



The Idea of Civil Police

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Part 4 of 4

IV. THE HISTORY OF POLICE

The conceptual plane: the history of the idea of civil police

What might have been expected, in view of the framework of principles in the philosophy of government and of law that call for an explicit development of the idea of civil police?

Answer: A major discussion of civil police as an indispensable instrument of constitutional government because it has a monopoly of authorized force at its disposal to enforce the law and the decisions of courts, to promote justice, and to preserve peace.

What, in fact, does the history of political thought reveal?

Answer: Almost no discussion at all in Plato, Aristotle, Cicero, Aquinas, Hobbes, Locke, Rousseau, Montesquieu, Kant, Hegel, Bentham, Mill, etc.

(Further comment: the Constitution of the United States contemplates the formation of a federal state with sharply divided jurisdictions and subordinate units of constitutional government. Yet the Federalist Papers do not discuss the role of police in either the national or the state governments; and the whole problem of three or four levels of police in the U.S.A. receives little attention in the history of commentary on the governments of the United States, e.g., see Bryce.)

The institutional plane: the history of police forces in operation

Note: I am not going to tell this history in simple chronological order, but rather in terms of the basic political categories already used to summarize and contrast the functions of police, both civil and non-civil.

I will first, deal with the history of non-civil police in despotic regimes that are (i) mainly tyrannical or (ii) mixed with some elements of constitutionalism or ameliorated by some degree of benevolence.

I will, second, deal with the history of civil police in constitutional regimes, either republics or constitutional monarchies, such as England from the 19th century on.

In terms of this basic division between two categories of political institutions, what would anyone naturally expect to find in the institutional history of police in each category?

In despotic regimes, a use of unauthorized force, with no clear distinction between police force and military or paramilitary force; to which may be added the performance of certain functions that resemble those performed by civil police when despotic regimes are mixed with constitutionalism or are to some degree benevolent. In any case, the agencies of coercive force employed for internal use are as much minions, instruments, or servants of the regime, as are the agencies of military force used for external purposes.

In constitutional regimes or republics, a use of authorized force to serve the welfare of the citizens, with respect to the reign

of law and justice and with respect to the preservation of civil peace and public order. One would expect that the coming into existence of a civil police would be co-eval with the coming into existence of constitutional government, because it is an indispensable adjunct of such government. And one would expect that as constitutional government itself developed institutionally from ancient to modern times, and especially with the development of federal constitutions in modern times, there would be a corresponding development of the institution of a civil police force.

What anyone might have expected to find in the history of this subject is by and large found in the case of despotic governments of various types.

Egypt: beginning with the policing of the Nile, the protection of the tombs from vandalism, etc. (from 1500 BC down to the first century)

Rome: beginning with Augustus and with the transition from the republic to the despotism of the Ceasars (at first a mixed regime with decadent constitutionalism, and later purely despotic and largely tyrannical). Under Augustus, there was a Prefect of Rome and on Urban Cohort that performed a number of quasi-civil police functions, though performing them as minions of Caesar not as servants of the community.

After Augustus, the line between military force and anything that resembles civil police force progressively disappears.

Mediaeval Europe, especially France and England during the feudal period and in the transition to the rise of national states with strong central governments.

During the relative anarchy of feudalism, individuals had to resort to self-help and self-redress or private revenge to secure their private interests. In other words, violence was the order of the day. Not even the unauthorized force of a non-civil police existed to save individuals from engaging in private violence to protect themselves or serve their interests.

With the increasing power of the throne and the central government as national states emerged from the anarchy of the feudal era, and something like civil peace—the peace of the realm—became a primary objective of government, various instrumentalities developed whereby the unauthorized force at the disposal of the monarch could be used to protect the regime itself

against sedition or treason, to keep the peace for the king, to maintain internal order. It would be difficult to say whether these instrumentalities were para-military in character or something a little more like a non-military police.

Modern tyrannical despotism—in France, Spain, Austria, and Russia.

Here we have the beginning of “secret police” and the use of police power, mainly in a para-military form, to preserve the regime against all types of insurgency and conspiracy.

Benevolent despotism, most clearly exemplified in Prussia under Frederick the Great, a model benevolent despot

Here both aspects of the use of unauthorized force by the prince:

On the one hand, to serve the interests of the prince, protect the regime against internal enemies, and maintain order

On the other hand, to serve the welfare of the subjects, to protect them from injury by one another, and to enforce certain legal rights and duties.

Until very recently—the middle of the 19th century or even later—the great European states, with the exception of England, i.e., France, Germany, Spain, Austria, Russia—were all to some degree police states. This state of affairs continues into the 20th century with the rise of fascist or totalitarian regimes in Italy, Germany, Russia, and Spain.

Now let us ask what anyone might expect to find in the history of this subject if we turn to the other main political category—constitutional governments or republics.

The answer, astonishing and paradoxical as it may seem, is that what one might expect to have occurred did not occur to any substantial degree.

On the principles here set forth, as I have already pointed out, one would expect civil police to come into existence with the first republics and to develop institutionally along with the development of other aspects of constitutional government. *But that is simply not the way things happened.*

The city-states or republics of ancient Greece—the beginnings of constitutional government. Here we find almost nothing in the way of an organized civil police force.

The Roman Republic, during five hundred years of its history, from the expulsion of the Tarquins to Augustus.

Under the Tarquins and in the early years of the Republic, the emergence of the office of certain magistrates having the authority to regulate such things as markets, public games, traffic, maintain a minimum degree of public order in emergencies, such as fires, etc.

But in view of other aspects of republican Rome as the outstanding model of constitutional government in antiquity, the history is conspicuously vague about how the authority of such magistrates was supplemented and made effective by instrumentalities of authorized force. It is not until you come to Augustus as an imperial prince, not as a republican official, that definite signs of an organized police force first appear, and then that police force is a servant of the prince, not of the people.

