following example:

#### 9.2.1 - Case Study - Deliberative Accountability in action

Police Scotland announced the merger of Aberdeen City Division with Aberdeenshire and Moray Division and the merger of 'K' and 'L' Divisions<sup>33</sup>. Under the previous governance arrangements, this would have been within the scope of the 'operational' decision-making of the chief constable. The SPA engaged proactively with Police

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<sup>33</sup> Renfrewshire and Inverclyde Division (K) and West Dunbartonshire and Argyll and Bute Division (L)

Scotland, and following months of consultations, engagements and *deliberations*, raised the following questions in relation to the mergers:

- **Question 1:** *Evidence* on the approach taken by Police Scotland to *engagement* and *consultation* with *local interests* in each areas, what feedback was received and how it was considered by Police Scotland, and how issues raised during the engagement phase has shaped and informed Police Scotland decisions on whether to proceed, or not, with divisional structure changes;
- **Question 2:** *Evidence* on how Police Scotland propose to ensure that Local Authorities continue to enjoy appropriate access, and *responsiveness*, to senior decision-makers from Police Scotland where changes are proposed;
- **Question 3:** How senior officer resilience and work-life balance across the service will be supported within any change or rationalisation – locally and nationally -and especially within the superintending ranks;
- **Question 4:** Assurance on how any proposed changes have been considered alongside existing *community planning structures* and will contribute to *partnership working* and the successful delivery of *shared outcomes*;
- **Question 5:** How work to assess and quantify potential efficiencies has progressed and what a timeline for realisation may look like;
- **Question 6:** How any proposed structural changes will read across to decisions about the police estate, given the strong prominence stakeholders in both the north-east and west coast have given to the status of local headquarters buildings;
- **Question 7:** What preparations for further planned communications have been made to *inform* and *engage* internally and externally with *local interests* and the workforce in each area where changes were under consideration?

(SPA, 2015a)

Following further information presented by Police Scotland, the SPA approved the merger of the Aberdeen City and Aberdeenshire and Moray Divisions, despite stringent opposition from the Aberdeen City Council, however, it did not approve the

merger of the K and L Divisions. In writing to the Justice Minister, the SPA Chief Executive gave *reasons*:

*“As a result of the evidence considered, I can report that SPA members were satisfied that Police Scotland had demonstrated an effective approach to engagement and that the proposals now being taken forward have been developed to take account of concerns and issues raised. This includes the decision not to proceed at this time with one of the two proposed changes*

*As a result, from today (28 October 2015) Police Scotland will begin communications internally and externally to confirm that the divisions currently aligned to Aberdeen, Aberdeenshire and Moray areas will from the beginning of 2016 operate as a single division. They will also confirm that the proposed merger of K and L divisions will not be taken forward, but will be reviewed again not earlier than the third quarter of 2016-17.”* (SPA, 2015b).

The above exemplifies how the SPA has managed to weave in principles of deliberation into its approach to police accountability of operational policies. The evidence provided by Police Scotland was published (SPA, 2015a) and subsequent *reasons* were given for the decisions made. This example further illustrates that the balance of power had shifted somewhat in favour of the SPA, through continued deliberation and engagement.

Police Scotland had to *justify* their decision and *persuade* the SPA rather than asking for the decision to be rubberstamped, as was the case under the previous arrangements (Chapter 2 and 3). As a former Minister said: “once you get down to having to coerce, it’s a sign of failure”. *Persuasion*, on the other hand, is an inherent principle of deliberative dialogue (Dryzek, 2001), and it has gradually become evident in the SPA’s approach to police governance and accountability. The emphasis of the SPA on *local engagement* and *local interests* also underpins responsiveness.

The above analysis shows that through deliberative principles, the SPA has started to act as an intermediary between the Police Scotland senior executive and the local scrutiny committees. It is an active participant in the recently established Police Scrutiny Convenors Forum, aimed at providing a formal route for the escalation of issues affecting the local scrutiny committees (CoSLA, 2016). Further, continued deliberation with Police Scotland, and through horizontal deliberation and engagement with other key stakeholders such as HMICS, Audit Scotland, PIRC, and the Justice Sub-Committee on policing, the SPA has managed to implement mechanisms of proactive scrutiny, which means that any policing policy, likely to have a public impact must be brought before it for scrutiny, before it is implemented. In essence, this would relate to all operational policies that were historically shielded from external scrutiny under the guise of operational independence and police professionalism. This arrangement is consistent with my proposals in Chapter 7, and it may have rendered the *traditional* notion of operational independence dormant, unless invoked once again by an overzealous chief constable.

