



The Idea of Civil Police

Mortimer J. Adler

A Presentation given at Aspen February 1972

Part 1 of 4

I. INTRODUCTION

Let me begin by mentioning the purely accidental occasion for my interest in this subject, for it will reveal at once the most astonishing fact about the subject itself.

A reading of Plutarch's lives of the Gracchi brothers brought with it the discovery that public officials of the Roman Republic, a constitutional government or government of laws, had little or no protection against the violence that could be brought to bear against them by their opponents, who used paid thugs to drive them out of the city and to kill them.

Presidents of the United States, even though amply guarded by Secret Service officials, can, of course, be assassinated. But at least they are generally guarded against such violence, so that breaches of security are the exception rather than the rule.

Plutarch's story of the Gracchi seemed to indicate that there was no general system of security for public officials in ancient Rome—no instrument of government which, exercising authorized and organized force, tried to maintain the civil peace and public security which one might expect to be a prime objective of civil society and civil government.

This led me to ask two questions, both in the first instance historical rather than philosophical. One concerned the actual history of police as a basic institution of government. The other concerned the history of the idea of police as a basic concept in political philosophy or the philosophy of government.

The inquiries we have so far conducted at the Institute for Philosophical Research have turned up what to my way of thinking are astonishing—unexpected—answers to these two questions.

We have looked into the history of police as an institution of government and found that a police force as we are now acquainted with the instrumentality of police in our kind of society and our kind of government—a republic or constitutional regime—is of extremely recent origin; in fact, about 150 years old.

We have also examined the great works of political philosophy, from Plato and Aristotle in antiquity through John of Salisbury, Aquinas, and Marsilius in the Middle Ages, to Bodin, Hobbes, Locke, Rousseau, Kant, Hegel, and Mill in modern times; and here we have found an equally astounding deficiency. The idea of police is seldom discussed, although there is some discussion of the use of force by government. The concept of police force as a basic instrument of government is almost totally absent from the conceptual framework of political philosophy.

Let me hasten to add at once that both of the points that I have just made are rendered somewhat questionable by a profound ambiguity or equivocation in the use of such words as “force” and “police” in the literature of political history and political philosophy. Clearing up this ambiguity or equivocation will be one of the principal contributions of this lecture, for unless that is done, the discussion is riddled through and through with contradictions and paradoxes.

The word “civil” as an adjective qualifying the word “government” and the word “society,” just like the word “constitutional,” introduces so fundamental a distinction between two forms of society and two modes of government, that to use the words “soci-

ety” and “government” without qualification is treacherously ambiguous. A despotic government, as we shall see, and a civil or constitutional government are not univocally governments. One is an organization of force and nothing but that; it is totally without authority; its ends can never be identical with the ends of civil government. So much so is this the case that Locke makes what might at first appear to be the extreme statement that an absolute monarchy is not civil government in any sense of that term and does not create a civil society; and there are passages in both Rousseau and Aristotle that support this: only with the advent of constitutional government does the state come into existence for Aristotle; only with the social contract does civil society come into existence for Rousseau, and what then comes into existence is a republic or constitutional government. Just as Aquinas says that a tyrannical law is a law in name only, because it is an expression of force totally devoid of authority and right or justice, so we should say, in my judgment, that a despotically governed state is a state—or civil society—in name only; for it, too, is a creation of pure force, totally devoid of authority and right or justice.

The relevance of these observations should be clear at once. The adjective “civil” attached to the word “police” or “police force” introduces an absolutely basic distinction between police or political force that has or does not have duly constituted authority and is or is not limited by principles of right and justice.

The immediate effect of this clarification, it will be seen, is greatest in the field of political history. Most of the historical accounts of police or police force fail to observe the distinction. In consequence of this, it is thought by most historians of the subject or commentators on the history that the institution of police has a long history, that there are ancient and medieval manifestations of police forces, and that fairly early in modern times, both in England and on the continent, there are well-organized, disciplined, and effective police forces in operation. All of this will be seen to be an illusion or mistake—a misleading misreading of the historical facts—once the words “police” and “police force” are cured of their ambiguity by insisting, always, upon the basic distinction between a police or police force that is civil or constitutional and a police or police force that is not.

In our own day, these words have another kind of ambiguity—that of opposite evaluations. The words are used both eulogistically and dyslogistically; and this evaluative ambiguity is ultimately rooted in the conceptual ambiguity that attends the common or general use of the terms.

What I have said so far explains the way in which I will proceed to discuss the idea of a civil police force. I will do so in the following four steps.