Finally, we come to the history of police in England— a mixed regime from Magna Carta until 1688, and progressively more constitutional from then on; and to all intents and purposes a republic, except in name, from the 19th century on.

In the late feudal period and in the early days of the kingdom, what was true on the continent was true of England: little or no police power; mainly self-help, self-redress or private vengeance.

However, as early as 1285, the Statute of Winchester (which prevailed throughout the country with the exception of London itself) set up justices of the peace to settle civil disputes and to keep the King's peace. There were also local sheriffs and constables, but during this whole period between 1285 and 1829, there is no clear picture of how police power was organized and used—the nature of the force and its operation. Furthermore, questions about the constitutionality of the police force and the manner of its authorization are difficult to answer.

One exception to the foregoing statement is the creation of the Bow Street Runners by the Fieldings, as a private enterprise to assist the courts in the apprehension of criminals. The Runners are, in a way, the precursors of the Metropolitan Police.

Then in 1829, after much debate and strenuous opposition (the motivation of which was hatred and fear of uniformed police in the French and continental style, a paramilitary force that, in the British view, constituted a serious threat to individual liberty), an

act of Parliament created the Metropolitan Police. This is a genuine first in history—the first constitutionally created police force, an organized body of men given authority, severely limited authority, to use coercive force to enforce the law, prevent injustices or injuries, and maintain civil peace and public order; in short, the first truly civil police force in history, in the service of the community and acting for the welfare of the citizens, not minions of the prince acting for his private interests.

The history of the Metropolitan Police from its origin and until very recently provides us with an example of what a civil police force can be and should do—and do with extraordinary effectiveness and restraint. Recent indications of diminished effectiveness in curbing crime and curtailing violence may be explained by the amount of crime committed by drug addicts (whom no police force can control or deter) and by the change in the character of the population from homogeneous Anglo-Saxon to a polyglot mixture involving many who no longer tend to regard the police officer as a fellow citizen and a friend.

After the establishment of the Metropolitan Police, similar action was taken in Boston and in New York, and later in other American cities, to create a uniformed police force where, before the middle thirties or forties of the last century, none existed.

The opposition in this country was just as intense as in England—many holding that a uniformed police force would be a standing army that threatened the liberties of the citizens.

But the history of civil police in Boston and New York and other American cities is a history of corruption and abuse of power. Even before the present era of drug addicted criminality and polyglot populations, it does not follow the English pattern of highly restrained effectiveness in curtailing violence, curbing crime, and maintaining peace and order.

One reason for this difference may be that the municipal governments in the United States, which first created organized and uniformed police forces, are far and away the poorest most corrupt, least lawful or constitutional governments—much less responsible and responsive than the state governments and than the Federal government. Where, in England the Metropolitan Police was created by an act of Parliament and fell under the supervision of a cabinet officer (the Home Secretary) of the national government, in the United States, police departments were formed by local mayors and were run by police chiefs or superintendents who

were, for the most part, political hacks or henchmen of the party boss.

V. A LOOK TOWARD THE FUTURE OF CIVIL POLICE: PROBLEMS TO BE SOLVED

In the realm of theory: the conception or theory of a civil police is an essential and important chapter in political philosophy that remains to be written. As we have seen, it does not now exist. I am ashamed to say that I failed to write it in *The Common Sense of Politics*, published as recently as 1970.

In the realm of practise, the following problems seem to me the outstanding ones to be solved:

Should the functions of a civil police be limited to those actions that require the use of authorized force? In other words, should all the other functions now being performed by police, especially municipal police functions that have no need for the use of coercive force, be eliminated from the responsibilities of police and assigned to other agencies of government?

Should the burden of crime prevention that falls most heavily on municipal police be lightened by the decriminalization of certain types of behavior which, although judged immoral by certain prevalent standards of right and wrong, do not cause injury to anyone except, perhaps, the person engaging in the behavior? (In this connection, it is necessary to consider all the pros and cons of the issue concerning the elimination of crimes without victims; for the effect on police duties of eliminating such crimes is certainly not the only factor to be taken into account).

What steps can and should be taken to make policing a learned profession, an adjunct of the legal profession, and one having prestige in the community? What kinds of preparation and training should be required for the performance of police duties? What level of compensation would, then, become appropriate? What measures can and should be taken to safeguard a professionally trained civil police from political influences that attempt to use its power for private purposes instead of for the public good?

How can the public attitude toward police be changed to accord with and support the changed character of police, the ideal being a conception of civil police as a friend of the citizen and the servant of the community, the representative of justice not of tyranny, the opponent of violence not the exemplar of it?

What should be done to draw the line between the problems of maintaining public order and curtailing the violence and disorder that properly fall within the province of a civil police force, and the problems raised by mass political protests that seethe with incipient violence and verge on political riots or even open and declared rebellion. Should not problems of the latter sort be solved by means of authorized force at the disposal of the state, *other than civil police force*?

Should a civil police force be deprived of weapons and of uniforms? Or should the style of the weapons and the uniforms be altered in order to stress the difference between police force and military or paramilitary force?

Where, as in the United States, civil police forces now exist at various levels of government, from municipal and county levels to state and federal levels, would it not be desirable to have the institution of civil police *at all levels* defined and controlled by an amendment to the Constitution that would call upon Congress for legislation that would set national standards and impose legal limitations upon the organization and employment of authorized force at all levels of government?

In the light of the analysis here set forth, the history briefly summarized, and the problems posed, it might now be useful to examine the burgeoning current literature that is mainly concerned with the organization and operation of urban police forces, in order to see if the issues implicit in that literature can be made explicit, clarified, and intelligently discussed.



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