### 9.3 - Discussion: Deliberation and lessons for the framework

Due to the evolving nature of the post-2012 Act arrangements, the SPA's deliberations with Police Scotland have taken place largely behind closed doors. This raises the spectre of proactive scrutiny taking place in informal, private meetings rather than the more transparent public reasoning that is associated with deliberative democracy (Dryzek, 2001; Gutmann and Thompson, 2004; Fishkin, 2009; Lafont, 2015). My analysis of the evolving nature of the new arrangements show that this was a necessary aspect of relationship and trust building, following an initial period of turmoil (Chapter 8, 8.2), and HMICS and the Scottish Government played a facilitative role to ensure greater symbiosis between the two organisations. However, the SPA is responsible for holding the police to account, and despite their role being framed as 'a critical friend' there have been arguments that they needed to come out publicly and take the lead on issues such as firearms and stop and search:

“They are not a critical friend, they are there to deliver governance and oversight” - (Interview: MSP, Lab)

Whilst the policy engagement protocol states that the public could be consulted on issues of concern, and that policies will be announced in a public forum, there is an increased likelihood that the real deliberation, whilst the policies are being shaped, will continue to take place behind closed doors. This arrangement raises concerns regarding regulatory capture, that I alluded to in Chapter 8 (8.1), particularly if there is a perception that there is too little distance between the SPA and Police Scotland. However, from the SPA's point of view, particularly as it was trying to restore the balance of power and influence that it had lost in its early years (Chapter 8, 8.2), the members felt that these informal meetings had some benefits from a governance point of view:

“We also have informal forums or safe space discussions so that's where our members can meet on a regular basis, I think its monthly where they invite Police Scotland to come and actually discuss topics of interest so you know what are they thinking, what are their biggest challenges where can the SPA input...so there's kind of regular check points” - (Interview: Executive Member A, SPA)

Following the governance review, the SPA board decided to hold committee meetings in private as it was argued that these were “working committees” rather than “decision-making committees” (Flanagan, 2016: para. 75). Since January 2017, the SPA's four sub-committees have met in private with no agendas, papers or minutes published to the public. This decision has been criticised by external stakeholders, with HM Chief Inspector of Constabulary in Scotland writing to the SPA Chair, and the SPA board to review this decision. It has also led to a resignation of one of the board members who raised concerns at an SPA's PBM in December 2016. Following her resignation, the Scottish Parliament's Public Audit and Post-Legislative Scrutiny Committee has intensely criticised the SPA's lack of transparency and at a recent meeting, one MSP equated the SPA to the “Kremlin” (Scottish Parliament, 2017: Col. 5).

Whilst informal scrutiny of policing policy does raise concerns around a lack of transparency, in a network governance approach there are other stakeholders involved in policing policy, providing mechanisms for horizontal accountability between the various actors (Schillemans, 2011; Romzek, 2014). The Scottish Government itself is

also an interested actor, and as my analysis has shown it has had considerable influence and interest in matters pertaining to policing, hampering the ability of the SPA to establish itself as an independent body (Chapter 8, 8.3). The 2012 Act has resulted in a complex set of arrangements where bodies like Audit Scotland, HMICS and PIRC have an interest in how the SPA and Police Scotland handle their finances, manage complaints, and provide an effective and efficient service (see Chapter 3, 3.1). This multifaceted arrangement creates opportunities for horizontal checks and balances between the various actors *including* direct democratic oversight.