First, I will state, as briefly as possible, the principles in the theory of government and law that constitute the conceptual framework within which the problem of police can be clearly stated and some attempt can be made to solve it.

Second, I will try to present, sketchily perhaps, an ideal conception of civil police—what, ideally, its role and functions as an institution of civil government should be. I will do so without any attention whatsoever to actual police forces, historical or present.

In the light of these purely theoretical considerations, I will then, third, offer a history of the subject quite different from any, with which I am acquainted—different because it will be controlled by categorical distinctions that the general run of historians totally ignore. The history, as I present it, will be divided into two parts, one devoted to the history of the concept in political thought, the other devoted to the history of the institution in political action.

Fourth and finally, I will have a few words to say about the direction to be taken in the future-development of the institution. Here what I have to say is most tentative and problematic, for it is least philosophical; and here also, in my judgment, we need what this lecture does not and cannot provide; that is, a careful analysis of the burgeoning, almost exploding, current practical literature about urban police forces as they exist in our cities today, expressing the most widely diverse and generally un-clarified views of how they should be organized, how they should function, how they can be improved, etc.

II. THE FRAMEWORK OF PRINCIPLES

The basic controlling distinction is that between despotic and constitutional government—between a government by men and a government of laws, absolute and limited government; or what I have called, in *The Common Sense of Politics*, *de facto* and *de jure* government. A precise analysis of this distinction is set forth there in Chapters 6,7, and 9; see esp. pp. 79-80, 87-88-89-90,112,115-121. Let me summarize briefly here what is involved in this distinction.

A *de facto* government, which may be either a tyrannical or a benevolent despotism, but in either case is essentially despotic, is nothing but a government by might or naked force—force devoid of authority. Those subject to such government are governed without their consent, even if from fear they are passively acquiescent; they are governed without any participation on their part; their obedience or submission is ultimately and solely grounded in their fear of the sanctions that will be enforced. These essential points remain the same whether the absolute or despotic government (by one or by a few) is wholly tyrannical (exercised exclusively in the private interests of the ruler or rulers) or somewhat ameliorated by benevolence (with some concern for the good of the ruled or for the public good).

In sharp contrast, a *de jure* government, which also may be unjust in one or more respects (see *C.S.P.*, Ch. 9) is a government that derives its authority from the consent of the governed by their explicit or tacit acceptance of the framework of government that is laid down in a constitution or what is sometimes called “the fundamental law of the land”—the law that is antecedent to the acts of legislators, the law that creates the offices of government and assigns to each a limited authority to perform this or that function of government and that makes the office-holder exercising that authority responsible to the citizens who, as the constituents of government, are both rulers and ruled.

The primary distinguishing feature of *de jure* government lies in its possession of authority, totally lacked by *de facto* government. The possession of authority, derived from the consent of the governed, means that obedience to or compliance with government is grounded in reason, rather than in fear: since, with the consent of the governed, government has the authority to do certain things for the common good of the community and the ultimate good of its members, they, in consenting to it, always are predisposed to comply with it, and so do not need to be compelled to do so by fear of the sanctions imposed on the disobedient.

If all members of the population were so disposed, naked authority would suffice. No coercive force would ever have to be exercised to render government effective. That is the meaning of Alexander Hamilton’s remark that if all men were angels, no government would be necessary. Hamilton, I think, is here using the word “government” as a synonym for “coercive force.” If that is not his intention, then, of course, he is wrong, for even angels *need* government in the sense of directions given by an authority for their own good; or, as Aquinas points out, if Adam had not sinned

and the family of man had remained in Eden in a state of virtuous innocence, there would have been government, having directive authority for the good of the community, but that government would not have needed coercive force to compel obedience, because all members of the community would, through reason and virtue, have complied with its ordinances. (See *Summa Theologica*, Part I, Q. 96, A.4.)

Since *not all* the members of a society living under *de jure* government are angels or men of perfect virtue, such government must have its authority supplemented and supported by the right to exercise coercive force to compel obedience by those who need to be compelled by the fear of sanctions.

It would thus appear to be the case that *de facto* and *de jure* government have one element in common; namely, coercive force, applying sanctions to elicit obedience. One has what the other lacks—authority; but both have coercive force. On closer examination, however, this is not the case; for a *de facto* government has naked force, force without authority, and is nothing but the exercise of such naked force; whereas a *de jure* government, which needs coercive force to supplement its authority in order to be effective against those in the community who are not, for one cause or another, disposed to comply with its authorized acts, has, as part of its authority, the right to exercise the needed force. Its authority includes the authorization to use such force as may be necessary for the good of the community and its members.

