

**DEMOCRATIC CONTROL OF POLICE: HOW 19TH
CENTURY POLITICAL SYSTEMS DETERMINE
MODERN POLICING STRUCTURES**

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All states, democratic or not, have a form of policing, and one of the ways in which a democratic state can be distinguished from a police state is the extent to which the police are controlled by (or are independent of) government and the level of accountability to the public built into police organisational structures. A very brief consideration of various democratic states, for example member states of the EU, Australia, New Zealand, the USA and UK show that although the principles of democratic government and accountable policing are met in all, nevertheless the way in which this is done varies considerably from state to state. New Zealand and the Republic of Ireland each have a single, national policing body, Australia has one Federal and seven State and Territory Police Agencies, France and Italy have a variety of national, regional and municipal police agencies, Britain has about fifty local police organisations while the USA has literally thousands of police agencies. This paper will discuss policing in Australia, the UK and the USA to show how those nations' widely different policing structures on the eve of the 21st century arose from different political thinking in each of those nations in the 19th century or earlier. The particular aspect of policing which will be discussed in this context is the accountability of police organisations for strategic and policy decisions.

The crucial date in modern policing is 1829, the date of the establishment of the Metropolitan Police in London. The perception that the London Bobby is, and always has been, loved and trusted by the British public is not entirely in accord with the historical record. As will be shown in detail, Peel had considerable difficulty in persuading Parliament of the need for a police force for London, and it took a further 27 years before every town and county was forced, by law, to implement the new policing. Policing in Australia was established piecemeal during the 1830's, South Australia establishing the first recognisable, centralised state police force in 1844. In this same year, New York established the first modern police force in America, followed ten years later by Boston. Policing in the USA has never been centralised, or even regionalised, as a result of political principles established at the time of the American Revolution.

I will take as the first axiom about the establishment of modern police in the first half of the 19th Century that the Industrial Revolution had encouraged the growth of cities, which had led to population pressure and attendant public order and crime problems¹. However, the sentiments of the Atlantic Democratic Revolution of the late 18th Century had led to a great distaste for monarchic order and rule, and police who resembled the armed guard of a king, prince, lord or emperor would have been completely unacceptable. This was particularly true in the new American republic, whose citizens perceived themselves to have obtained their freedom from King George's soldiers, and were unwilling to submit to the control of any powerful government.

The historical context of the establishment of policing in Britain was that the nation had, over the centuries, limited the power of kings through Magna Carta in 1215, limited the power of feudal lords through the establishment of the Common Law system, and through a complex mechanism of Sheriffs, Magistrates, Courts of Assize and Quarter Sessions established a workable justice system. The Civil War in the 1640s, the restoration of the Monarchy and the Glorious Revolution of 1688 all redefined the authority of Parliament, Courts, Sovereign and people. In what was still, at the end of the eighteenth century, a rural society, wealth was largely defined in terms of land ownership. By the early nineteenth century, the rise of the middle classes had led to considerable numbers of urban rich, individuals whose wealth lay in manufacture, with houses, factories and valuable movable property in the cities and towns. Such people had great fear of the deprivations of the urban poor, who lived in close physical proximity to the new rich.

¹ It might be more correct to state the problem as the fear of crime among the new, affluent, urban middle class.

The urban middle classes, then, were the driving force behind the need for the new police: many of them held seats in the House of Commons. The poor, who had no vote anyway, saw the institution of police as another instrument of oppression, while the landed gentry felt that their safety was secured by their own bailiffs and servants on their country estates, and felt no need of a new policing body. Furthermore, the landed gentry, many of whom also held parliamentary seats, usually in the House of Lords, foresaw that their wealth would be taxed to pay for policing. It is hardly surprising, then, that Peel's idea for the new police was rejected in 1795, and by parliamentary committees in 1812, 1816, 1817, 1818 and 1822 before the *Metropolitan Police Act* was passed by a slim majority in 1829.

However, Peel's police force was soon recognised as a useful innovation for urban areas, and Parliament allowed towns and city corporations outside London to establish policing in 1833, and rural counties in 1839. The watch system was updated, and each new police force was controlled by the old Watch Committee, which consisted of Magistrates, Councillors, local dignitaries (or their nominees) and sometimes members of parliament. Control remained local.