I argued in Chapter 5, drawing on Romzek *et al.*, (2012), that informal accountability mechanisms can often lead to realisation of shared goals. They have shown through empirical analysis of network-based governance arrangements, primarily involving non-profit organisations, that the emphasis on shared goals and collective action can lead to better information sharing on the basis of trust and reciprocity (Romzek *et al.*, 2012: 446). Particularly, in the absence of clear lines of power, informal accountability mechanisms can develop within the ‘shadow of hierarchy’ (Romzek *et al.*, 2012: 447). Further, other research on partnership working between various agencies in a network governance arrangement has also found that horizontal accountability can address accountability deficits and provide a strong basis for feedback and learning stimuli (Schillemans, 2011: 400).

In the absence of formal powers of sanction, and in light of the SPA’s inability to implement robust mechanisms of accountability in its formative years, proactive scrutiny, even if it is taking place informally, still provides external oversight over policing policies. The SPA board members I spoke to were particularly supportive of the idea of private meetings, precisely because it allowed them to gain sight of policing policies at an early stage. This meant that policies could be examined without undue media and public interference.

“there is an issue around some private discussion taking place before the board. It is not an issue, it's helpful, it allows for matters to be aired in a non-threatening way, to allow policy making to go on, to explore all the possibilities and hopefully for the police service, the senior officers whether Chief Constable’s team or his

civilian Directors to bring stuff to us, to test ideas and to allow for some planning and some of that takes place at committees but some of it also at some working groups at member's meetings that allow early airing and discussion of stuff. Which I hope helps decision making in the longer term because where things aren't clear there is then an ability for board members to ask for further information and that will end up in the public report that goes out in the board decision" - (Interview: Board Member A, SPA)

"So things like, well let's take the contact centres where there was a rationalisation and the plan is that there will be three, if that had just come straight to the board here's the plan this is it, it would be very difficult for us to discuss issues like that in a public forum for the first time ever because of the way media works and all the rest of it, if you have discussions like that in public then things get misrepresented so we do our early thinking at these informal members meetings and then do the formal, but it's not about stage management... it's at a very early stage before plans are formulated" - (Interview: Board Member B, SPA)

Despite the recent criticisms around a lack of transparency, the private safe-space meetings during the formative years of the new arrangements had in fact created a relationship of trust and reciprocity between the SPA and Police Scotland, as a means of "getting things done" to manage early tensions (Crawford and Jones, 1995: 21) and contributed towards a shared goal, i.e. to ensure policing policies do not have a negative public impact, as per the joint engagement protocol (9.1.2). However, this arrangement, whilst necessary to allow the new governance protocols to develop and evolve, should not become business as usual. The essence of deliberative democracy is public reasoning and justification, and particularly in an epistocratic governance arrangement, deliberation provides a democratic dimension because it encapsulates key democratic principles such as *information*, *redress*, *responsiveness* and *participation* (Chapter 5, 5.2).

#### 9.4 - Conclusion: democracy and epistocracy reconciled?

The analysis of the SPA in this chapter provides a strong empirical foundation for the inclusion of deliberation as a democratic check against epistocracy, and supports my argument (Chapter 5, 5.2) that the inclusion of deliberative principles in the processes

and mechanisms of accountability can not only ensure delivery of robust mechanisms of accountability but also enhance and promote key principles of democratic governance.

As I have shown above the deliberative ideals allowed for better provision of *information*, the omnipresent threat of reputational damage allowed the SPA to develop processes of proactive scrutiny, ensuring that policing policies that may be contentious and may lead to a negative public impact were challenged and reversed early on, underpinning the principle of *redress*. Further, the SPA has shown a greater interest in engaging with the members of the public on key issues such as armed policing, and there are plans to engage with various stakeholders, including the public on issues such as body-worn cameras, underpinning *responsiveness* and *participation*. However, principles of deliberation also mean that the SPA will often have to refuse unreasonable demands from the public or local or central political actors. Whilst the SPA has shown with the example of the Aberdeen Division merger that it can sustain pressure from the local authorities and draw on evidence and information to explain and justify decisions, it is yet to situate itself as sufficiently independent of the influence of the Scottish Ministers, as my analysis in Chapter 8 showed.