Hence the force exercised by a *de jure* government is authorized force and is rightfully exercised to the extent that remains within the limits of its authorization.

The force exercised by a *de facto* regime, being naked force or force without authority, is, therefore, not identical with the authorized force exercised by a *de jure* government.

The two forms of government thus do not have any elements in common.

The philosophical anarchists have projected as an ideal a community of men, living at peace with one another and enjoying maximum freedom and equality, either (a) without any government whatsoever or (b) government that exercises naked authority and does not need to be supplemented by coercive force, even authorized force. The first of these alternatives can be shown to be intrinsically impossible; the second is utopian, in the sense that it might

exist in a community of angels or of completely virtuous men but not in a community of men as they are, by and large. (See *C.S.P.*, Ch. 8). Hence of the four logical alternatives:

A community without government, in which each individual is *completely autonomous*

A community under government having authority but needing no force

A community under government having authority and also needing force to supplement it; therefore, having the right, as part of its authority, to use force

A community under government having only force at its disposal and no authority whatsoever—the first is self-contradictory (by virtue of the fact that complete autonomy is incompatible with the existence of a community), the second is utopian, and only the third and fourth have reality for men as they are constituted.

Let me add one further comment on the foregoing. Machiavelli said that men, unlike beasts, have two ways of settling their differences: by law and by force. If his statement means that disputes among men can be settled either (i) by law without force or (ii) by force without law, whereas disputes among beasts can be settled only in the second way, the statement is false, or at least misleadingly imprecise. For though men, like beasts, can settle their differences by force alone—and frequently do so, as in war and even within communities—and even though they can sometimes settle their disputes by law alone, it is not true that they can always do so; for sometimes, and especially in the crucial, difficult instances, the settlement of a dispute by law needs the supplementation of force to make the settlement effectively prevail. This, as we shall presently see, means that coercive force, while not of the essence of law or an element in its definition, is nevertheless an indispensable property of law, indispensable not by virtue of any defect in law itself but by reason of defects in men, or in some portion of the, population to whom the law applies.

We need to understand no more than this basic distinction and what it entails in order to reach the conclusion that the idea or institution of police raises no special conceptual problems and no perplexing practical difficulties in a society or state under *de facto* or despotic government.

Since despotic government is essentially an organization of force, to be employed in whatever way may be necessary to secure or advance the interests of the regime, the instrumentalities or implementations of force will always be operative in such a state, whether they are called “soldiers,” “guards,” “cohorts,” or “police.”

Just as the phrase “military force” is somewhat redundant, because a military that lacked force would be useless, so, too, the phrase “police force” is similarly redundant. Like “military” the word “police” connotes the possession of force available for use.

Since, furthermore, a *de facto* government is absolute and irresponsible, and so is without limitations or restraints except those that can be imposed by superior force either from without or within, its use of its military or its police Power can be both arbitrary and capricious, and is subject to no other considerations than those of expediency.

Under such conditions, there is no essential difference between the military and the police power at the disposal of the government, except, perhaps, that one form of force is reserved for external use, against “enemies” of the state from without, whereas the other is employed internally, against “enemies” of the state from within.

Although the phrase “police state” in its modern origin is connected with the institution and operation of a “secret police” to detect and suppress insurgents, a *de facto* government is a police state—a state in which organized force is deployed by the regime in power to retain its power and even, perhaps, to increase it.

The philosophical anarchist who regards the distinction between *de jure* and *de facto* government as mythical, and denies that authority is ever conferred upon government and by the consent of the governed, looks upon all historical and existing states as police states. Given his premises, that view of the matter cannot be gainsaid. Only if his premises are wrong, as they most certainly are, can there be states in which the institution and operation of police are such that the society is in no sense a police state. Though the police would still be a police *force* it would also be a *civil* police *force*. The prefix “civil” changes the character of the force that is a necessary adjunct of police: the force ceases to be naked and unlimited force and becomes authorized and limited. As I suggested at the beginning, serious equivocation is involved in any use of the word “police” or the word “force” that does not take account of the

difference made by prefixing “police” with “civil” and “force” with “authorized.”



THE GREAT IDEAS ONLINE

is published weekly for its members by the

CENTER FOR THE STUDY OF THE GREAT IDEAS

Founded in 1990 by Mortimer J. Adler & Max Weismann

Max Weismann, Publisher Emeritus

Elaine Weismann, Publisher and Editor

Phone: 312-943-1076

Mobile: 312-280-1011

Ken Dzugan, Senior Fellow and Archivist

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