The *Lighting and Watching Act* (1833) which allowed towns and boroughs to establish policing, also allowed the Australian colonies to establish policing, and by the mid 1840s New South Wales had the Sydney Police, Sydney Water Police, Mounted Police, Rural Police, Border Police and Native Police². The first steps toward self-government of the colonies came with the establishment of the New South Wales Parliament in 1823, and this had little enough power initially. Rather than fragment this power further by the growth of local policing bodies, first the South Australian Parliament in 1844, followed by Victoria in 1853, Western Australia in 1861, New South Wales in 1862, and Queensland in 1863 all enacted legislation establishing a unitary state policing system: only Tasmania held out with decentralised policing until 1898. The Westminster government certainly did not object to police in the Australian colonies being answerable to the Governor and thus ultimately to the colonial power. Indeed, policing in other parts of the British Empire was similarly answerable to Westminster³. Policing, therefore, was established under the aegis of the British government in different ways in the two nations.

The American political ideal has always been to restrict, as far as possible, the power of government. This is encapsulated by Jefferson in part of the Kentucky Declaration of 1789 (in effect, the state's constitution): "Free government is founded in jealousy, not in confidence, it is jealousy not confidence which prescribes our limited constitutions, to bind those we are obliged to trust with power". In the USA the Constitution is intended to place individual rights above all else, and to restrict the power of national government - indeed, individual states restrict their state legislatures, so that in the USA, more than in any other nation, a significant quantum of power rests with local government and other locally elected bodies such as school boards. While this can lead to some highly controversial outcomes, for example fundamentalist Christians with a literal approach to Bible interpretation who sit on school boards have caused the theory of evolution to be removed from the science syllabus in many southern states, the effect on policing in America has been to ensure that the overwhelming majority of police agencies remain under strictly local control.

² King (1956) Some Aspects of Police Administration in *New South Wales Journal of the Royal Australian Historical Society* Vol 42

³ The Royal Hong Kong Police, for example, always drew its officers of Inspector rank and above from British police officers on secondment.

The system of having a sheriff responsible for the safe custody of felons and the arrangements for their trials was a long-established part of common law practice, and was established in America during its colonial era. Although by the 18th Century the role of the sheriff was changing in Britain, the office, somewhat modified, maintained a useful function in America even after 1776. Sheriffs remained an important part of the American justice system after independence, with the extremely important difference that the office of sheriff ceased to be a Crown or government appointment, but became an elective position. Once modern policing became established in America, local politics was the most important and influential factor: the mayor or council of various cities decided whether or not they required policing, and set down the parameters for the appointment of the chief officer and police. Policing became a responsibility solely of local government, and was accountable strictly to the local voters, either directly through elected sheriffs, or at one remove, through mayors and councillors being answerable to the electorate for the chief of police they appointed.

Although the early Acts of Parliament establishing policing in both UK and Australia posited local control, it was not many years before government began to exercise its authority over some aspects of policing. In Australia, as we have seen, the consolidation of policing into one colony-wide (later, state-wide) body led to policing being one of the responsibilities of the state government. Funding for policing is a matter for state budgets, and there is no national legislation concerning policing methods or standards, nor is there any federal control of state police.

By contrast, as early as 1856, the *County and Borough Police Act* in Britain demanded that every part of the nation be policed, and any area that had not already done so was to establish a police force. This was the legislative stick: the legislative carrot was that Parliament voted that central government funds would be made available to assist in the cost of policing: first at 25% of the total cost, then a quarter of a century later 50%. The devil, as always, lurked in the detail. The Act provided that this money would be paid to Constabularies deemed “efficient”, which criterion would be judged by Her Majesty’s Inspector of Constabularies. The parameters of efficiency have, over the course of time, been laid down by the section of the Home Office dealing with policing, which has established national training and promotion criteria, recruiting levels and pay scales, and provided for the regular external examination of policing by Her Majesty’s Inspectorate.

The spirit of independence from government of the American people has allowed the growth of a plethora of police agencies across the nation, and has prevented any form of external checks on police methods or standards. Each municipality or local body which wants police has the level and quality of policing it is willing to fund, no more and no less, and, although various states establish training academies and minimum qualifications for officers, there is no way that federal or state government can exercise any sanction against a police agency which follows the beat of its local electorate’s drum. Until the civil rights era of Martin Luther King and Robert Kennedy, white sheriffs representing a white electorate in rural Mississippi and other southern states were able to enforce subservience on the African American populace, contrary to the law, natural justice and the Constitution.