The analysis of the SPA shows that the inclusion of deliberation can also strengthen other characteristics of the framework. For instance, since its inception, the SPA has engaged with external stakeholders, and academics, to enhance its epistocratic credentials, and fill the gaps in its own knowledge composition. The SPA jointly organised ThinkTanks with Police Scotland and SIPR, which served as a platform for the SPA to draw on external knowledge and evidence. The SPA's most recent strategic police plan entitled *Policing 2026* was developed through explicit engagement and deliberation with academics, practitioners, and local and central political stakeholders. In 2016, SIPR held an International policing conference inviting academics and practitioners from across the globe. The presentations focused on the six key components that informed the SPA's strategic police plan, i.e. *Performance, Partnership, Prevention, Place, Public Accountability, and People and Organisational Development*.



Further, whilst the analysis of the SPA in Chapter 8 showed that its powers were not clearly defined, resulting in differing interpretations of its role and function, through continued engagement and deliberation, it has managed to restore the balance of power by enhancing its influence. This has mostly been achieved through informal, private safe-space meetings between the SPA, Police Scotland, HMICS, and other key stakeholders in the landscape of police governance. Despite criticisms and concerns around a lack of transparency, my research has shown that such an arrangement has allowed the SPA to establish an accountability relationship on the basis of deliberative principles, requiring the senior executive of the police to explain and justify decisions before they are implemented. This arrangement has developed under an omnipresent threat of reputational damage to both Police Scotland, and the SPA, following intense media, and political scrutiny of both organisations in the early years of the new arrangements. The threat of reputational damage to the police in particular, that relies on public confidence and consent, has allowed the SPA to develop a shadow of hierarchy, compensating for the lack of formal powers of sanction. Nevertheless, *power* remains an important characteristic for my proposed framework as the establishment of an epistocratic arrangement requires some *delegated powers*.

In relation to *autonomy*, there is insufficient evidence to suggest that the SPA has started to operate independently, without undue interference from the Scottish Ministers. The presence of other key stakeholders such as HMICS, Audit Scotland, PIRC, local scrutiny committees, and the Scottish Parliament, whilst enabling greater horizontal deliberation, does have the capacity to limit the autonomy of the SPA. However, it is crucial for the SPA's legitimacy and purpose, that it remains impartial, and non-partisan, that its composition remains diverse, and that not a single perspective is allowed to dominate and inform decision-making.

## Chapter 10 - Conclusion

This thesis examined the Scottish Police Authority and its emergent role in delivering police governance and accountability after the 2012 Act. In cognisance of the SPA's model, as a body composed of members with professional expertise, instead of elected councillors, I drew on the notion of *epistocracy* (Estlund, 2003, 2008) to develop an original conceptual and analytical framework for the analysis of the SPA.

I argued that, in the context of police governance, an epistocratic arrangement can not only be justified, but in fact it may be more desirable than the previously tried and tested models of democratic governance, provided that it can be institutionalised properly and if it can enhance key principles of democratic governance, whilst resolving the 'perennial' problems of police governance, i.e. - the operational independence doctrine, and the perpetual tussle between the local and the central.

I proposed an 'epistocratic and deliberative' approach to police governance arguing that an epistocracy could be institutionalised if its *composition* reflects a range of knowledge, expertise and skills, and represents a broad social demography (Holst, 2011, 2012, 2014). Further, I argued that an institutional epistocracy would need delegated *powers* to have an established role within a democratic order (Holst and Mollander, 2014). In order to ensure that the proposed epistocratic arrangement does not serve partisan interests, I argued that it will need to be sufficiently independent of the police and the local and central political actors, including the component of *autonomy* (Jones *et al.*, 1996; Rosenvallon, 2011). Finally, I argued that an epistocratic arrangement would have to weave in principles of *deliberation*, underpinned by justification and reason-giving, into its mechanisms of accountability (Mulgan, 2000; Bovens, 2010), and that the inclusion of deliberation encapsulates key principles of democratic governance such as *information, redress, responsiveness and participation* (Jones *et al.* 1996).

Whilst the *composition, power and autonomy* relates to the overall *capacity* of an epistocratic arrangement to carry out its functions, *deliberation* refers to the way it

delivers police governance and operationalises the mechanisms of accountability. Deliberation also gives an epistocracy, a democratic character, particularly because it encapsulates key principles of democratic governance. Further, it allows an epistocratic arrangement to enhance its claims to knowledge through horizontal deliberations with academics, practitioners and external stakeholders.

The analysis of the SPA provides strong empirical support for my proposed framework. I found that, during its formative years, the SPA's inability to resolve the perennial problems of police governance, and to establish robust mechanisms of police organisational accountability was due to a combination of weaknesses in its knowledge *composition*, lack of clarity regarding its *powers*, and external impositions, particularly by the Scottish Government, resulting in a lack of *autonomy*.

However, recent developments have shown that the SPA has been able to overcome these problems, and it has managed to implement mechanisms of proactive scrutiny of police operational policies through *deliberative* principles. This in turn has resulted in better provision of *information* from the police, and a prior engagement on key issues pertaining to 'operational' policies. Through horizontal deliberation and engagement with other key stakeholders such as HMICS, Audit Scotland, PIRC, local scrutiny committees, and the Scottish Parliament's Justice Sub-Committee on Policing, the SPA has started to establish an accountability relationship under the shadow of hierarchy, restoring some of its influence that it ceded during the initial turf war. The SPA has actively engaged with members of the public on key issues such as armed policing, and it plans to engage with a cross-section of stakeholders on the issue of body-worn cameras. These developments hint at more *responsiveness* and *participation*.

The joint policy engagement protocol between the SPA, the Scottish Government and Police Scotland means that all operational policies that could potentially have a public impact have to be presented before the SPA for scrutiny, prior to implementation. This arrangement has potentially resolved the 'traditional' notion of operational independence, or at least made it dormant, until invoked by an overzealous chief

constable. The SPA is also enhancing its epistocratic credentials by continually engaging with academics and practitioners through the platform of SIPR, allowing it to draw on knowledge and expertise that it lacks, in order to counterbalance police expertise.

The ‘epistocratic and deliberative’ approach to police governance has become implicitly evident in the way the SPA performs its role and functions, as it continues to develop and evolve as an organisation. Through engagement with the local scrutiny committees at the newly established Local Scrutiny Convenors Forum, the SPA may be best placed to act as an intermediary between Police Scotland’s senior executive and the local police authorities. However, the SPA is not sufficiently independent of the Scottish Government, its members are reliant on the Ministers for reappointments, and due to fears of reprisals, they may be more inclined to follow Ministerial directions. My proposed epistocratic arrangement is ideally situated as a buffer between the police and the politicians, balancing the interests of the local and the central, by informing its decision-making based on knowledge, evidence, and expertise rather than serving narrow partisan interests. Until and unless the SPA can establish some visible distance from the Scottish Government, it cannot resolve the perpetual tussle between the local and the central. If there are continued perceptions that the SPA is just an extension of the Scottish Government, its members merely carrying out the wishes of the Justice Minister, then the SPA would lose its legitimacy and purpose. The SPA was envisioned as an ‘arms-length body’ by its architects and it needs to establish that distance.

My proposed ‘epistocratic and deliberative’ framework, strengthened by the empirical analysis of the SPA, provides a holistic way of thinking about police governance and accountability. In addition, it shows how:

- a) An epistocracy could be institutionalised in the context of police governance,
- b) An institutional epistocracy could implement robust mechanisms of police organisational accountability through deliberative principles

- c) Deliberative principles weaved into the actual mechanisms of police accountability could encapsulate and operationalise key principles of democratic governance
- d) The ‘perennial’ problems of police governance, i.e. the operational independence doctrine, and the perpetual tussle between the local and the central could be resolved

Thus, this study makes an original contribution to the existing body of knowledge on police governance and accountability (Lustgarten, 1986; Walker, 2000; Jones, 2008; Donnelly and Scott, 2002a,2002b), and democracy and policing (Jones *et al.*, 1996; Marenin, 1982; Manning, 2010; Aitchison and Blaustein, 2013). This study also fills a gap in knowledge by focusing on the SPA’s role in delivering police governance and accountability in the post-2012 Act police governance arrangements in Scotland. The proposed ‘epistocratic and deliberative’ approach to police governance and accountability could also be adapted as an analytical framework to examine police governance arrangements in other jurisdictions particularly to examine the nexus between expertise and democracy.