The historical perspective helps to explain some of the absurdities apparent to international observers in American policing. Certainly, the absolute local control of policing means that chief officers of police are completely answerable to their communities, both directly and

through local government⁴. One positive aspect of this is that community policing becomes a far easier model for police to implement. The biggest problem facing police in Australia and Britain in establishing community policing is to involve the public directly and in sufficient numbers in police issue and crime strategies. If, however, an American municipality has elected a community policing oriented local government which appoints a chief of police committed to community policing, then that electorate is likely to do its part in working with the police department. However, if the electorate can be persuaded that its city is a crime jungle, and police cannot maintain control without the use of force, then there may be few restrictions on police activity.

There is some evidence of insufficient regulation of police in certain American cities. Los Angeles Police Department, for example, has a higher proportion of shootings of suspects by police than most other cities: the city council raises no questions about the proportion of the police budget spent on settling civil cases where officers assault or kill members of the public who may or may not be suspects. The police, the city council and a high proportion of voters all believe that Los Angeles is a battleground where the police cannot maintain the peace unless they can outgun the criminal element, and that police violence is an unfortunate necessity. Given this background, it is unsurprising that police internal affairs rarely recommend prosecution of fellow police officers for assault, elected district attorneys are unlikely to recommend such prosecutions independently, nor are elected judges likely to indict police officers. Even when this does happen, as in the Rodney King case, juries may well feel police violence is justified, and refuse to convict. The only recourse under the American system is a federal prosecution for infringement of constitutional rights. From the civil rights era to Rodney King and beyond, such prosecutions have been brought successfully, but seem a poor substitute for enforceable national standards in policing.

Over the last twenty years, British policing has moved closer towards national control from the Home Office. The *Police and Magistrates Courts Act 1994* changed the structure of police authorities, limiting their size and requiring that a proportion of their members be subject to Home Office nomination. Further, police budgets have been capped, and among the criteria by which constabularies are judged efficient are their compliance with Home Office national policing priorities. The even more recent *Crime and Disorder Act 1998* requires, among other things, that local councils and police develop joint crime prevention initiatives. Since both local councils and police depend upon central government for a large proportion of their finance, then there is considerable pressure on these bodies to accede to the wishes of the national government.

The *Police and Criminal Evidence Act 1984* has, however, created an exceptionally good police complaints investigation procedure in the UK. Although complaints are investigated by police, an independent body, the Police Complaints Authority, reviews all investigations, and can be involved in any investigation from the outset - in some investigations, the PCA must be involved as soon as a complaint is made. A police officer who is treated as a suspect in a criminal offence, for example if an assault is alleged, is entitled to all the rights of any person suspected of a criminal offence, including the right to legal advice and the right to silence.

⁴ The Chief of Police in San Antonio, for example, is required to attend the weekly meeting of the city council, and answer questions on any agenda issue which involves police. This is by no means unusual. Chiefs of Police have little job security - the average length in post is around 3 years, before the officer moves on.

Like the American federal government, the Australian government in Canberra has no authority to impose or enforce policing standards on individual states. However, the fact that there are only a handful of police agencies in Australia means that a level of agreement can be reached by police ministers and commissioners on policy issues, which can be enforced in the individual states. A history of problems in policing, most notably in recent years those exposed by the Fitzgerald and Wood Royal Commissions, and a culture of change in policing mean that no Australian police agency wants to be left behind, and all want to establish their practice as best practice for national adoption. Nevertheless, the diversity of needs of capital city, towns, and bush communities, imposed on a single state police agency operating, as it must, to coherent organisational standards means that compromises must be made in policing strategies.

Finally, consider three cities, roughly equal in area, population and number of police officers: Greater Manchester, Melbourne and Los Angeles. Manchester's policing conforms to British national standards, although it is controlled by a local police authority with no concerns for other areas. Victoria's police have to provide service for the whole state, not just the city, and officers are transferred in and out of the city - Melbourne is policed in a manner which takes into account not just the city's needs, but is compatible with the needs of Geelong and rural Victoria. Police in Los Angeles need consider only the requirements of the city, and are answerable, ultimately, only to its voters and powerful lobbies.