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## Appendix A - Official sources list

### Pre-reform

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- Sustainable Policing Sub Group, *Minutes of the meeting*, 16<sup>th</sup> November 2010.
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- Sustainable Policing Sub Group, Project Update, 8<sup>th</sup> February 2011.
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- A Consultation on Reforming Police and Fire and Rescue Services in Scotland, 15<sup>th</sup> September 2011.
- Outline Business Case for Police Reform Programme, 15<sup>th</sup> September 2011.
- Social Research: Keeping Scotland Safe and Strong - A Consultation On Reforming Police And Fire And Rescue Services In Scotland: Analysis Of Consultation Responses, 9<sup>th</sup> February 2012.

#### The Scottish Parliament:

- Justice Committee - *Report on Inquiry into the Effective Use of Public Resources*, 4<sup>th</sup> Report, Session 3.
- Justice Committee - *Official Report*, 34<sup>th</sup> Meeting, Tuesday 27<sup>th</sup> November 2012, Session 4.
- Police and Fire Reform (Scotland) Bill, Submitted on 16<sup>th</sup> January 2012.



## HMICS

- Independent Review of Policing in Scotland led by Paddy Tomkins, January 2009.
- Governance and Accountability of Policing in Scotland led by Andrew Laing and Emma Fossey, May 2011.

## HMICS and Audit Scotland

- Dumfries and Galloway Constabulary and Police Authority, Best Value Audit and Inspection, June 2012.
- Central Scotland Police and Central Scotland Joint Police Board, Best Value Audit and Inspection, July 2012.
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- Best Value in police authorities and police forces in Scotland. Overview Report, November, 2012.

## Audit Scotland

- The role of boards, September 2010.
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## Post-reform

### The Scottish Parliament: Justice Sub-Committee on Policing

- Official Report, 3<sup>rd</sup> Meeting, 18<sup>th</sup> April, 2013, Session 4.
- Official Report, 8<sup>th</sup> Meeting, 27<sup>th</sup> June, 2013, Session 4.
- Official Report, 9<sup>th</sup> Meeting, 5<sup>th</sup> September, 2013, Session 4.
- Official Report, 11<sup>th</sup> Meeting, 3<sup>rd</sup> October, 2013, Session 4.
- Official Report, *Local Policing*, 12<sup>th</sup> Meeting, 31<sup>st</sup> October, 2013, Session 4.
- Official Report, *Local Policing*, 4<sup>th</sup> Meeting, 20<sup>th</sup> March, 2014, Session 4.

- 1st Report, The Sub-Committee's activities in the first year of police reform, 11<sup>th</sup> June, 2014, Session 4.
- Official Report, *Stop and Search*, 7<sup>th</sup> Meeting, 19<sup>th</sup> June, 2014, Session 4.
- Official Report, *Armed Policing*, 8<sup>th</sup> Meeting, 21<sup>st</sup> August, 2014, Session 4.
- 1<sup>st</sup> Report, *Legacy Paper*, 18<sup>th</sup> March, 2016, Session 4.

#### Audit Scotland

- Police Reform Progress Update, November 2013.
- The 2013/14 audit of the Scottish Police Authority, December 2014.
- The 2014/15 audit of the Scottish Police Authority, December, 2015.

#### HMICS

- Review of Standing Firearms Authority for Armed Response Vehicle Crews within Police Scotland, October 2014.
- Audit and Assurance Review of Stop and Search: Phase 1, March 2015.
- Independent Assurance Review, Police Scotland Call Handling - Interim Report, September 2015.



## Appendix B - Breakdown of interviewees

*Note: Unless explicitly stated, all respondents in role when the fieldwork started in March 2015.*

### **MSPs**

Former Minister

2 x Opposition MSPs (Labour and Liberal Democrat)

### **The Scottish Police Authority**

2 x Executive Officers

4 x Non-executive board members

### **Police Scotland**

1 x Deputy Chief Constable

1 x Chief Superintendent

3 x Local Divisional Commanders (*As part of the partners in scrutiny research*)

2 x Local Area Commanders (*As part of the partners in scrutiny research*)

### **HMICS**

1 x Serving police officer (Assistant Chief Constable)

### **Local Scrutiny Committees** (*As part of the partners in scrutiny research*)

1 x Convenor

2 x Lead Officers

1 x Councillor

### **Other**

Civil Servant involved in the reform programme

Third Sector representative (*As part of the partners in scrutiny research*)



## Appendix C - Sample Access Letter

Dear Sir/Madam

I write to you in connection with my PhD research exploring the new landscape of police governance in Scotland. As part of my research I aim to conduct interviews with all key stakeholders and as the Scottish Police Authority occupies a central role in the new governance arrangements, I would be very grateful if you would agree to an interview.

The purpose of this research is to explore and analyse how police accountability is managed and delivered since the Police and Fire Reform (Scotland) Act came into effect on 01 April 2013. The establishment of the Scottish Police Authority as a body tasked with maintaining Police Scotland, promoting policing principles, and holding the chief constable to account makes it a key institution in the new accountability landscape and a natural focus for this study. This research will benefit greatly from your perspective as a Board member of the SPA.

The interview would broadly focus on the role of expertise in police governance, mechanisms of accountability and the relationship of the SPA with Police Scotland and other stakeholders.

The research is being carried out as an independent PhD study (please see the attached information sheet and consent form) in accordance with the Economic and Social Research Council's ethical code of conduct<sup>[1]</sup> and it is being supervised by Dr. Alistair Henry (Associate Director of the Scottish Institute for Policing Research) and Dr. Andy Aydın-Aitchison at the University of Edinburgh.

I hope that you would agree to this interview and I can meet at a time and location of your convenience.

I look forward to hearing from you.

Yours Faithfully

Ali Malik

[1] [http://www.esrc.ac.uk/images/framework-for-research-ethics-09-12\\_tcm8-4586.pdf](http://www.esrc.ac.uk/images/framework-for-research-ethics-09-12_tcm8-4586.pdf)



## Appendix D - Sample Interview Schedule

### **Expertise**

What expertise and skills are needed to scrutinise the operational policies of a professional body such as Police Scotland?

Do you think that the SPA has the required expertise and capacity to carry out its statutory responsibilities effectively?

How do you build capacity and expertise? What kind of training is offered to members who work with Police Scotland on a regular basis?

In terms of holding the chief constable to account, what are the underlying challenges that the SPA face?

### **Scrutiny Review Task Groups**

Why was there a need to set up the Scrutiny Review Processes?

How were the Scrutiny Review Task Groups set up?

Were there any difficulties in obtaining information from Police Scotland on stop and search and deployment of armed police officers? What lessons have been learned to ensure future reviews are seamless?

How does the SPA work with Police Scotland in developing a good working relationship?

### **Local Accountability**

Was the SPA aware of the decision of Police Scotland to raid saunas in Edinburgh?

Why has the SPA not set up a scrutiny task group to scrutinise local policy changes?

What is the SPA doing to encourage local authorities to scrutinise local policies?

How does the SPA ensure that national priorities do not override local interests?

### **Democratic Accountability**

How does the SPA manage its relationship with COSLA, MSPs and other stakeholders in police accountability landscape?

How does the SPA ensure and encourage public participation?

How useful have the public meetings been to raise awareness of operational issues within Police Scotland?



The Scrutiny Review on armed policing has taken evidence from members of the public, how useful was this? And going forward, is this going to be a regular mechanism for scrutiny?

### **Operational Independence**

What is your understanding of the term 'operational independence'?

Has this notion caused difficulties in putting in place mechanisms of police accountability?

Is there a need to re-define this notion to reflect the post-2012 Act governance landscape?

### **Possible Questions for Recommendations**

What would you suggest the SPA should work on to improve the mechanisms of police accountability in Scotland?

What can Police Scotland do to ensure the mechanisms of accountability are seamless?

## Appendix E - Sample Information Sheet and Consent Form

This research is being carried out as an independent PhD study at the University of Edinburgh. The purpose of this research is to explore how police governance and accountability is managed and delivered in the new governance landscape.

The establishment of the Scottish Police Authority tasked with maintaining Police Scotland, promoting policing principles and holding the Chief Constable to account makes it a natural focus for this study. As part of the research I am conducting interviews with a cross-section of interested stakeholders in the Scottish police governance landscape.

The interviews can usually last around 1 hour and will be audio taped to ensure accuracy. Transcription of the interviews will be available on request. All responses will be treated strictly in accordance with the ESRC research code of conduct<sup>34</sup>. Your name and personal information will not be used and I will maintain the highest standards of anonymity and confidentiality. Please note that in some cases in order to contextualise your answers I may have to refer to your title, however, I will do everything reasonable to make sure you are not personally identifiable.

As part of this PhD, I am developing a conceptual framework of Epistocracy, or knowledge based governance, that will represent a novel approach to the study of police governance and make a valuable contribution to the current discourses in Scotland. An independent academic study of this nature is pertinent given the ongoing governance review and I aim to share my findings and recommendations with a range of stakeholders and practitioners.

If you have any questions about the study, then please do not hesitate to contact me

Ali Malik

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<sup>34</sup> [http://www.esrc.ac.uk/images/framework-for-research-ethics-09-12\\_tcm8-4586.pdf](http://www.esrc.ac.uk/images/framework-for-research-ethics-09-12_tcm8-4586.pdf)

**Consent Form**

**Project Title:** Exploring the landscape of police governance in Scotland

**Researcher:** Ali Malik (Ali.Malik@ed.ac.uk)

**Position:** PhD Candidate

- 1. I confirm that I have read and understand the information sheet for the above study and have had the opportunity to ask questions.
- 2. I understand that my participation is voluntary and that I am free to withdraw at any time, without giving reason.
- 3. I agree to take part in the above study.
- 4. I agree to the interview being audio recorded.
- 5. I agree to the use of anonymised quotes in the thesis.
- 6. I agree that in some cases my job title will be used to provide context to my answer.

\_\_\_\_\_  
Name of Participant                      Date                      Signature

\_\_\_\_\_  
Name of Researcher                      Date                      Signature

## Appendix F - SIPR-SPA-Police Scotland ThinkTanks Terms of Reference

The SPA/SIPR Think Tanks have been established to facilitate SPA engagement with research evidence on matters related to policing, broadly refined, and its practice. The Think Tanks will run regularly and will aim to identify topics of importance through dialogue with Board members of the SPA.

Ali Malik is a fully-matriculated PhD candidate at the University of Edinburgh. He is studying the post-2012 Act police governance arrangements in Scotland. Ali's roles and responsibilities in the Think Tanks include:

- Providing general administrative support to the Steering Committee<sup>35</sup> in organising Think Tank sessions
- Working with the Steering Committee to develop the research content of Think Tank sessions (including working with the Committee to identify appropriate topics and speakers, and contacting speakers and invited participants)
- Attending Think Tank sessions and writing up a note of themes raised and discussed (but without attribution to specific persons, other than invited speakers) for the record. These notes may be published by the SPA/SIPR.

It is understood that Think Tank sessions themselves are 'safe spaces' in which participants can voice views for the purposes of discussion without having those views attributed to them. Deliberations within Think Tank sessions are therefore not part of the fieldwork of the PhD and should not be reported within the PhD or subsequent publications without the express written consent of the individuals concerned. It is recognised, however, that the Think Tanks provide Ali with a means of meeting and networking with SPA Board members and other important office bearers in the field and that he may use such contact to inform people about his research and request consensual interviews with them (which they have every right to refuse). All research for the PhD will be subject to the University of Edinburgh's ethical review processes.

*Payment.* Ali will be paid for time spent on activities related to his work with the Think Tanks and can claim reasonable travel and subsistence expenses. The daily rate is £151. The hourly rate (based on a 7 hour working day) is £23. Receipts and notes of time spent on relevant activities should be submitted to the SIPR Knowledge Exchange Officer at regular intervals.

1 December 2014

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<sup>35</sup> At the time of writing the Steering Committee is made up of Tom McMahon (SPA), Nick Fyfe (SIPR) and Alistair Henry (SIPR).